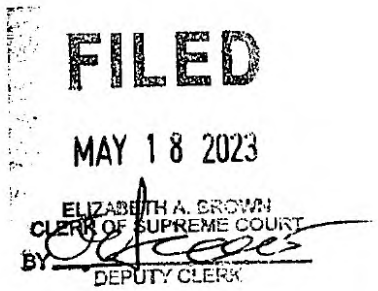
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIEL ARMSTRONG, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF ROY ARMSTRONG,
Appellant,
vs.
LAS VEGAS POST ACUTE & REHABILITATION, LLC, D/B/A LAS VEGAS POST ACUTE AND REHABILITATION, A DOMESTIC LIMITED LIABILITY COMPANY; AND MERIDIAN MANAGEMENT SERVICES LLC, A CALIFORNIA LIMITED-LIABILITY COMPANY DOING BUSINESS IN NEVADA,
Respondents.

No. 84007-COA



ORDER OF REVERSAL AND REMAND

Mariel Armstrong, as an individual and special administrator of the estate of Roy Armstrong, appeals from a district court order granting a motion for summary judgment[1] in a medical malpractice or professional negligence case. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

[1]We note that on appeal Armstrong does not challenge the grant of summary judgment but instead argues that the district court's interlocutory order striking her medical experts constituted the imposition of a case-concluding sanction because it made summary judgment inevitable. Therefore, Armstrong argues that the interlocutory order should be reversed, which would then necessarily require setting aside the order granting summary judgment.

23-15694

Facts and procedural history

In March 2018, Armstrong's father, Roy Armstrong, was admitted to Sunrise Hospital Medical Center (Sunrise Hospital) for shortness of breath and dehydration.[2] He was diagnosed with exacerbation of chronic obstructive pulmonary disease, hypertension, anemia, and failure to thrive. Because his condition required 24-hour nursing care and rehabilitative services, Roy was transferred to Las Vegas Post Acute and Rehabilitation (LVPAR) facility, managed by Meridian Management Services, LLC (Meridian). LVPAR and Meridian are collectively referred to as respondents where appropriate.

On May 2, Roy suffered altered mental status, a decrease in his oxygen saturation levels, and low blood pressure, which allegedly went unnoticed by LVPAR employees for several hours. Eventually, at midnight a physician's order was obtained to transfer Roy to the Sunrise Hospital where he passed away the afternoon of May 3.

Following her father's death, Armstrong filed a complaint alleging medical negligence, corporate negligence/vicarious liability, wrongful death, and elder abuse. Armstrong's complaint was supported by the affidavits of two medical experts, detailing how respondents' conduct allegedly fell below the professional standards of care for failing to monitor Roy's condition and to timely transfer him to Sunrise Hospital.[3] Armstrong

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[2]We do not recount the facts except as necessary to our disposition. We refer to Roy Armstrong by his first name to avoid confusion.

[3]The parties and the district court refer to the statutes for "professional negligence" and "medical malpractice" interchangeably, although they are distinguishable. *See Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 802, 358 P.3d 234, 241 (2015) ("[W]hile the definition of medical malpractice is narrower in scope, the definition of professional

was represented by out-of-state counsel, admitted pro hac vice in Nevada, as well as local counsel.

The district court issued a scheduling order and discovery proceeded.[4] Trial was eventually set for November 15, 2021. Armstrong timely disclosed her two medical experts in accordance with the applicable deadlines, but Armstrong failed to produce her experts for their depositions despite respondents' repeated requests for dates and times. Therefore, on the last day of discovery, August 2, respondents filed a motion to strike Armstrong's experts or in the alternative motion to compel expert depositions. The motion was set for a hearing on an order shortening time for August 10. Armstrong's pro hac counsel claimed he was unaware of the local procedures regarding shortening the time to respond to the motion and therefore missed the deadline to file an opposition. Neither Armstrong's pro hac counsel nor local counsel appeared at the August 10 hearing.

The hearing on respondents' motion was short. The district court found that striking Armstrong's experts was an appropriate sanction for her failure to make her experts available for their deposition prior to the

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negligence encompasses almost all of the medical malpractice definition."). Nevertheless, a complaint sounding in either professional negligence or medical malpractice requires an expert affidavit pursuant to NRS 41A.071. *See Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 645, 403 P.3d 1280, 1286 (2017) (noting that medical malpractice claims require a medical expert affidavit pursuant to NRS 41A.071).

