IN THE MATTER OF THE MICHAEL ABOUD AND BETTY JO ABOUD INTER VIVOS TRUST DATED JANUARY 5, 1979, AS AMENDED.

I.C.A.N. FOODS, INC.; KENDALL SWENSEN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BETTY JO ABOUD; AND DAVID BRAHEEM ABOUD, APPELLANTS, *v.* MICHELLE RAE ABOUD SHEPPARD AND MICHAEL ABOUD, RESPONDENTS.

MICHELLE RAE ABOUD SHEPPARD, CROSS-APPELLANT, *v.* I.C.A.N. FOODS, INC.; KENDALL SWENSEN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BETTY JO ABOUD; AND DAVID BRAHEEM ABOUD, CROSS-RESPONDENTS.

No. 55303

December 19, 2013 314 P.3d 941

Appeal and cross-appeal from a district court judgment in a trust action. Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

In action for trust accounting, the district court imposed constructive trust on assets of corporation to which former trust assets had been transferred. Parties cross-appealed. The supreme court, HARDESTY, J., held that: (1) former trust assets were no longer subject to the court's in rem jurisdiction, and (2) the court lacked jurisdiction to impose personal monetary judgments against former trustee and corporation.

**Affirmed in part, reversed in part, and remanded.**

[Rehearing denied February 26, 2014]

*Lemons, Grundy & Eisenberg* and *Tiffinay B. Pagni, Robert L. Eisenberg*, and *Douglas R. Brown*, Reno, for Appellants/Cross-Respondents.

*J. Douglas Clark Attorney at Law, Ltd.*, and *J. Douglas Clark*, Reno, for Respondent/Cross-Appellant Michelle Rae Aboud Sheppard.

*Michael Aboud*, Sun Valley, in Proper Person.

1. APPEAL AND ERROR.
   The supreme court reviews jurisdictional issues de novo.
2. JUDGMENT.
   When a court has in rem jurisdiction, in personam jurisdiction is not necessary to enter a judgment.

3. JUDGMENT.
   In rem jurisdiction permits a court to enter judgment against specific property; in personam jurisdiction permits the district court to enter judgment against a person.
4. TRUSTS.
   After trust property was transferred from the trust to limited partnership for consideration and by consent of trust beneficiaries, those assets were no longer trust property, subject to the court's in rem jurisdiction, but rather, property of the partnership. NRS 164.010(1), 164.015(6).
5. TRUSTS.
   In trust accounting action against former trustee, the district court had only in rem jurisdiction over trust assets and lacked jurisdiction to impose personal monetary judgments against former trustee and corporation to which former trust assets had been transferred. NRS 164.010(1), 164.015(6).

Before PICKERING, C.J., HARDESTY and SAITTA, JJ.

## OPINION

By the Court, HARDESTY, J.:

This appeal and cross-appeal concern trust property that was transferred from the trust to a limited partnership for consideration and by consent of all of the trust beneficiaries. Subsequently, the partnership transferred the property to a third-party business. We must now determine whether the in rem jurisdiction over trust assets conferred upon a district court by NRS 164.010(1) and NRS 164.015(6) permits that court to impose a constructive trust on this previous trust property based on the alleged improper transfer made by the partnership to the third party. We also must address whether the district court erred by entering a personal monetary judgment against the former trustee and the third party holding former trust assets based on the district court's in rem jurisdiction.

Because in rem jurisdiction only extends to property and the disputed assets were no longer trust property after they were transferred to the limited partnership, we conclude that NRS 164.010(1) and NRS 164.015(6) did not confer jurisdiction upon the district court to enter a constructive trust on those assets and a personal monetary judgment against the former trustee and third-party company. Because the claims against the former trustee arose from alleged breaches of fiduciary duties to the limited partnership and not to the trust, the district court erred by entering a personal judgment against the former trustee in a trust accounting action.

### *FACTS*

In 1979, Betty Jo and Michael Aboud, a married couple, created an inter vivos trust, which they amended in 1983 and again in

1993. The inter vivos trust's assets consisted of various real property and a restaurant known as The Griddle.

Michael Aboud died in 1998, and, pursuant to the trust's terms, the trust assets were divided and distributed into a survivor's trust and an irrevocable residual trust. The residual trust named as beneficiaries the couple's four adult children: appellant/cross-respondent David Braheem Aboud, respondent Michael J. Aboud, respondent/cross-appellant Michelle Rae Aboud Sheppard, and Robin Maureen Aboud Gonzales.[1] Betty Jo and Michael Sheppard, Michelle's husband, were the successor co-trustees of both trusts.

On the advice of estate planning counsel, Betty Jo and the Aboud children created the Aboud Family Partners Limited Partnership in 1999. Its primary purpose was to own, develop, lease, manage, and sell real property. The partnership agreement named Betty Jo, Michael Sheppard, and the survivor's trust as general partners. Pursuant to the terms of the agreement, the general partners had exclusive authority to transfer and control the partnership assets. The residual trust and the other Aboud family members, including Michelle, were limited partners who did not have the right to participate in partnership business. Notably, the partnership agreement also contained a clause requiring binding arbitration for ''[a]ny controversy or claim arising under this Partnership Agreement.''

In December 2000, Betty Jo and Michael Sheppard, as co-trustees of both the survivor's trust and the residual trust, transferred all of the trusts' assets to the partnership, including The Griddle restaurant. In exchange for the transfer, the residual trust received a 49.18% share in the partnership, and the survivor's trust received a 28.62% interest in the partnership. All of the beneficiaries to the trusts, including Michelle, consented to this transaction.

In 2001, Michael Sheppard resigned as co-trustee of the trusts and as general partner of the partnership. The partnership agreement was amended to name Betty Jo and the survivor's trust as general partners with the ability to control the partnership assets.

In September 2005, Betty Jo, acting as general partner both individually and as successor trustee of the survivor's trust, transferred all of the Aboud Family Partners Limited Partnership's assets, with the exception of The Griddle restaurant, to I.C.A.N., a Nevada corporation formed by David Aboud, who was the sole shareholder. I.C.A.N. Foods, Inc., paid for the assets by executing two promissory notes and David's renunciation of his beneficial interest in the residual trust. The transfer occurred without the

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[1]Robin Maureen Aboud Gonzales is not a party to this appeal.

knowledge or consent of the remaining residual trust beneficiaries. That same year, Betty Jo, again acting as general partner, also transferred The Griddle from the partnership to I.C.A.N. for no monetary consideration.

In 2006, Betty Jo resigned as trustee of the residual trust and Ashley Hickey, David's girlfriend, became the sole successor trustee. Shortly thereafter, Michelle filed a petition in the district court requesting that the court assume jurisdiction of the residual trust and require Ashley to perform an accounting of trust assets. The district court assumed jurisdiction of the trust and ordered an accounting. Ashley performed an accounting for the trust for 1999 through 2005, noting that the transactions occurred before she became successor trustee.

After Ashley performed the accounting, Michelle filed a petition to remove Ashley as trustee on the grounds that Ashley did not properly perform the accounting, had a conflict of interest, and had breached her fiduciary duties to the trust by engaging in self-dealing. Michelle sought to have Michael Sheppard appointed as trustee and for Michael Sheppard to perform an accounting. In response, Ashley argued that Betty Jo, not Ashley, was trustee during the time period in which Michelle claims that the alleged self-dealing occurred. Michelle acknowledged this fact in her response and alleged that Betty Jo may have breached her fiduciary duties to the residual trust by failing to properly account for trust property.

Before the district court ruled on this motion, Michelle filed another motion seeking a temporary restraining order and a preliminary injunction to protect the residual trust's assets. She argued that Ashley had also allegedly breached her fiduciary duty to the trust by failing to disclose that I.C.A.N. had recently used some of the former partnership assets to secure a loan. Michelle requested that the district court freeze both the trust assets and the partnership assets, remove Ashley as trustee, audit the residual trust's finances, and impose a preliminary injunction.

In Ashley's opposition, she argued that Michelle, ''as a limited partner, simply has no grounds for seeking judicial review'' of Betty Jo's decision as general partner to transfer The Griddle to I.C.A.N. because the terms of the partnership agreement prohibited limited partners from participating in partnership affairs. Ashley further argued that Michelle was clearly attempting to seek judicial review of Betty Jo's business decision and that Michelle ''may be seeking to avoid the arbitration provisions of the partnership agreement by styling her action as a trust case.'' Betty Jo joined in this opposition. In response, Michelle argued that Betty Jo owed a fiduciary duty to the residual trust because the residual trust was a limited partner in the Aboud Family Partners Limited Partnership.

At the hearing on this motion, the district court noted that it had statutory authority to order an accounting of trust assets. Thus, it entered a preliminary injunction. In relevant part, the district court enjoined Ashley, Betty Jo, and David from transferring, encumbering, or releasing trust assets. The district court also ordered Betty Jo to provide a summary accounting of the partnership.

Following the injunction, Michelle filed a motion for summary judgment that sought removal of Ashley as trustee, appointment of Michael Sheppard as successor trustee, and for a constructive trust to be placed on all of the partnership assets that were transferred to I.C.A.N. until the court could ascertain the amount of money owed to the residual trust. The district court granted Michelle's motion for summary judgment, in part, suspending Ashley as successor trustee and appointing Barry Solomon as an independent successor trustee.[2] It also ordered Solomon to perform an accounting of the trust.

