IN THE SUPREME COURT OF THE STATE OF NEVADA

LUSSO AUTO, LLC D/B/A LUSSO AUTO DESIGN & AUTO SPA, A NEVADA LIMITED LIABILITY COMPANY; AND JOHN RHEE, AN INDIVIDUAL,
Appellants,
vs.
GREGORY KELLY,
Respondent.

No. 89010

ORDER OF AFFIRMANCE

This is an appeal from a default judgment in a breach of contract and fraud action. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

The plaintiff below, Chicago's Car Wash, LLC, sued appellants John Rhee and Lusso Auto, LLC, for breach of contract and fraud. The district court struck appellants' answers as a sanction for repeated failures to appear or retain counsel. Because appellants then failed to oppose the application for default judgment, the district court precluded appellants from presenting evidence of damages mitigation at the prove-up hearing. After Rhee and Lusso appealed the default judgment, Chicago's Car Wash assigned its judgment interest to respondent Gregory Kelly, who was duly substituted into this appeal without opposition from appellants. Kelly was then joined as the real party in interest in post-judgment proceedings below.

Standing

Appellants argue respondent Gregory Kelly lacks standing in this appeal because he is not licensed to collect on the judgment and thus was improperly joined as the judgment assignee below. The issue of

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whether Kelly was properly joined below, however, is not properly before us. Appellants' notice of appeal designates only the default judgment. Because Kelly's joinder occurred as part of the post-judgment proceedings after entry of the default judgment, that matter is not part of this appeal. *See Reno Newspapers, Inc. v. Bibb*, 76 Nev. 332, 335, 353 P.2d 458, 459 (1960) ("Only those parts of the judgment which are included in the notice of appeal will be considered by the appellate court."). Given that Kelly was assigned the appealed judgment and appellants did not oppose the motion to substitute him as respondent, appellants' arguments as to lack of standing fail.

Striking the answer

Appellants next argue the district court abused its discretion in striking Rhee's answer to the complaint as a sanction.[1] *See Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 254, 235 P.3d 592, 599 (2010) (reviewing non-case-concluding sanctions for an abuse of discretion). We disagree.

District courts have inherent powers to sanction litigants for "abusive litigation practices," *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990), particularly when those practices are "repetitive, abusive, and recalcitrant," *Foster v. Dingwall*, 126 Nev. 56, 64, 227 P.3d 1042, 1047 (2010). Here, Rhee repeatedly failed to appear for court

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[1]To the extent appellants urge us to apply a "heightened standard," we decline the invitation because striking the answer alone is not a case-concluding sanction. *See Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (explaining that case-concluding sanctions are reviewed under a heightened abuse of discretion standard); *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 256, 235 P.3d 592, 600-01 (2010) (recognizing that striking an answer as to liability is not "case-concluding" if the defendant is free to argue over damages).

proceedings or retain counsel. The district court concluded that Rhee's ever-shifting excuses for these failures were not credible. We "will not reweigh credibility on appeal." *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007). Because substantial evidence supports the district court's factual findings on this matter, we conclude that appellants have not demonstrated the district court abused its discretion. *See Bahena*, 126 Nev. at 254, 235 P.3d at 599 (discerning no abuse of discretion where "substantial evidence supports the [non-case-concluding] sanctions of striking [respondent's] answer as to liability only pursuant to the district court's inherent equitable power").

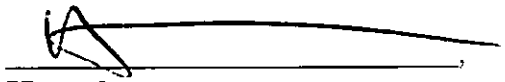
Default hearing

Appellants argue that the district court erred in precluding them from introducing mitigation evidence at the prove-up hearing. District courts have "broad discretion in determining how prove-up hearings should be conducted" and may determine how, if at all, a defaulted party may participate in such hearings to "facilitate the truth-seeking process." *Hamlett v. Reynolds*, 114 Nev. 863, 866-67, 963 P.2d 457, 459 (1998); *see* NRCP 55(b)(2). A district court's determination will not be reversed absent a clear abuse of discretion. *Hamlett*, 114 Nev. at 867, 963 P.2d at 459.

Appellants failed to oppose the application for default judgment and thus waived any legal argument on damages under EDCR 2.20(e), which provides that the "[f]ailure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same." At the hearing, appellants primarily challenged the legal permissibility of certain damages rather than the factual existence of the damages. Because appellants'

further participation would not have facilitated the "truth-seeking process," *Hamlett*, 114 Nev. at 866-67, 963 P.2d at 459, we conclude the district court did not abuse its discretion in barring appellants from introducing evidence at the prove-up hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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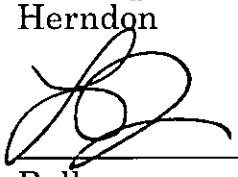

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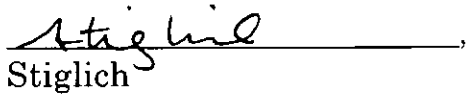

_____, J.
Stiglich

cc: Hon. Tara D. Clark Newberry, District Judge
Persi J. Mishel, Settlement Judge
Gregory Kelly
Law Offices of Marc Risman
Eighth District Court Clerk