[4]The district court's initial scheduling order deadlines are set forth in its minutes on December 17, 2019. As Armstrong acknowledged during oral argument, a copy of the scheduling order is not contained in the record. However, the parties agree that they subsequently stipulated to an extension of the discovery deadline to August 2, 2021, approximately three months in advance of trial.

close of discovery. The court did not consider the respondents' alternative motion to compel,[5] nor did the court specify the statute or rule on which it relied to impose sanctions.[6] After the order granting the motion to strike was entered, respondents moved for summary judgment based on the lack of expert testimony as required to prove a medical malpractice or professional negligence case. *See generally* NRS 41A.100. After the motion for summary judgment was filed, Armstrong moved to reconsider the court's order striking her medical experts. The district court heard the motion to reconsider first.

On September 21, at the hearing on the motion to reconsider, Armstrong argued that striking her experts was akin to a case-concluding sanction because, without medical experts, she would not be able to prove her case at trial. She also argued that the district court unfairly struck her experts under NRCP 37(b) for her failure to produce them for deposition without first imposing an order compelling their depositions pursuant to NRCP 37(a). Respondents agreed that the sanction was case terminating, but nevertheless claimed that Armstrong failed to present any legal argument for reconsideration, and argued that granting reconsideration

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[5]The parties dispute whether the district court could hear the motion to compel in the first instance or whether such motions are required to be heard first by the discovery commissioner. *See* EDCR 2.34(a). We need not resolve this dispute as the district court did not hear the alternative motion to compel.

[6]The only rule referenced in the district court's order is NRCP 26(b)(4). This rule states that "a party *may* depose any person who has been identified as an expert whose opinions may be presented at trial." (Emphasis added.) However, this permissive rule does not, in and of itself, justify sanctions for failing to produce an expert for deposition during the discovery period.

would be detrimental to the respondents' defense strategy of filing a summary judgment motion in advance of trial.[7]

The district court did not schedule an evidentiary hearing to analyze the factors in *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 92-93, 787 P.2d 777, 779-80 (1990), before denying the motion to reconsider. Indeed, at the beginning of the hearing, the district court indicated an inclination to deny the motion to reconsider. Although Armstrong expressly asked the court to address the *Young* factors by referencing *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 645, 837 P.2d 1354, 1359 (1992), and the court acknowledged that striking the experts was a severe sanction, the hearing transcript does not support that the district court evaluated the *Young* factors before denying the motion. This is of particular concern in light of Armstrong's counsel's declaration submitted with the motion to reconsider. In the court's order denying reconsideration, prepared by respondents' counsel, some of the *Young* factors are briefly discussed but there is no indication that they were in fact analyzed by the district court in advance of denying Armstrong's motion to reconsider and in the manner contemplated by *Young*. We also note that counsel's declaration raises questions of fact related to whether counsel's conduct in failing to produce

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[7]While we in no way approve of Armstrong's repeated failure to produce her experts for deposition, the respondents could have timely filed a motion to compel her experts' depositions so as to have completed them before the close of discovery. This is why filing timely motions to compel within the discovery period to obtain the outstanding discovery is prudent—particularly when efforts to coordinate with opposing counsel have repeatedly failed. Interestingly, it appears that respondents scheduled the deposition of one of Armstrong's experts, Gregg Davis, M.D., for September 9, which, if the parties had agreed to that date, would have required an extension of the discovery deadline.

Armstrong's experts for their depositions was willful, an important issue that is not specifically addressed in the court's order.[8]

Further, although the district court conducted an evidentiary hearing on November 8, the court made it clear that the hearing was for the purpose of determining whether Armstrong had an "ineffective assistance of counsel" claim against Armstrong's out-of-state counsel, not to address the *Young* factors. Indeed, the hearing transcripts from both the motion to reconsider and motion for summary judgment confirm that this was the purpose of the evidentiary hearing.[9]

At the hearing on respondents' motion for summary judgment that occurred prior to the evidentiary hearing, the respondents argued that

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[8]For example, Armstrong's counsel's declaration alleges that he advised respondents' counsel that he would be unavailable from May 21, 2021, to June 7, 2021, as he would be getting married and on his honeymoon in Mexico. Despite this knowledge, respondents' counsel noticed a deposition for May 25, and then for Armstrong's experts' depositions for June 7 and June 8, at or near the time of his return to the office. The experts' depositions were next set for July 13 and July 14 when Armstrong's counsel was attending a conference. Then, the depositions were unilaterally noticed for July 26. And on August 10, the date of the hearing on the motion to strike the experts, which Armstrong's counsel claims he had no knowledge of, he was attending a doctor's appointment with his wife to confirm her pregnancy. These facts arguably have bearing on the willfulness of the conduct at issue.