Solomon's initial accounting report concluded that Betty Jo had breached her fiduciary duties to the *partnership* because the sale of the partnership assets to I.C.A.N. was undervalued and unreasonable. In response, Betty Jo, David, and Ashley each filed a proper person objection to the report. Conversely, Michelle, without filing a complaint or serving a summons, filed a motion in support of Solomon's report, in which she argued that Betty Jo, Ashley, and David had all breached their fiduciary duties. She also requested that the district court: (1) remove Betty Jo as general partner of the partnership, to be replaced by Solomon; (2) remove Ashley as trustee, to be replaced by Solomon; (3) transfer the partnership assets and The Griddle back to the partnership; (4) cancel the promissory notes executed by I.C.A.N. to the partnership in exchange for the partnership assets; (5) charge I.C.A.N., Betty Jo, David, and Ashley for the difference between the debt owed to the partnership before the sale of the partnership assets to I.C.A.N. and the present debt against the assets; (6) surcharge I.C.A.N., Betty Jo, David, and Ashley for all sums found to be unaccounted for; (7) charge I.C.A.N., Betty Jo, David, and Ashley for the costs of obtaining an accounting and getting assets diverted from the partnership to the trust; (8) authorize Solomon to continue his accounting of the trust; and (9) retain jurisdiction to order more charges against I.C.A.N., David, Betty Jo, and Ashley. Michelle

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[2]The parties do not argue, and therefore we do not address, whether Michelle was the proper party to bring a claim against Betty Jo, David, and I.C.A.N. after the district court appointed Solomon as the successor trustee. *See* Restatement (Second) of Trusts § 294 cmt. a (1959) (''[I]f a third person commits a tort with respect to the trust property the trustee and not the beneficiary is ordinarily the proper party to bring an action against the third person.'').

mailed a copy of this pleading to Ashley, Betty Jo, and David, but she did not mail a copy to I.C.A.N.

The district court held a hearing to review Solomon's report. At the conclusion of this hearing, the district court entered an order in which it adopted, in relevant part, the report's findings and conclusions. Thus, the district court implicitly determined that Betty Jo breached her fiduciary duties to the partnership by transferring the assets from the partnership to I.C.A.N. for unreasonable terms. The district court also ordered I.C.A.N. and David to pay delinquent property taxes on the real property that I.C.A.N. had purchased from the partnership, and for Solomon to complete his accounting. A copy of this order was mailed to Ashley, Betty Jo, and David, but not to I.C.A.N.

In Solomon's second accounting report, he again determined that Betty Jo breached her fiduciary duties to the partnership by transferring The Griddle to I.C.A.N. for no monetary consideration. Relying on his determination, Michelle requested, again without the filing of a complaint or service of summons, that Betty Jo, David, I.C.A.N., and Ashley be held jointly and severally liable for any monetary damage to the residual trust. She argued that Solomon's report proved that Betty Jo had breached her fiduciary duties by transferring The Griddle to I.C.A.N. for no consideration, transferring partnership assets to I.C.A.N. for nominal consideration, failing to keep adequate books and records of the partnership, permitting I.C.A.N. to use The Griddle to secure a loan, and failing to default I.C.A.N. for not paying property taxes. At the hearing, the district court noted that while someone had clearly breached his or her fiduciary duty, it was unclear who was responsible and whether the parties were properly before the district court.

Regardless, the district court entered judgment against Betty Jo and I.C.A.N. that provided in relevant part as follows:

> 1. That Judgment hereby is entered in favor of Barry Solomon, as Independent Successor Trustee of the Decedent's Trust of the Michael Aboud and Betty Jo Aboud Inter Vivos Trust, against Betty Jo Aboud and I.C.A.N. Foods, Inc., a Nevada corporation, jointly and severally, for the sum of $782,078.98.
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> 2. That a constructive trust hereby is imposed upon the assets of I.C.A.N. Foods, Inc., a Nevada corporation, until the judgment entered herein is paid in its entirety.

The district court based its judgment on its conclusion that Betty Jo had breached her fiduciary duties as both general partner of the Aboud Family Partners Limited Partnership and as trustee of the residual trust by transferring The Griddle from the partnership

to I.C.A.N. for no monetary consideration, and by transferring the remaining partnership assets to I.C.A.N. for nominal consideration, without the knowledge or consent of the residual trust's beneficiaries. A copy of the district court's order was mailed to both Betty Jo and I.C.A.N. This was the first time anything in the underlying litigation was mailed to I.C.A.N.

Betty Jo, David, and I.C.A.N., now with counsel, filed a motion to alter or amend the judgment, or in the alternative, for relief from the judgment. They argued, in pertinent part, that the district court lacked subject matter jurisdiction over the transfer of the assets from the partnership to I.C.A.N. and disregarded the binding arbitration clause in the partnership agreement.[3] The district court denied the motion. This appeal followed, and Michelle has cross-appealed the district court's order declining to hold David jointly and severally liable for the monetary judgment.

## *DISCUSSION*

On appeal, the parties dispute whether the district court had jurisdiction to impose a constructive trust on I.C.A.N.'s assets and enter a judgment for money damages against Betty Jo and I.C.A.N. individually. Michelle argues that NRS 164.010(1) and NRS 164.015(6) conferred jurisdiction on the district court to enter these judgments. We disagree.

[Headnotes 1-3]

We review jurisdictional issues de novo. *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000). Jurisdiction can take the form of either in rem or in personam jurisdiction. *See Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 453 (2004). When a court has in rem jurisdiction, in personam jurisdiction is not necessary to enter a judgment. *Id.* In rem jurisdiction permits a court to enter judgment against specific property; in contrast, in personam jurisdiction permits the district court to enter judgment against a person. *Chapman v. Deutsche Bank Nat'l Trust Co.*, 129 Nev. 314, 318, 302 P.3d 1103, 1106 (2013).

NRS 164.010(1) confers in rem jurisdiction on the district court over trust property in all trust administration actions. In addition, NRS 164.015(6) provides that a district court's order in a trust administration action is ''binding in rem upon the trust estate and upon the interests of all beneficiaries.''

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[3]The Aboud Family Partner's Limited Partnership's agreement required that ''[a]ny controversy or claim arising under this Partnership Agreement . . . shall be determined and settled by arbitration.'' Betty Jo argues that the district court failed to determine whether Betty Jo's alleged breach of fiduciary duty should have been submitted to binding arbitration. Given our disposition, we do not reach this issue.

[Headnote 4]

Michelle's argument that these two statutes conferred jurisdiction upon the district court is premised on the theory that the assets that were transferred by the partnership to I.C.A.N. remained trust assets. It is well recognized that when a trustee breaches his or her fiduciary duty by *improperly* transferring trust assets to a third party, those assets are held pursuant to the trust if the third party purchasing the trust assets had notice of the trust and a breach of duty by the trustee.[4] *See Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 250 (2000); Restatement (Second) of Trusts § 284(1) (1959). However, when a trustee transfers trust assets with authority or the consent of all of the beneficiaries, the transfer ''operates to pass the legal and equitable title to the purchaser.'' 76 Am. Jur. 2d *Trusts* § 500 (2005); *see generally Williams v. Jackson*, 107 U.S. 478, 482 (1883). Here, all of the beneficiaries, including Michelle, consented to the survivor and residual trusts' transfer of all the trust assets to the partnership in exchange for an ownership interest in the partnership. Michelle does not argue, nor did Solomon or the district court find, that Betty Jo breached her fiduciary duty to the trusts in making this transfer. Therefore, the only assets now remaining in the trusts are the trusts' respective ownership shares in the Aboud Family Partners Limited Partnership. The property that Betty Jo, acting as general partner, transferred to I.C.A.N. was the property of the partnership and not the trusts. Thus, we conclude that the district court's in rem jurisdiction under NRS 164.010(1) and NRS 164.015(6) over the trust assets did not extend to the assets I.C.A.N. acquired from the partnership.

[Headnote 5]

''A valid and final judgment in an action based only on jurisdiction to determine interest in a thing . . . [d]oes not bind anyone with respect to a personal liability.'' Restatement (Second) of Judgments § 30(2) (1982). The district court held Betty Jo and I.C.A.N. *personally* liable for the judgment of $782,078.98. Because the district court's order was a judgment against Betty Jo and I.C.A.N., and not against any trust property, it exceeded the in rem jurisdiction over trust assets provided by NRS 164.010(1) and NRS 164.015(6) and is void. To impose personal liability on Betty Jo and I.C.A.N.—and a constructive trust on assets I.C.A.N. acquired from a third-party partnership—required the

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[4]Because the property in this case was not a trust asset at the time of the transfer by the partnership to a third party, we do not address the appropriate procedure for recovering trust assets inappropriately transferred to a third party.

court to acquire ''personal jurisdiction over [them as] part[ies], normally through appropriate process based on contacts with the jurisdiction or through his general appearance therein to defend on the merits.'' Restatement (Second) of Judgments § 30(2) cmt. c; *see Young v. Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987) (''A court does not have jurisdiction to enter judgment for or against one who is not a party to the action.''). But here, the pleading that initiated the action and gave the court jurisdiction was brought under NRS 164.010(1) and NRS 164.015(6). This gave the court in rem jurisdiction but not jurisdiction to impose personal judgments against Betty Jo and I.C.A.N. under the circumstances present here. Accordingly, we affirm the district court's order declining to enter judgment against David, and reverse the district court's order imposing a constructive trust and entering a judgment against Betty Jo and I.C.A.N., and remand the case to the district court for proceedings consistent with this opinion.[5]

PICKERING, C.J., and SAITTA, J., concur.

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JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, AS TRUSTEES OF THE LYTLE TRUST, APPELLANTS, *v.* ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, A NEVADA NONPROFIT CORPORATION, RESPONDENT.

No. 60657

JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, AS TRUSTEES OF THE LYTLE TRUST, APPELLANTS, *v.* ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, A NEVADA NONPROFIT CORPORATION, RESPONDENT.

