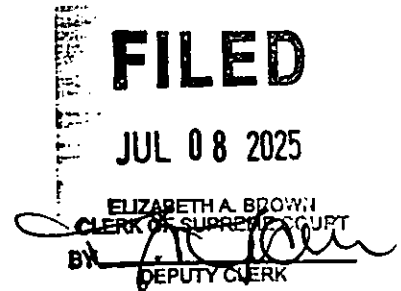


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATHERINE E. MELTON, AS AN  
INDIVIDUAL AND AS THE  
ADMINISTRATOR OF THE ESTATE  
OF MARY L. MELTON,  
Appellant,  
vs.  
STEPHANEE RACHEL LAWSON,  
Respondent.

No. 88356-COA



*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Katherine E. Melton appeals from an order of dismissal with prejudice in a civil action. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Melton (Katherine) is the daughter of Mary L. Melton (Mary) and following Mary's death in 2023 at the age of 82, Katherine sought to nullify Mary's estate plan, which named Mary's neighbor, respondent Stephanie Rachel Lawson, as the sole beneficiary. Katherine proceeded pro se both in her individual capacity and as administrator of her mother's estate, and she filed a "Petition to Transfer Real Property Back to Decedent, Restore the Life Insurance to Previous Beneficiaries, and Accounting of Money Spent by Power of Attorney" in the Second Judicial District Court in August 2023.<sup>1</sup>

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<sup>1</sup>We refer to the "petition" as the original complaint or complaint in this order. See NRCP 3.

The complaint, supported by affidavits from numerous individuals, alleged a litany of abusive, negligent, and deceptive behaviors by Lawson, who purportedly inserted herself into Mary's life within a week after Mary's son Floyd, who was Mary's previous caretaker, passed away on October 31, 2020. Katherine alleged that by February 2021, Lawson coerced Mary, then age 79, into quitclaiming in Lawson's favor her homestead property containing a cottage and two mobile homes. Lawson immediately began renting out the mobile homes for her own financial benefit. Katherine also alleged that Lawson coerced Mary into granting Lawson durable power of attorney in February 2021, which Lawson used to gain access to Mary's checking account. Lawson then allegedly spent almost \$15,000 of Mary's money on Lawson's personal expenses. Katherine further alleged that Lawson coerced Mary into establishing a living trust, also in February 2021, of which Lawson was the trustee and sole beneficiary. Article 21 of the trust document, titled "Exclusion," stated that "Katherine Melton . . . is to get nothing of Mary's." Katherine also accused Lawson of tricking Mary into changing Mary's life insurance policy so that Lawson would be the sole beneficiary.

The complaint also alleged that Lawson physically and psychologically harmed Mary. Lawson allegedly isolated Mary from family and friends by installing surveillance cameras at Mary's home, which allowed Lawson to intervene and prevent anyone from entering the property, and Lawson also pursued temporary restraining orders and trespass warnings against those who tried to visit Mary. Numerous affidavits from Katherine's friends and family reiterated such allegations. A man who lived in one of the mobile homes stated the Lawson chased Katherine away with a gun when Katherine came to console Mary after

Floyd's death. When another of Mary's neighbors came to visit her, the neighbor stated that she found the house in a filthy condition with Mary heavily medicated in a state of semi-consciousness. When the neighbor asked Lawson who she was and how she knew Mary, Lawson was evasive and told the neighbor to leave. Another friend of Mary's claimed she went to check on her and found Mary covered in her own vomit. Several neighbors claimed that Lawson had blocked their phone numbers on Mary's phone and/or changed Mary's phone number. Katherine also alleged that Lawson left Mary home alone for days at a time with the air conditioner turned off and failed to timely take Mary to the hospital when she developed gangrene, resulting in the amputation of Mary's right leg.

Lawson moved to dismiss Katherine's original complaint with prejudice for failure to state a claim upon which relief can be granted pursuant to NRCP 12(b)(5). Lawson pointed out that Katherine could not pursue charges for criminal elder abuse and criminal neglect via a civil action. As to Katherine's putative civil claims, Lawson argued that, because they amounted to various species of fraud, they were not pleaded with sufficient particularity pursuant to NRCP 9(b). Over Katherine's opposition, the district court summarily granted Lawson's motion to dismiss but without prejudice, giving Katherine 30 days to file an amended complaint. The court provided no rationale or citation to any legal authority in support of its ruling nor did it consider the affidavits attached to the petition. The sole instruction it provided to Katherine was to "address issues raised therein, and to more clearly identify the factual basis for each claim and remedy sought."

