



IN THE SUPREME COURT OF THE STATE OF NEVADA

MAXINE HOPKINSON; MICHAEL
TERPIN, AN INDIVIDUAL; AND
ROYAL PARADISE LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellants,

vs.

DOMINIC MARROCCO, AN
INDIVIDUAL; 6740 TL SERIES LLC, A
NEVADA LIMITED LIABILITY
COMPANY; TOMIYASU HOLDINGS,
LLC, A NEVADA LIMITED LIABILITY
COMPANY; DOMINIC MARROCCO
LLC, A NEVADA LIMITED LIABILITY
COMPANY; VIVA CAPITAL SERIES
LLC, A NEVADA LIMITED LIABILITY
COMPANY; TOMIYASU
ADMINISTRATIVE TRUST; CLAUDIA
PEREZ; AND 3260 LA MIRADA LLC,
Respondents.

No. 88777

MAXINE HOPKINSON; MICHAEL
TERPIN, AN INDIVIDUAL; AND
ROYAL PARADISE LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellants,

vs.

DOMINIC ANTHONY MARROCCO, AN
INDIVIDUAL; 6740 TL SERIES LLC, A
NEVADA LIMITED LIABILITY
COMPANY; TOMIYASU HOLDINGS,
LLC, A NEVADA LIMITED LIABILITY
COMPANY; DOMINIC MARROCCO
LLC, A NEVADA LIMITED LIABILITY
COMPANY; VIVA CAPITAL SERIES
LLC, A NEVADA LIMITED LIABILITY
COMPANY; TOMIYASU
ADMINISTRATIVE TRUST; CLAUDIA
PEREZ, AN INDIVIDUAL; AND 3260

No. 89822

LA MIRADA LLC,
Respondents.

ORDER OF AFFIRMANCE

These consolidated appeals challenge district court orders granting motions to alter and amend and for sanctions in a real property action. Eighth Judicial District Court, Clark County; Hon. Tina Talim and Hon. Adriana Escobar, Judges.

Appellants and respondents are in a breach-of-contract dispute over appellants' payment of \$5 million to buy two Las Vegas residences. After the district court denied appellants leave to file a third amended complaint adding a RICO claim, appellants filed a separate business court RICO action against respondents. The business court denied respondents' motion to dismiss the RICO action. The district court later consolidated the RICO action with the contract action and dismissed the RICO action with prejudice. Appellants moved to alter or amend the dismissal order, which the district court denied. The district court, however, entered a new order that dismissed the RICO claim with prejudice but omitted findings that appellants acted in bad faith in litigating the claim. Appellants appealed from that order in Docket No. 88777. In district court, respondents moved to alter or amend the order, which the district court granted, reinstating its original dismissal order with the bad faith findings.

Respondents separately moved for sanctions based on appellants' discovery conduct and pursuit of the RICO action. While both motions were pending, some respondents accepted appellants' NRCP 68 offer of judgment with respect to the contract action. The district court granted both sanctions motions and awarded respondents \$130,548.75 in attorney fees. Appellants appeal from that order in Docket No. 89822.

Appellants argue that their appeal in Docket No. 88777 divested the district court of jurisdiction from reinstating the initial RICO dismissal order. We review the scope of the district court's jurisdiction de novo. *Argentena Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 531, 216 P.3d 779, 782 (2009), *superseded by statute on other grounds as stated in Fredianelli v. Fine Carman Price*, 133 Nev. 586, 588-89, 402 P.3d 1254, 1256 (2017). Appellants overlook this court's November 7, 2024, order which (1) indicated that the notice of appeal appeared to be premature because of a pending tolling motion such that the district court had not been divested of jurisdiction, (2) held the appeal in abeyance, and (3) directed the district court to resolve respondents' pending motion to alter or amend. NRAP 4(a)(5)(B)(i) (stating that a notice of appeal becomes effective as to the final order upon entry of an order resolving the last remaining tolling motion); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 581-82 245 P.3d 1190, 1192-93 (2010) (discussing when a motion to alter or amend carries tolling effect). The district court therefore had authority to resolve respondents' tolling motion, notwithstanding appellants filing a premature notice of appeal.

Appellants also contend that the district court improperly relied on minutes, transcripts, and other record materials to reinstate the initial RICO dismissal order. We review district court orders under NRCP 59 and NRCP 60 for an abuse of discretion. *AA Primo Builders*, 126 Nev. at 589, 245 P.3d at 1197; *Ford v. Branch Banking & Tr. Co.*, 131 Nev. 526, 528, 353 P.3d 1200, 1202 (2015). NRS 3.180(3) permits a successor judge to examine such material when addressing a predecessor judge's ruling. In this case, a predecessor judge heard appellants' motion to alter and amend and then entered a minute order denying the motion in its entirety, while directing certain respondents to draft the written order. But that district court judge

mistakenly entered a different proposed order, not submitted by respondents, which modified the initial dismissal order by removing bad faith findings while leaving the dispositive ruling intact. The successor judge therefore acted within their authority in reviewing the record and did not abuse their discretion in reinstating the initial RICO dismissal order and resolving the mistake. *See Frontier Ins. Serv. Inc. v. State ex rel. Gates*, 109 Nev. 231, 239, 849 P.2d 328, 333 (1993) (recognizing that NRCP 60(a) permits correction of a clerical mistakes when a written judgment fails to reflect the determination made); *see also Mack v. Est. of Mack*, 125 Nev. 80, 93, 206 P.3d 98, 107 (2009) (affirming a successor judge's *nunc pro tunc* order based on the predecessor judge's oral rulings and the record).