No. 61308

December 26, 2013 314 P.3d 946

Jurisdictional screening of consolidated appeals from a final judgment in an action concerning homeowners' association dues and governance (Docket No. 60657) and from a post-judgment order awarding supplemental attorney fees (Docket No. 61308). Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Property owners brought action against homeowners' association with respect to unpaid association fees. The district court ruled that

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[5]Because we reverse the district court's order on appeal, we do not address the parties' remaining arguments.

fees were proper, dismissed owners' claims, and awarded association the unpaid fees and attorney fees. After owners appealed, association was awarded supplemental attorney fees. Owners filed motion to alter or amend order. The district court denied motion. Owners appealed. After issuing order to show cause whether notice of appeal was timely filed, the supreme court held that: (1) motion to alter or amend is permitted as to any appealable order, not just final judgments; and (2) tolling of period for filing notice of appeal applied to motion to alter or amend post-judgment order awarding supplemental attorney fees.

**Briefing reinstated.**

*Sterling Law, LLC*, and *Beau Sterling*, Las Vegas, for Appellants.

*Leach Johnson Song & Gruchow* and *Sean L. Anderson* and *Ryan W. Reed*, Las Vegas, for Respondent.

1. Appeal and Error.
   The district court's order awarding supplemental attorney fees to homeowners' association, in action addressing unpaid association fees, qualified as special order after final judgment and was therefore an appealable order. NRAP 3A(b)(8).
2. Appeal and Error.
   Motion to alter or amend is permitted as to any appealable order, not just final judgments, and as a result, motion to alter or amend any appealable order will generally toll time to appeal from that order. NRCP 59(e); NRAP 4(a)(4).
3. Appeal and Error.
   Tolling of period for filing notice of appeal applied to property owners' motion to alter or amend post-judgment order that awarded supplemental attorney fees to homeowners' association in action addressing unpaid association fees, which, as order that was independently appealable as special order after final judgment, fell within rule's definition of ''judgment.'' NRCP 54(a), 59(e); NRAP 4(a)(4).

Before Hardesty, Parraguirre and Cherry, JJ.

## OPINION

*Per Curiam:*

NRCP 59(e) allows a party to move the district court to alter or amend a ''judgment.'' The timely filing of an NRCP 59(e) motion may toll the period in which a notice of appeal from the judgment must be filed until the motion is resolved. NRAP 4(a)(4). Here, however, appellants filed a motion to alter or amend a post-judgment order awarding supplemental attorney fees. We asked the parties to address whether an NRCP 59(e) tolling motion is prop-

erly directed at a post-judgment order or whether that rule is limited to final judgments.

NRCP 54(a) defines judgment to include ''any order from which an appeal lies.'' Based on this definition, we conclude that tolling under NRAP 4(a)(4) applies to an NRCP 59(e) motion to alter or amend directed at an appealable special order after final judgment. As a result, the notice of appeal from this order was timely filed and the appeal may proceed.

## *FACTS AND PROCEDURAL HISTORY*

In a dispute concerning unpaid homeowners' association (HOA) dues, the district court concluded that the HOA fees were proper, dismissed appellants' claims to the contrary, and awarded respondent HOA the unpaid fees and attorney fees. Although appellants prematurely filed a notice of appeal before the district court's final judgment was entered, their appeal from that order was deemed timely and proper once the order was filed. NRAP 4(a)(6). Thus, there is no jurisdictional issue as to the appeal from the final judgment.

Meanwhile, however, respondent moved for and was awarded supplemental attorney fees for its counsel's additional services in the court below. The supplemental attorney fees award's notice of entry was served by mail on August 14, 2012. Appellants did not immediately file a notice of appeal, but instead timely filed an NRCP 59(e) motion to alter or amend the order. After the district court denied the motion to alter or amend in a written order entered on January 16, 2013, appellants filed a notice of appeal from the supplemental attorney fees award on January 30, 2013, well beyond 30 days from the supplemental attorney fees award's notice of entry. Because it was unclear whether appellants' motion to alter or amend the post-judgment order awarding supplemental attorney fees tolled the period for filing the notice of appeal, this court issued an order to show cause whether the notice of appeal was timely filed. The parties timely responded.

## *DISCUSSION*

A notice of appeal must be filed within 30 days following service of the notice of entry of the judgment or appealable order. NRAP 4(a)(1). An additional 3 days are added to the 30-day appeal period under NRAP 26(c) to allow for service of the notice of entry, unless the paper is delivered on the date of service.

[Headnote 1]

Here, the district court's order awarding supplemental attorney fees qualifies as a special order after final judgment, and is therefore an appealable order. NRAP 3A(b)(8); *Winston Prods. Co. v.*

*DeBoer*, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006). As service of the order's notice of entry was by mail, appellants had only 33 days from August 14, 2012, to file their notice of appeal, unless the appeal period was tolled. NRAP 4(a)(1), 26(c). Generally, the time for filing a notice of appeal may be tolled if one of several different enumerated motions is filed, including a motion to alter or amend the judgment under NRCP 59. NRAP 4(a)(4). But because NRCP 59 provides for a motion to alter or amend the *judgment*, it is unclear whether the motion was properly applied to a post-judgment order. *See, e.g.*, *Ex parte Troutman Sanders, LLP*, 866 So. 2d 547, 550 (Ala. 2003) (stating that a motion to alter or amend ''may be made only in reference to a final judgment or order'' (internal quotation omitted)). Thus, the question in this appeal is whether the rule allows only for motions directed at final judgments, or whether a party can move to alter or amend other orders entered by the district court as well.[1]

[Headnote 2]

In resolving this issue, we turn to the definition of judgment as outlined in NRCP 54(a), which states that '' '[j]udgment' as used in these rules includes . . . any order from which an appeal lies.'' *See also Lee v. GNLV Corp.*, 116 Nev. 424, 426-27, 996 P.2d 416, 417 (2000) (recognizing that this definition pertains to the Nevada Rules of Civil Procedure). As this definition specifically states that it applies whenever the term ''judgment'' is used in the Nevada Rules of Civil Procedure, we must apply this definition when construing the language of NRCP 59(e) allowing for a ''motion to alter or amend the judgment.'' Applying the definition that judgment includes any appealable order, a motion to alter or amend is permitted as to any appealable order, not just final judgments. And, as a result, a motion to alter or amend any appealable order will generally toll the time to appeal from that order.

The Tenth Circuit Court of Appeals reached this same conclusion when it addressed the issue under the federal rules of civil and appellate procedure, which are similar to Nevada's rules in this regard. *Autorama Corp. v. Stewart*, 802 F.2d 1284, 1286-87 (10th Cir. 1986); *see also Moseley v. Eighth Judicial Dist. Court*, 124 Nev. 654, 662-63, 188 P.3d 1136, 1142 (2008) (recognizing that this court may look to the interpretation of similar federal rules when construing a Nevada Rule of Civil Procedure). In *Autorama*

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[1]In *Winston Products Co.*, 122 Nev. at 525-26, 134 P.3d at 731-32, this court held that a tolling motion directed at a final judgment could also serve to toll the time to appeal from a special order after final judgment. Our holding in *Winston Products* does not resolve the jurisdictional issue raised here, however, as the tolling motion in the present case was not directed at a final judgment, but instead was directed solely at the special order after final judgment.

*Corp.*, the court faced the same circumstances that exist in the present case, as the appellants there had filed a motion equivalent to a motion to alter or amend directed at a post-judgment order denying attorney fees. 802 F.2d at 1286. The *Autorama Corp.* court held that the tolling provision under the federal counterpart to NRAP 4(a)(4) applied to the motion to alter or amend, even though it was directed at a post-judgment order, and therefore the time for filing the notice of appeal was tolled until after the lower court resolved the motion. *Id.* at 1286-87; s*ee also Marie v. Allied Home Mortg. Corp.*, 402 F.3d 1, 6-8 (1st Cir. 2005) (addressing the federal rules analogous to NRCP 54(a) and NRAP 4(a)(4) in the context of a party filing a motion to alter or amend directed at an independently appealable interlocutory order); *Lichtenberg v. Besicorp Grp. Inc.*, 204 F.3d 397, 400 (2d Cir. 2000) (same). In *Marie* and *Lichtenberg*, the courts applied the definition of ''judgment'' provided in the federal counterpart to NRCP 54(a), which recognizes that ''judgment'' includes any appealable order, to determine that a motion to alter or amend could be directed at an appealable interlocutory order and that, as a result, the period for filing a notice of appeal provided under the federal counterpart to NRAP 4(a)(4) applied to toll the appeal period, even though the motion to alter or amend was not directed at a final judgment. *Marie*, 402 F.3d at 6-8; *Lichtenberg*, 204 F.3d at 400.

[Headnote 3]

Accordingly, we conclude that NRAP 4(a)(4) tolling applies to appellants' NRCP 59(e) motion to alter or amend that was directed at the post-judgment order awarding supplemental attorney fees. The supplemental attorney fees order is independently appealable as a special order after final judgment, and thus, falls under the definition of judgment provided in NRCP 54(a). As a result, the notice of appeal was timely filed, and these appeals may proceed. We reinstate the briefing schedule as follows. As appellants' opening brief was due at the time we issued our order to show cause and appellants had already received extensions of time to file the opening brief, appellants must file and serve their opening brief and appendix within 30 days of the date of this opinion. No more extensions of time will be granted. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

MICHAEL TAYLOR, APPELLANT, *v.* THE STATE OF NEVADA DEPARTMENT OF HEALTH AND HUMAN SERVICES, RESPONDENT.

No. 61241

December 26, 2013 314 P.3d 949

Appeal from a district court order denying a petition for judicial review in a state employment matter. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Employee petitioned for judicial review of decision of State Personnel Commission hearing officer in state employment matter. The district court denied petition. Employee appealed. The supreme court, DOUGLAS, J., held that hearing officer lacked authority to prescribe actual discipline imposed on permanent classified state employees.