[9]We caution the district court and the parties that there is no counterpart in the civil arena to a postconviction hearing for an ineffective assistance of counsel claim in the criminal arena. Such a hearing is collateral and irrelevant to the proceedings in the underlying case. Having said this, we are mindful that *Young* permits the district court to analyze the attorney's conduct versus that of the client's when determining the appropriateness of a case-concluding sanction. But this should have been addressed during an evidentiary hearing set for the purpose of addressing the *Young* factors before denying Armstrong's motion to reconsider.

all of Armstrong's remaining claims were derivative of her primary medical malpractice or professional negligence claim, and therefore, without expert testimony to support her claims, summary judgment was appropriate.[10] The district court agreed and granted summary judgment, dismissing Armstrong's complaint.[11] This appeal followed.

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[10]Armstrong argued below at the summary judgment hearing, after her experts were stricken, that she had other claims that were separate from the medical malpractice or professional negligence claim, which should not be dismissed. However, on appeal, Armstrong concedes that all her claims were derivative of the primary medical malpractice or professional negligence claim and therefore without expert testimony to support her claims summary judgment was inevitable. This is also the argument she advanced at the reconsideration hearing.

[11]We note that during the hearing on the summary judgment motion Armstrong, citing to *Fluor*, requested an evidentiary hearing for the district court to analyze the question of willfulness. The court ultimately agreed to hold an evidentiary hearing on November 8, 2021, but noted that the "subject matter of this hearing is about the ineffective assistance of counsel." Nevertheless, arguments were made regarding the *Young* factors during the evidentiary hearing, and Armstrong attempted to elicit testimony regarding those factors. The problem is that this hearing was conducted *after* the motion to reconsider was denied. The district court acknowledged this, stating the court conducted the evidentiary hearing because it "wanted to have Ms. Armstrong to have some sort of recourse" and that "it's [not] going to change what happens in the outcome of the case. The motion for summary judgment was granted. You don't have any experts." The district court made its decision to grant summary judgment at the hearing conducted on October 12, 2021, but the order was not entered until December 3, after the evidentiary hearing was conducted on November 8. Although the order granting summary judgment indicates that an evidentiary hearing occurred on November 8, the court's order does not incorporate any specific facts that it may have gleaned from that hearing into its order. This highlights that the purpose of the hearing was unrelated to the court's determination of whether the case-concluding sanction was appropriate, notwithstanding Armstrong's counsel's efforts to guide the court in that direction.

On appeal, Armstrong argues that the district court abused its discretion in (1) granting the motion to strike because a scheduling order is not an order "to provide or permit" discovery for the purpose of imposing case-concluding sanctions under NRCP 37(b)(1), (2) failing to analyze the *Young* factors and conduct an evidentiary hearing before imposing a case-concluding sanction, (3) failing to exercise discretion it believed it did not possess, and (4) imposing a case-concluding sanction was not just because it did not relate to an actual violation of a court order requiring the experts to be produced for deposition. Respondents argue that (1) the scheduling order was a valid and enforceable order that Armstrong violated, warranting sanctions under NRCP 16(f) and NRCP 26,[12] (2) the district court did not enter a case-concluding sanction, (3) the district court acted within its authority to strike Armstrong's experts, and (4) the sanction was just and related to the scheduling order because it was directly related to Armstrong's offending conduct.

Standard of review

This court generally reviews the imposition of a discovery sanction for an abuse of discretion. *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042, 1048 (2010). Where the discovery sanction is within the district court's authority to impose, this court will not reverse absent a showing of

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[12]We note that respondents raised the appropriateness of sanctions under NRCP 16(f) for an alleged violation of the scheduling order for the first time on appeal and this rule was not considered by the district court below. Thus, we decline to consider its application to the facts before us as an independent ground for sanctions. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal"). Further, as previously discussed, NRCP 26(b)(4) does not, in and of itself, justify the imposition of sanctions.

abuse of discretion. *Fluor*, 108 Nev. at 644, 837 P.2d at 1358 (citing *Young*, 106 Nev. at 92, 787 P.2d at 779). For example, the district court may impose case-concluding sanctions for non-compliance with its orders under NRCP 37(b)(1). *Blanco v. Blanco*, 129 Nev. 723, 729, 311 P.3d 1170, 1174 (2013). Case-concluding sanctions may include striking pleadings, dismissing the action, or entering a default. *Id.* "In addition to this rule-based authority, the court has the inherent equitable power to enter defaults and dismiss actions for abusive litigation practices." *Id.* (citing *Young*, 106 Nev. at 92, 787 P.2d at 779).