Appellants next argue that certain respondents' acceptance of the NRCP 68 offer of judgment, which included attorney fees and costs, precluded the district court from awarding attorney fees as sanctions. Because appellants' argument presents a question of law, we review this issue de novo. *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006) (observing that Nevada appellate courts review de novo questions of law implicated by an attorney fee award).

Although an accepted NRCP 68 offer of judgment resolves attorney fees encompassed within its terms, sanctions for litigation misconduct present a collateral matter distinct from the underlying claims. *See Emerson v. Eighth Jud. Dist. Ct.*, 127 Nev. 672, 678, 263 P.3d 224, 228 (2011) (holding that sanctions for litigation misconduct are collateral because they address misconduct affecting the judicial process). NRCP 54(d)(2)(D) likewise distinguishes attorney fees awarded as sanctions from other attorney-fee claims. Here, the district court separately awarded \$130,548.75 in attorney fees as sanctions under various legal theories. The district court awarded those

fees as a remedy for litigation conduct, distinct from the attorney fees included in the \$2.3 million offer of judgment. Thus, the offer of judgment's inclusion of attorney fees and costs did not preclude the district court from resolving the pending sanctions motions and awarding attorney fees as sanctions. *See Emerson*, 127 Nev. at 678, 263 P.3d at 228.

Appellants next argue that the business court's denial of respondents' motion to dismiss the RICO action precluded the district court from later finding that appellants pursued the RICO action in bad faith. We disagree. We review de novo whether an earlier ruling has preclusive effect. *Kirsch v. Traber*, 134 Nev. 163, 166, 414 P.3d 818, 821 (2018). Issue preclusion generally requires, among other things, a final ruling on the merits and an issue that was actually and necessarily litigated. *See Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015). Because the business court denied the motion to dismiss without reaching the merits of the RICO action, its decision lacked sufficient finality for issue preclusion. *See Kirsch*, 134 Nev. at 168-69, 414 P.3d at 822. Nor did the business court decide whether appellants pursued the RICO action frivolously or for an improper purpose. Accordingly, the business court's ruling did not preclude the district court from independently determining whether appellants' filing and pursuit of the RICO action warranted sanctions. *See, e.g., Las Vegas Review-J. v. City of Henderson*, 137 Nev. 766, 772, 500 P.3d 1271, 1278 (2021) (concluding that prior decisions' silence on frivolousness did not establish that the action was not frivolous).

As to the merits of the sanctions order, appellants argue that the district court abused its discretion because the record does not support the sanctions. We review a district court's sanctions order for an abuse of

discretion and will uphold non-case-concluding sanctions if substantial evidence supports the order. *Capriati Constr. Corp., Inc. v. Yahyavi*, 137 Nev. 675, 676-77, 498 P.3d 226, 229 (2021), *overruled on other grounds by Clark v. Marin*, 142 Nev., Adv. Op. 47, 592 P.3d 417 (2026). Substantial evidence is that which a reasonable mind could find adequate to support a conclusion. *Id.*

The record supports the discovery sanction. The district court found that appellants subpoenaed bank records they could have sought before discovery closed. It also found that, after the discovery commissioner granted a protective order, appellants failed to notify the bank not to comply with the subpoena, reviewed the protected records anyway, and later disclosed their intent to use them at trial. While appellants argue that the bank produced the records before entry of the written protective order and that destruction of those records was unwarranted, those arguments do not address the full basis for the monetary sanction. The district court relied on appellants' conduct surrounding the subpoena and after the discovery commissioner granted protective relief, not merely their receipt or retention of the records. Substantial evidence therefore supports the district court's finding that appellants willfully disobeyed its discovery orders. *See Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 251-52, 235 P.3d 592, 598 (2010) (affirming non-case-concluding sanctions under NRCP 37(b) where the district court's findings supported the sanctions imposed).

The record also supports the sanctions arising from appellants' pursuit of the RICO action. Although appellants argue that they properly sought leave to amend under NRCP 15(a), that argument does not address their conduct after the district court denied leave. Rather than seek relief from that ruling in the original action, appellants filed a separate RICO action in business court and then attempted to transfer the original breach-of-contract

action to the business court. The district court found that this amounted to forum shopping, vexatiously multiplied the proceedings, increased litigation costs, and caused unnecessary delay. Substantial evidence supports those findings and the resulting sanctions. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330-31, 130 P.3d 1280, 1288-89 (2006) (affirming sanctions under NRCP 11 and NRS 18.010(2)(b) where a party continued pursuing arguments after the district court rejected them as legally unsupported); *cf. Lamont's Wild W. Buffalo, LLC v. Terry*, 140 Nev. 119, 123, 544 P.3d 248, 253 (2024) (recognizing NRCP 11, NRS 18.010(2)(b), and NRS 7.085 as independent bases for sanctions).

Having considered appellants' arguments and concluded that no relief is warranted, we

ORDER the judgments of the district court AFFIRMED.



Bell, J.



Stiglich, J.



Cadish, J.

cc: Hon. Adriana Escobar, District Judge
Hon. Tina Talim, District Judge
Paul C. Ray, Chtd.
Womble Bond Dickinson (US) LLP/Las Vegas
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Eleissa C. Lavelle, Settlement Judge
Eighth District Court Clerk