**Affirmed.**

*Law Office of Daniel Marks* and *Daniel Marks* and *Adam Levine*, Las Vegas, for Appellant.

*Catherine Cortez Masto*, Attorney General, and *Shannon C. Richards*, Deputy Attorney General, Carson City, for Respondent.

1. OFFICERS AND PUBLIC EMPLOYEES.
   While hearing officers may determine the reasonableness of disciplinary actions and recommend appropriate levels of discipline, only appointing authorities have the power to prescribe the actual discipline imposed on permanent classified state employees; provisions of statute governing hearings to determine reasonableness of dismissal, demotion, or suspension of state employees grant State Personnel Commission hearing officers the power to review for reasonableness, and potentially set aside, an appointing authority's dismissal, demotion, or suspension decision, but the statutes do not make hearing officers appointing authorities or provide them with explicit power to prescribe the amount of discipline to be imposed. NRS 284.390.
2. ADMINISTRATIVE LAW AND PROCEDURE.
   When reviewing a district court's denial of a petition for judicial review of an agency decision, the supreme court engages in the same analysis as the district court.
3. ADMINISTRATIVE LAW AND PROCEDURE.
   The supreme court reviews an administrative agency's decision for an abuse of discretion or clear error. NRS 233B.135(3).
4. ADMINISTRATIVE LAW AND PROCEDURE.
   The supreme court defers to an agency's findings of fact that are supported by substantial evidence; however, questions of law are reviewed de novo.
5. ADMINISTRATIVE LAW AND PROCEDURE.
   Although statutory construction is generally a question of law reviewed de novo, the supreme court defers to an agency's interpretation of

its governing statutes or regulations if the interpretation is within the language of the statute.

Before GIBBONS, DOUGLAS and SAITTA, JJ.

## OPINION

By the Court, DOUGLAS, J.:

In this appeal from a district court order denying a petition for judicial review, we review a State Personnel Commission hearing officer's decision in a state employment matter. We conclude that the hearing officer did not err or abuse her discretion in determining that, pursuant to the clear and unambiguous language of NRS Chapter 284, while hearing officers may determine the reasonableness of disciplinary actions and recommend appropriate levels of discipline, only appointing authorities have the power to prescribe the actual discipline imposed on permanent classified state employees. Therefore, we affirm.

### *FACTS AND PROCEDURAL HISTORY*

Appellant Michael Taylor was employed by respondent State of Nevada, Department of Health and Human Services (DHHS), in the Division of Child and Family Services (DCFS), in a permanent classified position as a group supervisor at Caliente Youth Center. As part of his duties there, Taylor participated in a room search due to allegations of youths stealing food. During the search, there was an incident involving Taylor and one of the youths. As a result of this incident, Taylor was issued a specificity of charges document that recommended his termination from employment. Thereafter, Taylor was dismissed from employment.

Taylor administratively appealed his dismissal pursuant to NRS 284.390, and following an evidentiary hearing, the State Personnel Commission hearing officer issued a decision setting aside Taylor's dismissal and remanding the case to DCFS to determine the appropriate level of discipline for Taylor's infraction. In her decision, the hearing officer recommended that DCFS impose a suspension and require remedial training concerning the use of force. Taylor sought reconsideration of the decision, arguing that the hearing officer, as opposed to the employer, should determine the appropriate amount of discipline where modified discipline is required. The hearing officer denied reconsideration, and Taylor subsequently filed a petition for judicial review to have a district court decide the issue of who determines the appropriate level of discipline in his situation. Following briefing by the parties, the district court denied Taylor's petition for judicial review, concluding that hearing

officers are not required to determine the appropriate level of discipline after finding that dismissal was unreasonable. This appeal followed.

## *DISCUSSION*

[Headnote 1]

On appeal, Taylor argues that the statute governing hearings to determine the reasonableness of employee discipline, NRS 284.390, does not expressly address the situation where a hearing officer determines that dismissal from state employment is too severe, but that some amount of discipline is warranted for an employee's misconduct. He claims that some hearing officers remand the matter back to the employer, while other hearing officers determine the appropriate level of discipline themselves. Taylor asserts that the hearing officer should make the decision about the appropriate level of discipline because the hearing officer is the ''fact finding tribunal'' and doing so is consistent with the statutory and regulatory scheme adopted under NRS Chapter 284. We disagree and hold that pursuant to the clear and unambiguous language of NRS Chapter 284, while hearing officers may determine the reasonableness of disciplinary actions and recommend appropriate levels of discipline, only appointing authorities have the power to prescribe the actual discipline imposed on permanent classified state employees.

[Headnotes 2-5]

''When reviewing a district court's denial of a petition for judicial review of an agency decision, this court engages in the same analysis as the district court.'' *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 349, 240 P.3d 2, 4 (2010). Specifically, this court reviews an administrative agency's decision for an abuse of discretion or clear error. *See id.*; *see also* NRS 233B.135(3). In doing so, this court defers to the agency's findings of fact that are supported by substantial evidence; however, questions of law are reviewed de novo. *Rio*, 126 Nev. at 349, 240 P.3d at 4. Although statutory construction is generally a question of law reviewed de novo, this court ''defer[s] to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute.'' *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008). Accordingly, if the hearing officer's interpretation of NRS Chapter 284 and its associated regulations is ''within the language of the statute,'' this court will defer to that interpretation.

On appeal, Taylor challenges the hearing officer's decision to remand this matter to DCFS for a determination of appropriate discipline and her conclusion that NRS 284.390 ''does not grant the

hearing officer authority to determine the discipline to be imposed should he find the employer's decision unreasonable.'' In determining whether this interpretation of a hearing officer's authority is ''within the language of the statute,'' several statutory and regulatory provisions must be addressed. NRS 284.385 expressly empowers appointing authorities to dismiss, demote, or suspend permanent classified employees. NAC 284.022 provides that an '' '[a]ppointing authority' . . . [is] an official, board or commission having the legal authority to make appointments to positions in the state service, or a person to whom the authority has been delegated by the official, board or commission.'' Here, DCFS is an appointing authority and, as such, may dismiss, demote, or suspend its permanent classified employees.

Notably absent in the definition of appointing authority, however, is any reference to a hearing officer. *See* NAC 284.022. This is because the role and authority of a hearing officer is distinct from that of an appointing authority. While the appointing authority may dismiss, demote, or suspend an employee, ''[an] employee who has been dismissed, demoted or suspended may request . . . a hearing before the hearing officer . . . to determine the reasonableness of the action.'' NRS 284.390(1); *Knapp v. State ex rel. Dep't of Prisons*, 111 Nev. 420, 424, 892 P.2d 575, 577 (1995). The section further provides that:

> If the hearing officer determines that the dismissal, demotion or suspension was without just cause as provided in NRS 284.385, the action must be set aside and the employee must be reinstated, with full pay for the period of dismissal, demotion or suspension.

NRS 284.390(6). These provisions grant the hearing officer the power to review for reasonableness, and potentially set aside, an appointing authority's dismissal, demotion, or suspension decision; however, they do not make hearing officers appointing authorities or provide them with explicit power to prescribe the amount of discipline to be imposed. Moreover, ''[a]t the conclusion of the hearing, the hearing officer . . . shall notify the parties . . . of the hearing officer's findings and recommendations.'' NAC 284.818. At best, then, a hearing officer's only influence on the prescription of discipline in a matter on administrative appeal comes from his or her ability to determine the reasonableness of the disciplinary decision, *see* NRS 284.390(1), and to recommend what may constitute an appropriate amount of discipline, *see* NAC 284.818.

Based on the clear and unambiguous language of these statutes and regulations, while hearing officers may determine the reasonableness of disciplinary actions and recommend appropriate levels

of discipline, only appointing authorities have the power to prescribe the actual discipline imposed on permanent classified state employees. The hearing officer's interpretation of her authority is within the language of NRS Chapter 284 and its associated regulations, and we therefore do not disturb that interpretation on appeal. Accordingly, we affirm the district court's order denying judicial review.

GIBBONS and SAITTA, JJ., concur.

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MELINDA BOOTH DOGRA AND JAGDISH DOGRA, APPELLANTS, *v.* JANE H. LILES, RESPONDENT.

No. 59381

December 26, 2013 314 P.3d 952

Appeal from a district court order, certified as final under NRCP 54(b), dismissing an action based on lack of personal jurisdiction. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Following collision in Nevada between two vehicles that occurred after a driver lost control of a third vehicle, insurer for nonresident owner of third vehicle filed interpleader action in Nevada to allow injured parties to settle their rights to any money due under that insurance policy. Injured occupants of a vehicle involved in collision filed negligent entrustment claim against nonresident owner of third vehicle. After granting owner's motion to dismiss for lack of personal jurisdiction and granting owner's subsequent motion to consolidate all lawsuits stemming from accident, the district court denied motion to reconsider the dismissal for lack of personal jurisdiction and certified the dismissal as final. Injured occupants appealed. The supreme court, FLANAGAN, D.J., sitting by designation, held that: (1) nonresident owner's entrustment of vehicle to adult daughter, without placement of any restrictions on daughter's use of vehicle, did not result in sufficient minimum contacts with Nevada to subject owner to specific jurisdiction under due process principles; (2) nonresident owner's motion to consolidate all lawsuits stemming from accident did not waive her right to object to court's exercise of personal jurisdiction; and (3) interpleader motion filed by nonresident owner's insurer could subject owner to personal jurisdiction if insurer was acting as owner's agent in filing motion.

**Reversed and remanded.**

GIBBONS, J., with whom CHERRY and SAITTA, JJ., agreed, dissented in part.

*Law Office of William R. Brenske* and *William R. Brenske*, Las Vegas; *Raleigh & Hunt, P.C.*, and *John A. Hunt, Anastasia L. Noe*, and *Bert E. Wuester, Jr.*, Las Vegas, for Appellants.