However, where the sanction imposed is case concluding, "a somewhat heightened standard of review should apply." *Young*, 106 Nev. at 92, 787 P.2d at 779. Under this standard, procedural due process requires that the sanctions be just and relate to the claims at issue in the discovery order that was violated. *Id.* at 92, 787 P.2d at 779-80. This court imposes such a standard because "dismissal with prejudice is a harsh remedy to be utilized only in extreme situations, which a court must weigh against the policy favoring disposition of cases on their merits." *Eby v. Johnston Law Office, P.C.*, 138 Nev., Adv. Op. 63, 518 P.3d 517, 527 (Ct. App. 2022) (internal quotation marks omitted).

Further, "while dismissal need not be preceded by other less severe sanctions, it should be imposed only after thoughtful consideration of all the factors involved in a particular case." *Young*, 106 Nev. at 92, 787 P.2d at 780. In *Young*, the supreme court provided a nonexhaustive list of factors district courts should consider when imposing discovery sanctions, which include:

> [T]he degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of

> the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions . . . , the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.

Id. at 93, 787 P.2d at 780. *Young* further requires that "every order of dismissal with prejudice as a discovery sanction be supported by an express, careful, and preferably written explanation of the court's analysis of the pertinent factors." *Id.*

Importantly, "[i]f the party against whom dismissal may be imposed raises a question of fact as to any of these factors, the court must allow the parties to address the relevant factors in an evidentiary hearing." *Fluor*, 108 Nev. at 645, 837 P.2d at 1359. Where the district court "does not impose ultimate discovery sanctions of dismissal of a complaint with prejudice or striking an answer as to liability *and* damages, the court should, at its discretion, hold such hearing as it reasonably deems necessary to consider matters that are pertinent to the imposition of appropriate sanctions." *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 256, 235 P.3d 592, 600-01 (2010). "The length and nature of the hearing for non-case concluding sanctions shall be left to the sound discretion of the district court" and in determining the nature of the hearing, "the district court should exercise its discretion to ensure that there is sufficient information presented to support the sanctions ordered." *Id.* at 256, 235 P.3d at 601. Finally, "the district court should make such findings as necessary to support its conclusions" regarding the *Young* factors. *Id.*

This court recently expanded the case-concluding sanctions analysis in *Eby v. Johnston Law Office, P.C.* There, we explained that "[a]lthough *Young* concerned sanctions for discovery abuses, our supreme court has recognized its general applicability beyond this context in situations in which a court issues a case-terminating sanction in response to a party's conduct in litigation." *Eby*, 138 Nev., Adv. Op. 63, 518 P.3d at 527. Crucially, we further explained that "even where the circumstances of an action ending in case-terminating sanctions are procedurally and factually distinct from those addressed in *Young*, it is '[t]he magnitude of the sanction [that] brings the action under the purview of *Young*.'" *Id.* (alterations in original) (quoting *Chamberland v. Labarbera*, 110 Nev. 701, 704-05, 877 P.2d 523, 525 (1994)).

We therefore conclude that the heightened standard of review applies when the district court is considering striking experts in a medical malpractice or professional negligence case, where medical experts are required to present the case to the jury or trier of fact. *See* NRS 41A.100(1); *Banks ex. rel. Banks v. Sunrise Hosp.*, 120 Nev. 822, 834, 102 P.3d 52, 60 (2004) (noting that "expert testimony is required in medical malpractice cases to establish the accepted standard of care"); *Fernandez v. Admirand*, 108 Nev. 963, 968-69, 843 P.2d 354, 358 (1992) (recognizing that "[t]o prove medical malpractice, the appellants must first establish the accepted standard of medical care or practice, and then must show that the doctors' conduct departed from that standard and legally caused the injuries suffered. . . . This court has recognized the general rule that expert testimony must be used to establish medical malpractice." (internal citations omitted)). We recognize that medical experts may not be required in every malpractice case, such as where the doctrine of res ipsa loquitur