But instead of an amended complaint, Katherine filed what she termed an "Opposition to Motion Order Granting Defendants [sic] Motion

to Dismiss” (Opposition) eleven days after the entry of the district court’s order. The court struck this filing due to technical deficiencies and Katherine re-filed it, still within the 30-day timeline established by the district court. The Opposition included (1) an affidavit written by Katherine detailing, in a stream-of-consciousness fashion, allegations of physical and emotional abuse and financial exploitation by Lawson; (2) citations to criminal statutes without elaboration on how Lawson violated them; and (3) over 100 pages of exhibits including text messages between herself and Lawson, Lawson’s applications for TROs, bank statements from Mary’s checking account, and Mary’s medical records.

Lawson filed an objection to Katherine’s Opposition, requesting the district court to strike it as a rogue filing, or alternatively dismiss it as a motion for reconsideration brought under WDCR 12(8) without leave of the court. Katherine did not directly respond to Lawson’s objection, but she filed a “Motion to File Amended Petition” while Lawson’s objection was pending—but after the 30-day deadline to file an amended complaint had passed. When the district court ruled on Lawson’s objection to Katherine’s Opposition, it did so by summarily dismissing the entire case with prejudice. It adopted the arguments set forth in Lawson’s objection and cited Katherine’s “several failures to comply; the failure to timely amend; and the lack of a cogent statement of the purported claims for relief.” In a footnote, it denied Katherine’s motion to file an amended petition as moot. Katherine now appeals from the district court’s order dismissing her case with prejudice.

*Order of dismissal with prejudice*

Katherine argues that the district court erred in dismissing her case with prejudice, as that constituted a case-concluding sanction

requiring the district court to address the factors in *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990). Lawson responds that the *Young* analysis is not required here, as a dismissal based on the failure to state a claim pursuant to NRCP 12(b)(5) is not a punitive sanction for litigation misconduct. We agree with Katherine.

*Young* requires district courts to explicitly explain their rationale when issuing a sanction that effectively terminates a case. 106 Nev. at 93, 787 P.2d at 780. District courts should consider certain factors including:

the 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 . . . abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, . . . the policy favoring adjudication on the merits, . . . and the need to deter both the parties and future litigants from similar abuses.

*Id.* *Young* was decided in the context of discovery sanctions. However, we have previously held that a heightened level of analysis applies when a district court is considering case-concluding sanctions for other types of litigation misconduct, such as the failure to follow a district court's order to file an amended complaint following its grant of a motion for a more definite statement pursuant to NRCP 12(e). *Eby v. Johnston L. Off., P.C.*, 138 Nev. 660, 672, 518 P.3d 517, 528 (Ct. App. 2022). When the district court dismissed Katherine's original complaint *without* prejudice, it ordered her to "address issues raised therein, and to more clearly identify the factual basis for each claim and remedy sought." In other words, the court was

ordering Katherine to make a more definite statement.<sup>2</sup> See *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994) (noting that appellate courts construe an order based on what it “actually *does*, not what it is called”); cf. NRCP 54(c) (providing that district courts may grant relief different from what a party requested as long as the party is entitled to such relief).

We note that the district court dismissed Katherine’s complaint with prejudice at the same time it granted Lawson’s objection to Katherine’s Opposition. It thus appears clear that the district court was not only relying on NRCP 12(b)(5) as a vehicle to terminate the case, but by adopting the arguments in Lawson’s objection describing Katherine’s procedural missteps, it effectively punished Katherine for what it perceived as litigation misconduct. The order of dismissal with prejudice cited Katherine’s “failure[] to comply” with its previous orders, suggesting a punitive aspect to its dismissal. A “sanction” is “[a] penalty or coercive measure that results from failure to comply with a law, rule, or order.” *Sanction*, Black’s Law Dictionary (12th ed. 2024). We thus conclude that the order dismissing Katherine’s complaint with prejudice functioned as a