*Barron & Pruitt, LLP*, and *Peter A. Mazzeo* and *Jared G. Christensen*, North Las Vegas; *Lewis & Roca, LLP*, and *Daniel F. Polsenberg*, Las Vegas, for Respondent.

1. APPEAL AND ERROR.
   The supreme court reviews a district court's order regarding jurisdictional issues de novo when the facts are undisputed.
2. APPEAL AND ERROR.
   The supreme court reviews a district court's factual findings regarding a personal jurisdiction issue for clear error.
3. CONSTITUTIONAL LAW; COURTS.
   Nonresident vehicle owner's entrustment of vehicle to adult daughter, without placement of any restrictions on daughter's use of vehicle, did not result in sufficient minimum contacts with Nevada, where accident occurred as alleged result of daughter's negligence, to subject owner to specific personal jurisdiction in Nevada under due process principles; owner did not purposefully avail herself of Nevada's laws or direct her conduct toward Nevada, and daughter's act of driving to Nevada was a unilateral act unsanctioned by owner and of which owner had no specific knowledge. U.S. CONST. amend. 14.
4. CONSTITUTIONAL LAW.
   Nevada may exercise personal jurisdiction over a nonresident defendant only if doing so does not offend due process. U.S. CONST. amend. 14.
5. CONSTITUTIONAL LAW.
   Due process, in context of exercising personal jurisdiction over a nonresident defendant, is rooted in a defendant's ''contacts'' with the forum state and reflects his or her reasonable expectations about the litigation risks associated with those contacts. U.S. CONST. amend. 14.
6. CONSTITUTIONAL LAW.
   Due process, in the context of exercising personal jurisdiction over a nonresident defendant, requires a nonresident defendant to have sufficient ''minimum contacts'' with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. U.S. CONST. amend. 14.
7. COURTS.
   Absent a nonresident defendant's acquiescence to a forum state's jurisdiction, personal jurisdiction occurs in two forms: general and specific.
8. COURTS.
   Unlike general jurisdiction, specific personal jurisdiction is proper only where the cause of action arises from the nonresident defendant's contacts with the forum.
9. CONSTITUTIONAL LAW.
   Under due process ''minimum contacts'' analysis, Nevada may exercise specific jurisdiction over a nonresident defendant if the defendant purposefully avails himself or herself of the protections of Nevada's laws, or purposefully directs his or her conduct towards Nevada, and the plaintiff's claim actually arises from that purposeful conduct; thus, the mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state. U.S. CONST. amend. 14.

10. CONSTITUTIONAL LAW.

Whether general or specific, the exercise of personal jurisdiction over a nonresident defendant must also be reasonable to satisfy due process. U.S. CONST. amend. 14.

11. COURTS.

Motion by nonresident vehicle owner in Nevada court to consolidate all the lawsuits stemming from accident attributed to alleged negligence of that vehicle's driver did not waive owner's right to object to court's exercise of personal jurisdiction over her; consolidation motion did not seek affirmative relief, but was essentially a case management device to promote efficiency in resolving the various cases, and none of the parties' substantive rights were implicated.

12. INTERPLEADER.

Interpleader action, filed in Nevada court by insurer of nonresident vehicle owner to permit parties injured in accident in that state allegedly caused by negligence of that vehicle's driver to settle their respective rights to any money due under the insurance policy, could subject owner to personal jurisdiction if the insurer was acting as owner's agent in filing the action.

Before the Court EN BANC.[1]

## OPINION

By the Court, FLANAGAN, D.J.:

This case arises from a personal injury action filed by appellants Melinda and Jagdish Dogra. They sued respondent Jane H. Liles and her daughter Susan Liles, both California residents, for damages stemming from a car accident in Nevada. The accident occurred when Susan was driving Jane's car.

The central issue in this appeal is whether Jane, a nonresident defendant, is subject to personal jurisdiction in Nevada by virtue of the accident. Additionally, we address whether Jane's filing of a motion to consolidate in a Nevada court waived her right to object to the court's exercise of personal jurisdiction over her. Finally, we examine whether an interpleader action filed by Jane's insurance company subjects its insured—here, Jane—to personal jurisdiction in Nevada.

We hold that a nonresident defendant is not subject to personal jurisdiction in Nevada when the sole basis asserted is his or her adult child's unilateral act of driving the defendant's vehicle in Nevada. Secondly, because the consolidation motion did not implicate the parties' substantive legal rights, we conclude Jane's filing of it did not amount to a request for affirmative relief sufficient to constitute a waiver of the right to object to the court's exercise

[1]THE HONORABLE PATRICK FLANAGAN, District Judge in the Second Judicial District Court, was designated by the Governor to sit in place of THE HONORABLE MICHAEL L. DOUGLAS, Justice, Nev. Const. art. 6, § 4, who voluntarily recused himself from participation in the decision of this matter.

of personal jurisdiction over her. Finally, we conclude that the interpleader action could subject Jane to jurisdiction in Nevada courts if the insurance company was acting as Jane's agent in filing the action. But because the issue surrounding the interpleader action was not adequately addressed in the district court, we remand so that it can be analyzed under principles of agency.

## *FACTS AND PROCEDURAL HISTORY*

Jane, a California resident, purchased and registered, in California, a Scion for her daughter Susan to use as Susan's primary means of transportation while attending high school and college in that state. Jane made all of the payments on the vehicle, registered it in California in her own name, and placed it on her insurance policy. On the policy, Jane named Susan as the primary driver.

While in college, Susan drove the Scion to Nevada for a weekend trip. While traveling in Nevada on Interstate 15, she lost control of the vehicle and swerved in front of another car. The second car swerved to avoid a collision but crashed into the interstate's median, which caused it to flip over the median and land on the Dogras' car.

As a result of the accident, Jane's insurance company filed an interpleader action in Nevada, leaving the injured parties to settle their respective rights to any money due under the insurance policy. Thereafter, the Dogras and three other sets of plaintiffs separately sued Susan and Jane for negligence and negligent entrustment for damages caused during the accident. In the Dogras' action, Jane moved under NRCP 12(b)(2) to dismiss the complaint due to lack of personal jurisdiction. The Dogras opposed Jane's motion, arguing that Nevada could properly exercise personal jurisdiction over Jane because she had sufficient contacts with Nevada. The district court scheduled a hearing for the parties to present their arguments.

Following the hearing, the district court granted Jane's motion to dismiss. Six days later, Jane and Susan moved to consolidate all lawsuits stemming from the accident, including the Dogras' action. The Dogras then asserted that, by filing the motion to consolidate, Jane became subject to Nevada's jurisdiction. The district court granted the consolidation motion and concluded that the motion did not subject Jane to Nevada's jurisdiction.

Susan and Jane were subsequently deposed. At Susan's deposition, she testified that Jane did not prohibit her from driving the Scion to Nevada. At Jane's deposition, she testified similarly about the no-restrictions policy. She also testified that she did not remember whether she knew about Susan's trip to Las Vegas before the accident. After obtaining the transcript of Susan's deposition testimony, the Dogras filed a motion for reconsideration and, alternatively, a motion to certify the dismissal order as final pursuant

to NRCP 54(b). The Dogras claimed that Susan's deposition testimony constituted new and previously unavailable evidence proving that Jane was subject to Nevada's jurisdiction because she placed no restrictions on Susan's use of the vehicle. After full briefing and a hearing, the district court denied the Dogras' motion for reconsideration, determining the statements Susan made in her deposition were not new and substantially different evidence. The district court granted the Dogras' motion to certify the dismissal order as final pursuant to NRCP 54(b), and this appeal followed.

## *DISCUSSION*

On appeal, the Dogras contend that the district court erred in determining it lacked personal jurisdiction over Jane. They assert three theories in support of their position: (1) Jane has sufficient minimum contacts with Nevada to subject her to suit here based on the fact that she let Susan use her car in this state; (2) Jane sought affirmative relief in Nevada courts by filing the motion to consolidate, which subjects her to suit here; and (3) Jane acquiesced to the jurisdiction of Nevada courts over this matter when, through her insurer, she filed an interpleader action here.

[Headnotes 1, 2]

We review a district court's order regarding jurisdictional issues de novo when the facts are undisputed. *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000). We review a district court's factual findings regarding a personal jurisdiction issue for clear error. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

### *Minimum contacts*

[Headnote 3]

The Dogras assert that Susan's act of driving the Scion in Nevada subjected Jane to Nevada's jurisdiction because she entrusted the vehicle to Susan and did not place any restrictions on Susan's use of the vehicle, which resulted in injury in Nevada. Put more directly, the Dogras argue that Jane, by placing no restrictions on Susan's use of the Scion, specifically authorized Susan to drive to Nevada, thereby creating sufficient minimum contacts with Nevada from which the claim arose. As explained below, we disagree.

[Headnotes 4-7]

Nevada may exercise personal jurisdiction over a nonresident defendant only if doing so does not offend due process. *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 698, 857 P.2d 740, 747 (1993). Due process in this context is rooted in a defendant's ''contacts'' with the forum state—here, Nevada—and reflects his or her reasonable expectations about the litigation risks associated

with those contacts. *See id*. at 699, 857 P.2d at 748 (''The defendant must have sufficient contacts with [Nevada] such that he or she could reasonably anticipate being haled into court there.''). As it is classically understood, therefore, due process requires a nonresident defendant to have sufficient ''minimum contacts'' with the forum state ''such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'' *Int'l Shoe Co*. *v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks and citation omitted). Absent the defendant's acquiescence to a forum state's jurisdiction, personal jurisdiction occurs in two forms: general and specific. *Trump*, 109 Nev. at 699, 857 P.2d at 748. Because the Dogras do not argue that Nevada has general personal jurisdiction over Jane, we focus exclusively on specific personal jurisdiction.