governs. *See* NRS 41A.100(1); *see, e.g., Fierle v. Perez*, 125 Nev. 728, 731, 219 P. 3d 906, 908 (2009) (wherein the Nevada Supreme Court confirmed that an expert affidavit is not required for a "claim [that] falls under the res ipsa loquitur statutory exceptions exception . . ."). However, where medical experts are required to prove the plaintiff's case, their exclusion is considered case concluding. *See, e.g., Barrera v. Cardenas Markets, Inc.*, 2017 WL 663054 *6 (D. Nev. February 17, 2017) (wherein the federal district court acknowledged that, "[e]xcluding the testimony of all of Plaintiff's treating physicians will be tantamount to the dismissal of her claim."). Indeed, the exclusion of experts in medical malpractice or professional negligence cases is tantamount to imposing a case-concluding sanction since expert testimony is required to prove both liability and damages. *Fernandez,* 108 Nev. at 968-69, 843 P.2d at 358.

Therefore, during Armstrong's motion to reconsider its decision to strike her expert witnesses the district court should have applied a heightened standard of review in determining whether to affirm the striking of Armstrong's experts. *Young*, 106 Nev. at 92, 787 P.2d at 779. At the time Armstrong moved for reconsideration, respondents' motion for summary judgment was pending, which requested dismissal of Armstrong's complaint based on the legal argument that without medical experts her claims failed. Further, during the hearing on Armstrong's motion to reconsider, the court was made aware that the impact of denying reconsideration would lead to a "pro forma" grant of the pending summary judgment motion. Both parties advised the court that this was the inevitable outcome, in the event the court denied reconsideration. Thus, the district court, in denying Armstrong's motion to reconsider, knowingly

imposed a case-concluding sanction without undertaking the proper *Young* analysis.

Finally, although we admonish Armstrong's counsel for the failure to oppose the respondents' motion to strike Armstrong's experts and for not appearing at the hearing on the motion, this does not preclude our review of the discovery sanction of striking her experts on appeal. Armstrong sufficiently raised these issues below in her motion to reconsider, which the district court entertained on its merits, and because these issues are part of the record on appeal, this court may consider the discovery sanction imposed by the court in determining whether the district court abused its discretion in denying reconsideration. *See Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007) (concluding that "if the reconsideration order and motion are properly part of the record on appeal from the final judgment, and if the district court elected to entertain the motion on its merits, then we may consider the arguments asserted in the reconsideration motion in deciding an appeal from the final judgment"); *see also AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (stating that while a district court's decision to grant or deny a motion for reconsideration is reviewed for an abuse of discretion, "deference is not owed to legal error").

The district court abused its discretion in denying reconsideration

Based on the foregoing, we conclude that the district court abused its discretion in denying Armstrong's motion to reconsider on two grounds. First, at the time of the reconsideration hearing, the district court understood that striking Armstrong's medical experts would result in a case-concluding sanction as respondents' motion for summary judgment based on Armstrong's lack of expert testimony was pending. Therefore, the

district court was required to analyze the *Young* factors before denying Armstrong's motion to reconsider. And because the sanction of striking the experts would be case concluding, as it ultimately was in this case, an evidentiary hearing to elicit testimony to properly analyze the *Young* factors was required.[13] The district court's overall failure to properly perform the *Young* analysis and conduct an evidentiary hearing under *Fluor* based on the magnitude of the sanction involved and the disputed facts regarding Armstrong's willfulness, are legal errors requiring reversal of the district court's order denying reconsideration.

Second, in its initial order to strike Armstrong's experts, the district court failed to identify the rule on which it was relying to impose the case-concluding sanction. At oral argument, the parties appeared to agree that Armstrong's experts were timely disclosed as required by the scheduling order, but not produced for their depositions. We note that a scheduling order sets forth deadlines for the close of discovery, adding parties and amending pleadings, disclosing initial and rebuttal experts, and dispositive motions. *See* NRCP 16(b)(3). A scheduling order, by its very nature, cannot include the dates and times for expert depositions and the other requirements for scheduling a validly noticed deposition under NRCP

[13]We acknowledge that the district court's order denying Armstrong's motion to reconsider mentions certain *Young* factors. However, independent of that order, which was prepared by respondents' counsel after the hearing, the hearing transcript shows that the district court did not evaluate the *Young* factors before deciding the motion to reconsider. This is particularly problematic because Armstrong raised several factual disputes regarding the lack of willfulness in failing to produce her experts for deposition.