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<sup>2</sup>Federal courts that have reached the issue have held that dismissal based on a party’s failure to comply with an order for a more definite statement pursuant to FRCP 12(e) operates as a sanction. See, e.g., *Chennareddy v. Dodaro*, 282 F.R.D. 9, 14 (D.D.C. 2012) (“A party must comply with a district court order granting a motion for a more definite statement under Federal Rule 12(e) or run the risk of possible sanctions.” (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1379 (3d ed. 1998))). We also note that while Lawson argued that the district court did not impose a sanction when it dismissed the case with prejudice, she did not respond to Katherine’s argument that the holding in *Eby* applies to this type of dismissal.

case-concluding sanction under the particular circumstances of this case, which triggered the required analysis of the *Young* factors. The district court accordingly committed reversible error in failing to analyze the *Young* factors before dismissing the complaint with prejudice.

*Order of dismissal without prejudice*

Even if *Young* were inapplicable here, the district court still erred when it dismissed Katherine's original complaint without prejudice, as she pleaded sufficient facts in support of claims for undue influence, breach of fiduciary duty, civil elder abuse and neglect, and accounting to satisfy Nevada's notice pleading standard pursuant to NRCP 8(a). Her claim for undue influence was also pleaded with sufficient particularity to satisfy the heightened pleading standard of NRCP 9(b).

A civil complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." NRCP 8(a)(2). Nevada is a notice-pleading jurisdiction and its courts are to "liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party." *Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308, 468 P.3d 862, 878 (Ct. App. 2020) (quoting *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992)). While plaintiffs must set forth facts supporting a legal theory, they need not correctly identify the legal theory upon which they rely. *Id.* "A plaintiff who fails to use the precise legalese in describing his grievance but who sets forth the facts which support his complaint thus satisfies the requisites of notice pleading." *Id.* at 308-09, 468 P.3d at 878 (quoting *Liston v. LVMPD*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995)).

A district court's grant of a motion to dismiss is reviewed de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 736, 334 P.3d 402, 404-05 (2014).

This court presumes the truth of a plaintiff's factual allegations and draws all inferences in favor of the plaintiff. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2015). “[A complaint] should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.” *Id.*

We note at the outset that Katherine concedes that she cannot pursue criminal charges for elder abuse by means of a civil action. Thus, the district court did not err by dismissing her complaint with prejudice with respect to that claim. As to her remaining allegations, Katherine fashioned her complaint as a “Petition to Transfer Real Property Back to Decedent, Restore the Life Insurance to Previous Beneficiaries, and Accounting of Money Spent by Power of Attorney.” On the last page of her complaint, she requested the district court transfer real property currently held by Lawson to her mother’s estate pursuant to NRS 148.410 and NRS 155.097. These statutes are part of Title 12 of the Nevada Revised Statutes that is entitled wills and estates of deceased persons, and the local court rule mandates that proceedings brought under those chapters be heard first by the probate commissioner, not by the district court in the form of a civil action. WDCR 57.3(1); *see also* NRS 41.100(3), (4) (an administrator of an estate may pursue certain damages that arose before the death of the decedent possibly including damages related to a life insurance policy).

However, the district court treated Katherine’s filing as a civil complaint, and plaintiffs need not cite to a particular statute or identify the correct legal theory in their complaint, but their factual allegations must be sufficient to put the opposing party on adequate notice of the claims and relief sought. *Droge*, 136 Nev. at 308-09, 468 P.3d at 878. Thus, we analyze Katherine’s complaint as one containing putative claims of undue influence,

civil elder abuse and neglect, breach of fiduciary duty, and accounting, as she argues in her opening brief that these are the claims she originally pleaded, and we conclude that Katherine pleaded sufficient facts to state each of these four claims for the reasons set forth below. *See Moretto Tr. of the Jerome F. Moretto 2006 Tr. v. Elk Point Country Club Homeowners Ass'n*, 138 Nev. 195, 205, 507 P.3d 199, 207 (2022) (noting that courts are to analyze claims based on their substance regardless of their label); *see also Pelkola v. Pelkola*, 137 Nev. 271, 273, 487 P.3d 807, 809 (2021) (noting that courts follow the “principle of party presentation” on appeal, which requires the litigants to frame the issues (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))).