[Headnotes 8-10]

Unlike general jurisdiction, specific jurisdiction is proper only where ''the cause of action arises from the defendant's contacts with the forum.'' *Id*. Nevada may exercise specific jurisdiction over a nonresident defendant if the defendant ''purposefully avails'' himself or herself of the protections of Nevada's laws, or purposefully directs her conduct towards Nevada, and the plaintiff's claim actually arises from that purposeful conduct. *See World-Wide Volkswagen Corp*. *v. Woodson*, 444 U.S. 286, 297 (1980). Thus, ''the mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.'' *Id*. at 298 (internal quotation marks and citation omitted). Importantly, ''[w]hether general or specific, the exercise of personal jurisdiction must also be reasonable.'' *Emeterio v. Clint Hurt & Assocs., Inc.*, 114 Nev. 1031, 1036, 967 P.2d 432, 436 (1998) (citing *Trump*, 109 Nev. at 703, 857 P.2d at 750).

In this case, Jane's act of buying the Scion and placing no restrictions on Susan's use of it did not amount to purposeful availment of Nevada's laws or purposeful conduct toward Nevada. In car accident cases involving a nonresident's vehicle, courts have determined the nonresident defendant is subject to a forum's jurisdiction when the defendant actually knows his or her car is being operated in the forum state. For example, in *Tavoularis v. Womer*, the New Hampshire Supreme Court held that New Hampshire's exercise of personal jurisdiction over a nonresident defendant was reasonable because he ''specifically authorized'' his friend's use of his vehicle in New Hampshire. 462 A.2d 110, 114 (N.H. 1983). In *Stevenson v. Brosdal*, a Florida court held that a nonresident defendant created sufficient minimum contacts with Florida to justify the exercise of personal jurisdiction when he loaned his car to his son knowing that he (the son) would regularly

use the car in Florida. 813 So. 2d 1046, 1049 (Fla. Dist. Ct. App. 2002). Additionally, in *Trump* (not a car accident case), this court found that Nevada could reasonably exercise personal jurisdiction over a nonresident defendant where the defendant (and his agent) actively pursued a future employee who lived in Nevada, negotiated an employment agreement with the employee over a period of months while the employee lived in Nevada, and set up a trust in Nevada as part of the agreement. 109 Nev. at 701-02, 957 P.2d at 749-50.

Unlike all of those cases, Nevada does not have specific personal jurisdiction over Jane in this matter because she did not purposefully avail herself of Nevada's laws or direct her conduct towards Nevada. Jane did not specifically authorize Susan to drive the Scion to Nevada, as the defendant did in *Tavoularis*. She did not loan the vehicle to Susan knowing she would regularly use it in Nevada, as the defendant did in *Stevenson*. And she did not purposefully direct her conduct toward Nevada or a Nevada resident, as the defendant did in *Trump*.

Further, to the extent Jane's no-restrictions policy amounted to ''allow[ing]'' Susan to drive the Scion in Nevada, as the dissent observes, it must also be the case that Jane ''allowed'' Susan to drive *anywhere* in the United States a highway could deliver her. Under this logic, Jane ''allowed'' Susan to drive to Nevada, and to Maine, or Alaska, or Florida. And if Susan happened to cause an accident in any of those states or in any state in between, Jane would be subject to specific personal jurisdiction therein. Such a result would be unreasonable and would offend due process because it would, in effect, ''appoint'' the vehicle Jane's ''agent for service of process.'' *World-Wide Volkswagen*, 444 U.S. at 296. To be sure, Jane's only ''contact'' with Nevada in this case is her purchase of the Scion for Susan, and her failure to place any restrictions on Susan's use of it. She had no other contact with Nevada. To allow Nevada to exercise personal jurisdiction over Jane on these facts would undermine the degree of predictability the Due Process Clause provides to the legal system, which ''allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'' *Id*. at 297.[2]

Therefore, because Susan's act of driving to Nevada was a unilateral act unsanctioned by Jane and of which Jane had no specific

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[2]Moreover, this case is readily distinguishable from *Budget Rent-A-Car v. Eighth Judicial District Court*, 108 Nev. 483, 835 P.2d 17 (1992), upon which the dissent relies. In that case, the nonresident defendant (Budget Rent-A-Car) expressly prohibited the lessee-driver from traveling outside of California without its written permission. 108 Nev. at 485, 835 P.2d at 18. Jane gave no such express prohibition to Susan in this case.

knowledge, Nevada's exercise of personal jurisdiction over her pursuant to specific jurisdiction would be unreasonable.

*Affirmative relief*

[Headnote 11]

The Dogras also contend the district court erred in determining it lacked personal jurisdiction over Jane on the basis of her filing a motion to consolidate in the Dogras' case. They argue that, by filing the motion, Jane sought affirmative relief from Nevada's courts and thereby waived her right to object to Nevada's exercise of jurisdiction. We disagree.

We assume without deciding that seeking affirmative relief from a court subjects a litigant to that court's jurisdiction and cannot simultaneously be done while the litigant objects to the court's exercise of jurisdiction. *See, e.g.*, *S.E.C. v. Ross*, 504 F.3d 1130, 1148 (9th Cir. 2007) (''[A] party cannot simultaneously seek affirmative relief from a court and object to that court's exercise of jurisdiction.''). Ordinarily, a litigant seeks affirmative relief when he or she alleges wrongful conduct against another and seeks damages or equitable relief thereon, or defends against an action by denying or asserting defenses to allegations made against him or her. *See, e.g.*, *Black's Law Dictionary* 1404 (9th ed. 2009) (defining ''affirmative relief'' as ''[t]he relief sought by a defendant by raising a counterclaim or cross-claim that could have been maintained independently of the plaintiff's action'').

Jane's consolidation motion did none of these things. A review of the record below shows the motion was essentially a case management device employed by Jane (and Susan) to promote efficiency in resolving the various cases, including the Dogras' action, arising from the accident. None of the parties' substantive rights were implicated by the motion. On these facts, we cannot conclude that Jane's consolidation motion amounted to a request for affirmative relief that waived her right to object to personal jurisdiction.[3]

Further, *Dow Chemical Co. v. Calderon*, 422 F.3d 827 (9th Cir. 2005), cited by the dissent, is not persuasive on this point. In that case, which involved a declaratory judgment action brought by Dow Chemical Company against more than a thousand Nicaraguan citizens, the Ninth Circuit found ''personal jurisdiction exists where a defendant also independently seeks *affirmative* relief in a separate action before the same court concerning the same trans-

[3]In addition, Local Rule 2.50(a)(1) of the Eighth Judicial District Court requires a consolidation motion to be ''heard by the judge assigned to the case first commenced.'' Here, the case first commenced out of the several arising from the accident was the Dogras' case. Thus, Jane was required to file her motion to consolidate in the Dogras' case.

action or occurrence.'' 422 F.3d at 834. The court arrived at this ruling by ''assum[ing] without deciding'' that it would follow the holdings in two out-of-circuit decisions, *General Contracting & Trading Co. v. Interpole, Inc.*, 940 F.2d 20 (1st Cir. 1991), and *International Transactions Ltd. v. Embotelladora Agral Regionmontana S.A. de C.V.*, 277 F. Supp. 2d 654 (N.D. Tex. 2002). *Id.*

First, *Interpole* and *Embotelladora* are distinguishable from the instant case. In each of those cases, the relevant conduct was performed by *plaintiffs*. In *Interpole*, the court found that the party contesting personal jurisdiction waived its right to do so because it ''elected to avail itself of the benefits of the New Hampshire courts *as a plaintiff*'' in filing suit against Interpole, Inc., in New Hampshire. *Interpole*, 940 F.2d at 23. Similarly, in *Embotelladora*, the court found that the party contesting personal jurisdiction waived its right to do so because it had previously filed two lawsuits *as a plaintiff* in the same judicial district in which it was contesting jurisdiction. *Embotelladora*, 277 F. Supp. 2d at 668. The court also found those lawsuits arose from the same nucleus of operative facts underlying that case. *Id.*

By contrast, here, Jane is a defendant, not a plaintiff. She had not filed a lawsuit against the Dogras or anyone else involved in this case. The ''affirmative relief rule'' established in those cases cited in *Dow Chemical v. Calderon, supra*, therefore, is inapplicable to this case.

Second, the Ninth Circuit in *Dow Chemical* did not conclusively adopt the holdings in those cases. Rather, it ''assume[d] without deciding'' that the circuit would follow the holdings. Thus, even though federal authority is relevant here because NRCP 12 is consistent with its federal counterpart, *see Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 655, 6 P.3d 982, 985 (2000); *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) (''[F]ederal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules.''), *Dow Chemical* provides no persuasive authority relevant to this case for us to adopt.

*Interpleader*

[Headnote 12]

Finally, because the Dogras did not argue the issue on appeal adequately, we directed the parties to submit supplemental briefs as to whether the interpleader action filed by Jane's insurance company in Nevada subjected her to personal jurisdiction herein. After considering the supplemental briefs and other authorities, and because we anticipate the need for clarity in this area of the law, we find this question is properly analyzed under an agency theory. *Cf. Tweet v. Webster*, 596 F. Supp. 130, 133 (D. Nev. 1984). In *Tweet*, the plaintiff alleged that Nevada had personal jurisdiction

over a nonresident defendant because the defendant's insurance company negotiated a settlement agreement on defendant's behalf in Nevada. The court enumerated three factors crucial to the determination of whether an agency relationship existed arising from the insurance company's actions, thereby subjecting the defendant to Nevada's jurisdiction: (1) whether the insurer had complete control over settling the claims against the defendant; (2) whether the defendant could ''control the method, means or place of settlement negotiations''; and (3) whether the insurer could act in a dual capacity, ''the principal purpose of which [was] to protect its own contingent liability under the contract.'' *Id.* at 133.