30(b).[14] Thus, the district court erred in determining that Armstrong's failure to produce her experts for deposition was a violation of the scheduling order that could serve as the basis for imposing a case terminating sanction. *Cf. Stell v. Jordan*, No. 03-15603, 2004 WL 68700, at *1 (9th Cir. Jan. 15, 2004) (concluding that "[t]he district court did not abuse its discretion when it precluded plaintiffs' expert from testifying at trial after plaintiffs violated the district court's repeated orders to make the expert available for deposition"); *Barrett v. Atlantic Richfield Co.*, 95 F.3d 375, 379 (5th Cir. 1996) (holding that the district court did not abuse its discretion when it struck plaintiffs' experts *after it ordered* "[a]ll depositions of the plaintiffs' experts in this case will be taken and completed on or before July 30th, 1993" (emphasis added)). Therefore, because the scheduling order did not, itself, require Armstrong to produce her experts for deposition, Armstrong's failure to produce her experts for deposition within the discovery period did not violate the scheduling order such that case-concluding sanctions could be imposed for an alleged violation of that order.

Further, because respondents never secured a court order to compel Armstrong's experts' depositions during the discovery period, there was no court order in place that Armstrong would have violated by failing to produce her experts for their depositions, thereby allowing the district

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[14]A scheduling order that is prepared before discovery is permitted to commence could not be expected to include specific dates for expert depositions when those dates could not possibly be known *before* the expert disclosure deadline. After experts are disclosed and their deposition availability has been confirmed, then the depositions can be scheduled. Although Armstrong disclosed the same experts that she used to support her complaint, this does not always occur in every case. Thus, we agree with respondents that it was reasonable to wait until after the expert disclosures had been made to schedule expert depositions.

court to impose sanctions under NRCP 37(b). "A motion to compel discovery is an enforcement mechanism used when someone fails to comply with a discovery request." *Okada v. Eighth Judicial Dist. Court*, 134 Nev. 6, 12, 408 P.3d 566, 571 (2018). "It is clear from the language in NRCP 37(a) that a motion to compel discovery is not a separate, independent 'request' for information but rather is an application to the court for an order compelling cooperation with a preexisting 'request.'" *Id.* Thus, the district court may impose a sanction under NRCP 37(b)(1) for failing to obey an order issued under NRCP 37(a), such as requiring an expert to be produced for deposition.[15] In this case, however, respondents failed to obtain a court order compelling Armstrong's experts for deposition during the discovery period and, therefore, no order exists pursuant to either NRCP 16.1(e) or NRCP 37(a) that could serve as a basis for sanctions to be imposed under NRCP 37(b).

The district court abused its discretion by not conducting an evidentiary hearing and by failing to apply the Young *factors before imposing the case-concluding discovery sanction*

To the extent that there appears to have been some uncertainty on the part of the district court as to whether it had the discretion to impose or not to impose sanctions, we clarify that courts have the equitable inherent authority to do both. *Young*, 106 Nev. at 92, 787 P. 2d at 779. In

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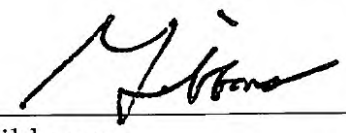
[15]We recognize that the respondents argued below that a violation of NRCP 16.1(e) as well as NRCP 37(b) warranted the imposition of sanctions. Again, the district court cited to neither rule in its initial order. And the record is devoid of any order requiring Armstrong to produce her experts for their depositions which, if such order existed, would have permitted the district court to impose sanctions under either NRCP 16.1(e) (if compelled by the discovery commissioner pursuant to NRCP 16.1(3)) or NRCP 37(b), for Armstrong's violation of a court order compelling the depositions of her experts.

considering whether to impose a case-terminating sanction, however, procedural due process requires that such sanctions be just and relate to the claims at issue in the violated discovery order. *Blanco*, 129 Nev. at 729, 311 P.3d at 1174. And this underscores why an evidentiary hearing under *Fluor* becomes critical in resolving whether to impose such a sanction. Imposing a case-concluding sanction, without conducting an evidentiary hearing, particularly where the willfulness of a party's conduct is disputed (as it is here), constitutes an abuse of discretion. Therefore, on remand, the district court must determine whether there is an alternative legal basis for sanctions, apart from any alleged violation of the scheduling order, conduct an evidentiary hearing as contemplated by *Fluor*, analyze the *Young* factors, and prepare an order that includes an "express, careful and preferably written explanation of the *court's* analysis of the pertinent factors." *Young*, 106 Nev. at 93, 787 P.2d at 780 (emphasis added).

Accordingly, we ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[16]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[16]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Erika D. Ballou, District Judge
William C. Turner, Settlement Judge
Sharp Law Center
Messner Reeves LLP
Eighth District Court Clerk