#### *Undue influence*

Undue influence is a species of fraud, and as such, must be pleaded with the degree of particularity required by NRCP 9(b). *In re Est. of Betherum*, 129 Nev. 869, 875, 313 P.3d 237, 241 (2013). NRCP 9(b) imposes upon the plaintiff a duty to provide details as to the time, place, and identity of the parties involved, as well as the nature of the fraud or mistake. *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981). Thus, Katherine was required to allege particular facts as to when, where, by whom, and how Mary’s free agency was overcome. *See Betherum*, 129 Nev. at 874, 313 P.3d at 241. Katherine’s original complaint alleges that Lawson overcame Mary’s agency by coercing her into signing the quitclaim deed, trust documents, and durable power of attorney. And Katherine attached all of these documents to her original complaint, which assisted her in establishing the time, place, identity, and nature of the undue influence. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (holding that a court may consider, inter alia, any

exhibits attached to the complaint when ruling on a motion to dismiss under NRCP 12(b)(5)). Moreover, Katherine's allegations supported a strong inference of fraud because Lawson inserted herself into Mary's life within a week of Mary's son's death and was allegedly able to convince Mary to sign documents disinheriting Katherine and giving Lawson control over her assets and finances just a few months later.

While Katherine's complaint and exhibits may not have established the exact time at which Mary's agency was overcome by Lawson's influence, this may have been because the relevant information was in Lawson's possession at the time Katherine filed her original complaint. Indeed, Katherine alleged that Lawson took steps to physically, psychologically, and financially isolate Mary and prevent anyone from entering the property, such that more specific information concerning the fraud would not have been available to Katherine at the time she filed her complaint. In such a case, a district court should allow a plaintiff the opportunity to conduct the necessary discovery to obtain such information. *See Rucker v. KPMG LLP*, 122 Nev. 1185, 1194-95, 148 P.3d 703, 709 (2006) (adopting a relaxed pleading standard to fraud actions when a plaintiff has stated facts supporting a strong inference of fraud but documents and information concerning the fraud are solely in the defendant's possession and cannot be secured without formal discovery), *abrogated by Buzz Stew*, 124 Nev. 224, 181 P.3d 670. The record thus shows that Katherine pleaded undue influence with sufficient particularity, and the district court erred in dismissing her original complaint without prejudice.

*Elder abuse and neglect*

Katherine also alleged sufficient facts to state a survivorship claim for civil elder abuse, exploitation, or neglect pursuant to NRS 41.1395.

That statute imposes liability for damages incurred by an elderly person if the accused causes the death or injury of that person due to abuse, neglect, or exploitation. NRS 41.1395(1), (4)(a)-(c). Katherine specifically referenced “elder abuse,” “elder exploitation,” and “abandonment of older people” in her original complaint and even recited portions of NRS 41.1395, albeit without citation. Furthermore, she alleged facts such as Lawson ignoring Mary’s dietary needs despite Mary being a diabetic and letting gangrene fester on Mary’s lower extremities resulting in amputation, despite Article 16 of the living trust providing that Lawson had a duty to ensure “the comfort, health, and support” of Mary in the event of Mary’s incapacity. Katherine alleged that Lawson coerced Mary to disinherit Katherine and quitclaim Mary’s property in favor of Lawson, and also drained Mary’s finances through her power of attorney.

Thus, when presuming the truth of her allegations and drawing all inferences in her favor, Katherine sufficiently pleaded a civil cause of action for elder abuse, exploitation, or neglect. *See Droge*, 136 Nev. at 308-09, 468 P.3d at 878. The district court therefore erred in dismissing Katherine’s original complaint as to this claim. *See Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

*Breach of fiduciary duty and accounting*

Lastly, Lawson did not respond to Katherine’s arguments that she pleaded sufficient facts regarding breach of fiduciary duty and accounting. Thus, Lawson has conceded these claims were sufficiently pleaded. *See Ozawa v. Vision Airlines Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (treating a party’s failure to respond to an argument as a concession that the argument is meritorious). Thus, the district court erred

in summarily dismissing Katherine's complaint in its entirety. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Barry L. Breslow, District Judge  
Brownstein Hyatt Farber Schreck, LLP/Las Vegas  
MOBO Law, LLP / Reno  
Barbara Buckley  
Snell & Wilmer, LLP/Las Vegas  
Paul C. Ray, Chtd.  
Washoe District Court Clerk

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<sup>3</sup>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 further relief or need not be reached given the disposition of this appeal.