The *Tweet* factors are of assistance in resolving this issue. The district court, however, should be the first to analyze the factual question of the control dynamics between insured and insurer, *i.e.*, whether Jane had an agency relationship with her insurance company. *See, e.g.*, *Polo Ralph Lauren, L.P. v. Tropical Shipping & Constr. Co.*, 215 F.3d 1217, 1224 (11th Cir. 2000) (stating ''determination of the existence of an agency relationship is a factual question'' and declining to resolve an agency issue by making an ''exception to the general rule that matters must be presented before the district court in the first instance''). Accordingly, we remand to the district court to address this issue in the first instance under the analytical framework of an agency theory.[4]

## *CONCLUSION*

Based on the foregoing, we hold that Jane is not subject to personal jurisdiction in Nevada by virtue of Susan's unilateral use of the Scion in Nevada and the accident arising from her use, or because she moved to consolidate the several cases stemming from the accident. But Jane might be subject to jurisdiction in Nevada based on her insurance company's filing of the related interpleader action in Nevada. Accordingly, the district court's order granting Jane's motion to dismiss is reversed, and we remand this matter to the district court for consideration of whether, under the principles of agency set forth in *Tweet v. Webster*, the interpleader action filed in Nevada by Jane's insurance company subjected Jane to personal jurisdiction.

PICKERING, C.J., and HARDESTY and PARRAGUIRRE, JJ., concur.

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[4]In addition to whether the Dogras adequately raised the interpleader issue on appeal and whether the question was properly analyzed under an agency theory, our order directing supplemental briefing ordered the parties to discuss the applicability of the Ninth Circuit's analysis in *Methwold International Finance Co. v. Manfredonia*, 481 F. App'x 363, 365 n.1 (9th Cir. 2012), to this question. After a careful review, we conclude the analysis in that case is inapplicable to the interpleader issue. It is merely dicta interpreting dicta; it has no precedential value and therefore should have no persuasive force in any case, including this one.

GIBBONS, J., with whom CHERRY and SAITTA, JJ., agree, concurring in part and dissenting in part:

I concur with the majority that this case should be remanded regarding the issues surrounding the interpleader action. However, I disagree with the majority's conclusion that the district court lacked specific personal jurisdiction over Jane Liles as a defendant in the Dogras' negligent entrustment action for two reasons. First, Jane acquired minimum contacts with Nevada when she (1) gave a car registered and insured in her name to her daughter, Susan Liles; and (2) allowed Susan to drive it in Nevada, thereby invoking the benefits and protections of Nevada law. Second, Jane impliedly consented to Nevada's jurisdiction when she filed the motion to consolidate and when her insurance company filed an interpleader action on her behalf. Therefore, I would reverse the district court's order dismissing the action against her based upon lack of personal jurisdiction because the district court obtained personal jurisdiction over Jane.

*Jane established minimum contacts with Nevada when she allowed her daughter to drive her car in Nevada*

Specific personal jurisdiction may be exercised over an individual who purposefully avails herself of Nevada's laws or directs her conduct towards Nevada, ''and the cause of action arises from that purposeful contact'' with Nevada. *Budget Rent-A-Car v. Eighth Judicial Dist. Court*, 108 Nev. 483, 835 P.2d 17 (1992); *Price & Sons v. Second Judicial Dist. Court*, 108 Nev. 387, 390, 831 P.2d 600, 602 (1992).

A. *The Dogras made a prima facie showing of personal jurisdiction to the district court*

When a defendant challenges personal jurisdiction, the plaintiff may meet his or her burden in one of two ways. *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993). The first way requires the plaintiffs to make a prima facie showing of personal jurisdiction prior to trial with ''competent evidence of essential facts,'' and then prove jurisdiction by a preponderance of evidence at trial. *Id.* (internal quotation marks omitted). The plaintiff must produce some evidence in support of all the facts necessary for a finding of personal jurisdiction, and the district court must accept properly supported proffers of evidence as true. *Id.* at 692-93, 856 P.2d at 744. When factual disputes arise, ''those disputes must be resolved in favor of the plaintiff.'' *Id.* at 693, 856 P.2d at 744 (internal quotation marks omitted).

The second way to show personal jurisdiction is for the trial court to hold a full evidentiary hearing on the personal jurisdiction issue prior to trial. *Id.* In such a situation, the plaintiff must prove

personal jurisdiction by a preponderance of the evidence and does not receive the same presumption of credibility that it would in a prima facie analysis. *Id.* at 693-94, 856 P.2d at 744-45.

Here, the Dogras used the first method to establish personal jurisdiction. This is evidenced by Jane's motion to dismiss and the subsequent hearing transcripts. The district court's order further confirms this. Therefore, the district court should have resolved factual disputes in favor of the Dogras and accepted all properly supported proffers of evidence as true.

B. *Jane established minimum contacts with Nevada*

Specific jurisdiction exists over a defendant when ''the cause of action arises from the defendant's contacts with Nevada.'' *Budget Rent-A-Car*, 108 Nev. at 486, 835 P.2d at 20. Further, specific jurisdiction exists when the defendant ''purposefully avails itself of the privilege of . . . enjoying the protection of the laws of the forum, and the cause of action arises from the purposeful contact with the forum.'' *Id.* at 487, 835 P.2d at 20.

Specific jurisdiction does not exist over a defendant when the unilateral activity of another person creates the contact between the defendant and the forum state. *Id.* In *Budget Rent-A-Car*, the rental agreement provided that the renter could not take a rental car out of California without Budget's written permission. *Id.* at 485, 835 P.2d at 18. The renter did not obtain permission to take the car outside of California, and got in an accident while driving in Las Vegas. *Id.* at 487, 835 P.2d at 20. This court determined that Nevada did not have jurisdiction over Budget because Budget did not give permission for the renter to drive the car in Nevada. *Id.* Thus, the unilateral activity of the renter created the contact with Nevada, which was insufficient to invoke specific jurisdiction over Budget. *Id.*; *see World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980) (''the mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State'').

A forum state will have jurisdiction over a defendant if the alleged injury occurred there and the defendant authorized the activity that caused the injury. *Tavoularis v. Womer*, 462 A.2d 110, 112 (N.H. 1983). In *Tavoularis*, the defendant authorized his friend to drive defendant's car in New Hampshire to visit family. *Id.* at 111. The New Hampshire Supreme Court held that New Hampshire had specific jurisdiction over the defendant because (1) ''it was reasonably foreseeable that the defendant would be sued in New Hampshire for negligently entrusting [his car] to [his friend],'' and (2) it was not ''fortuitous'' that the injury occurred in New Hampshire because the defendant ''specifically authorized [his friend] to drive in New Hampshire.'' *Id.* at 113-14.

However, a defendant can implicitly authorize the activity that causes the injury. *Stevenson v. Brosdal*, 813 So. 2d 1046, 1048 (Fla. Dist. Ct. App. 2002). In *Stevenson*, the defendant, who owned the car, gave his son a car to use. *Id.* The defendant did not specifically authorize the defendant to only use the car in a certain state. *Id.* The defendant knew that his son was living and driving the car in Florida. *Id.* The court found that Florida had jurisdiction over the defendant because the owner was aware the car was in Florida and impliedly consented to his son's use of the car in Florida. *Id.*

Here, Jane purposefully availed herself of Nevada's laws and established minimum contacts with Nevada when she purchased a car for Susan and admittedly did not place any restrictions on where Susan could drive it, thereby allowing Susan to drive the car to Nevada. Similar to *Tavoularis*, Jane authorized Susan to drive to Nevada when she did not place any restrictions on where she could drive the car. Also, like in *Stevenson*, Jane gave Susan a car and knew that she would likely use it if she was to travel anywhere by car. Thus, Jane implicitly consented to Susan's use of the car in Nevada. However, there is a crucial factual dispute as to whether Jane knew about her daughter's trip to Las Vegas. Specifically, Jane did not deny actual knowledge of her daughter's trip to Las Vegas for her friend's birthday party that had been planned for five months. Rather, Jane stated that she could not remember. Susan also could not recall if she told her mother about the trip, even though they talked a number of times before Susan left for Las Vegas. Resolving this factual dispute in favor of the Dogras, the inference arises that Jane must have known about the trip and her failure to disallow Susan from driving the car in Nevada on the day of the accident could be seen as specific authorization for her to do so. By giving the car to Susan with authorization to drive it in Nevada, Jane established minimum contacts with Nevada such that it is reasonable to subject her to a negligent entrustment suit here.

Further, it was foreseeable that Susan would drive to Las Vegas and does not constitute a ''mere unilateral activity.'' Unlike in *Budget Rent-A-Car*, where Budget restricted where the renter could drive without permission and did not give the renter permission to drive out of state, here, Jane did not place any restrictions on Susan's use of the car.[1] Further, Jane never told her daughter she needed permission to take the car out of state, and Susan did not act directly against her mother's instructions. Additionally, when resolving the factual disputes in favor of the Dogras, this further

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[1]I agree with the majority that *Budget Rent-A-Car* is ''readily distinguishable.'' As the majority states, ''Jane gave no such express prohibition to Susan in this case.'' However, as noted above, Jane impliedly authorized Susan to drive the car out of state, purposefully availing herself of Nevada's laws.

shows that (1) it was foreseeable that Jane could be sued in Nevada, (2) it was not fortuitous that the injury occurred in Nevada because Jane authorized Susan to drive to Nevada, and (3) Susan's driving the car to Nevada was not a ''mere unilateral activity.'' *See Tavoularis*, 462 A.2d at 114.

Additionally, the majority claims that this interpretation ''would be unreasonable'' and ''undermine the . . . predictability [of] the Due Process Clause'' because Susan would have been allowed ''to drive to Nevada, and to Maine, or Alaska, or Florida.'' The majority further argues that ''it would, in effect, 'appoint' the vehicle Jane's 'agent for service of process' '' and undermine the degree of predictability (citing *World-Wide Volkswagen*, 444 U.S. at 296). However, it would be reasonable to conclude that Jane authorized Susan to drive to Nevada, and this interpretation would not result in an unpredictable outcome because of the close proximity of Las Vegas to California, the factual inference that Jane likely knew about the trip, and Jane's failure to prohibit Susan from driving to Nevada.

I would hold that these facts take this case out of the realm of mere foreseeability and provides sufficient facts to establish a prima facie case in favor of exercising personal jurisdiction over Jane. The Dogras would still have to prove specific personal jurisdiction by a preponderance of evidence at trial, with the aid of cross-examination to determine Jane's actual knowledge.

*Jane consented to Nevada's jurisdiction when she filed a motion to consolidate the four district court cases arising from Susan's car accident*

Personal jurisdiction, like other rights, can be waived. *Dow Chem. Co. v. Calderon*, 422 F.3d 827, 831 (9th Cir. 2005). In *Dow Chemical*, the Ninth Circuit recognized that a defendant can give explicit or implied consent to a forum's jurisdiction over her when ''a defendant . . . independently seeks *affirmative* relief in a separate action before the same court concerning the same transaction or occurrence.'' *Id.* A request for affirmative relief may occur before the suit is filed, at the time the suit is brought, or after the suit starts. *Id.*

After the district court dismissed her from the case, Jane filed a motion in the Dogras' action to consolidate all four Nevada district court cases arising from her daughter's car accident. This motion submitted Jane to personal jurisdiction of Nevada courts because it was a request to the court for affirmative relief and clearly concerned the same transaction or occurrence, the car accident. Therefore, I would reverse and remand this case to the district court for further proceedings on the merits.

IN RE: DAVID ORRIN NILSSON, DEBTOR.

WILLIAM A. VAN METER, APPELLANT, *v.*
DAVID ORRIN NILSSON, RESPONDENT.

No. 61070

December 26, 2013 315 P.3d 966

Certified question, pursuant to NRAP 5, regarding homestead exemptions. United States Bankruptcy Court for the District of Nevada; Bruce T. Beesley, Judge.

In Chapter 13 bankruptcy proceedings, Chapter 13 trustee objected to debtor's claim of homestead exemption in property on which he did not reside, but on which his minor children resided. The United States Bankruptcy Court for the District of Nevada, Bruce T. Beesley, J., certified question regarding permissible scope of exemption under Nevada law. The supreme court, GIBBONS, J., held that: (1) in order to select property as a homestead, for purposes of state law homestead exemption from sale on execution and from process of court, an individual must reside on that property; and (2) property upon which debtor's children resided was not debtor's ''bona fide residence,'' and thus, debtor could not claim state law homestead exemption, despite debtor's contention that he constructively occupied the property.

**Question answered.**

*Woodburn & Wedge* and *John F. Murtha*, Reno, for Appellant.

*Christopher P. Burke*, Reno, for Respondent.

1. HOMESTEAD.
   Homestead exemption from sale on execution and from process of court can only be extended or limited by the statutes or constitutional provision that created it. Const. art. 4, § 30; NRS 115.005 *et seq*.
2. HOMESTEAD.
   Homestead exemption from sale on execution and from process of court is intended to protect the family home despite financial distress, insolvency, or calamitous circumstances. NRS 115.005 *et seq*.
3. HOMESTEAD.
   Nevada construes homestead laws liberally in favor of the debtor and his or her family. NRS 115.005 *et seq*.
4. HOMESTEAD.
   While statutory provisions relating to homesteads should be liberally construed, this liberal interpretation can be applied only where there is substantial compliance with the homestead provisions. NRS 115.005 *et seq*.
5. CONSTITUTIONAL LAW; STATUTES.
   In interpreting constitutional and statutory provisions, the supreme court looks first to the provision's language.

6. CONSTITUTIONAL LAW; STATUTES.
   If constitutional or statutory language is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.
7. BANKRUPTCY.
   Bankruptcy Code provides that states may opt out of the federal exemption scheme, which permits debtors to exempt certain assets from their estates, thus preventing creditors from reaching the exempted assets to satisfy outstanding debts, and instead provide for state law exemptions. 11 U.S.C. § 522(b)(2).
8. HOMESTEAD.
   Single person declaring an intention to claim a property as a homestead must be in actual possession of the house. NRS 115.020(1), (2)(a).
9. HOMESTEAD.
   In order to select property as a homestead, for purposes of state law homestead exemption from sale on execution and from process of court, an individual must reside on that property. Const. art. 4, § 30; NRS 115.020(2)(a).
10. HOMESTEAD.
    Property upon which Chapter 13 debtor's children resided, but upon which debtor had not resided for at least five years, since the time that he separated from his wife preceding parties' divorce, was not debtor's ''bona fide residence,'' and thus, debtor could not file homestead declaration so as to exempt the property from certain types of sale and process, despite debtor's contention that he constructively occupied property. NRS 115.020(2)(a).
11. HOMESTEAD.
    There cannot be a homestead absent residence; when a declaration of homestead is filed, the declarant must be residing on the premises with the intent to use and claim the property as a homestead. NRS 115.020.
12. HOMESTEAD.
    Homestead declaration must concern the claimant's ''bona fide residence.'' NRS 115.020(2).

Before the Court EN BANC.

## OPINION

By the Court, GIBBONS, J.:

The United States Bankruptcy Court for the District of Nevada has certified a question of law to this court regarding the ability of a debtor to claim Nevada's homestead exemption. The certified question asks:

> Can a debtor properly claim a homestead exemption for his interest in real property under NRS 21.090(1)(*l*) and NRS Chapter 115 when debtor himself does not reside on the property but his minor children do? Put another way, does a debtor have to actually reside on the property that is the subject of a claimed homestead exemption under NRS 21.090(1)(*l*) and NRS Chapter 115, or is it sufficient that a

> debtor's minor children reside on the property in order to qualify for the exemption?

*In re Nilsson*, No. BK-11-52664-BTB (Bankr. D. Nev. May 7, 2012). We conclude that a debtor must actually reside on real property in order to properly claim a homestead exemption for that property.

## *FACTS AND PROCEDURAL HISTORY*

Respondent David Orrin Nilsson (David) and his ex-wife, Kelli, married in 1990. They have three children. In 1994, David and Kelli purchased property in Reno as joint tenants and built a home on it a year later (the Reno property). David and Kelli lived together in the house with their children until 2006, when David moved out of the Reno property and began living in a travel trailer in Sparks. Kelli filed for divorce that same year.

The Nilssons' divorce decree provided that Kelli would reside at the Reno property with the children until it sold. Although the decree provided that the Reno property would be listed for sale on July 1, 2008, or as otherwise agreed, it does not appear that the property was ever listed for sale. Thus, David and Kelli each hold a half interest in the property as tenants in common.

In early 2011, over three years after the final divorce decree was filed, Kelli recorded a homestead declaration with Washoe County, listing the Reno property as her individual homestead. David did not join in the declaration, although Kelli noted that his name was on the Reno property's title. Subsequently, David filed for Chapter 7 bankruptcy, which was eventually converted to Chapter 13. On his schedule of real property assets, he claimed an interest in the Reno property as half-owner with Kelli. On his schedule of personal property, he listed the Sparks travel trailer and noted that he lived in it.

After a series of amendments, David claimed the Reno property as exempt from inclusion in his bankruptcy estate based on, among other things, the homestead exemption. Appellant William A. Van Meter, the bankruptcy trustee, objected to David's claimed exemption of the Reno property insofar as he had not resided on it since 2006. David responded that, even though he had not lived on the Reno property for several years, he could nonetheless claim the exemption in order to protect his interest in the Reno property for the benefit of his children. The bankruptcy court certified the question to this court without ruling on the trustee's objection. We subsequently accepted the question and directed briefing.

The trustee argues that David cannot claim a homestead exemption on the Reno property because he does not reside there, he did not record a declaration of homestead, and he cannot now record a valid declaration of homestead on the Reno property. David responds that he can claim a homestead exemption on the

Reno property even though he does not reside on it, and that he can exempt the Reno property through constructive occupancy because his children still live there and by tracing the homestead back to his family's residency there.

## *DISCUSSION*

### *The homestead exemption*

[Headnotes 1-4]

''[T]he homestead exemption can only be extended or limited by the statutes or constitutional provision that created it.'' *Savage v. Pierson*, 123 Nev. 86, 90, 157 P.3d 697, 699 (2007). The homestead exemption was intended to protect ''the family home despite financial distress, insolvency or calamitous circumstances,'' *Jackman v. Nance*, 109 Nev. 716, 718, 857 P.2d 7, 8 (1993), as the preservation of the home was ''deemed of paramount importance as a matter of public policy.'' *I.H. Kent Co. v. Miller*, 77 Nev. 471, 475, 366 P.2d 520, 521-22 (1961). Nevada construes homestead laws liberally in favor of the debtor and his or her family. *Jackman*, 109 Nev. at 718, 857 P.2d at 8. Nevertheless, we have made clear that the ''laws exempting the homestead are not based upon principles of equity.'' *I.H. Kent Co.*, 77 Nev. at 475, 366 P.2d at 521-22. Thus, while the statutory provisions relating to homesteads should be liberally construed, this liberal interpretation ''can be applied only where there is a substantial compliance with [the homestead] provisions.'' *McGill v. Lewis*, 61 Nev. 28, 40, 116 P.2d 581, 583 (1941).

[Headnotes 5, 6]

Determining whether a debtor must reside on real property in order to claim a homestead exemption requires us to interpret several constitutional and statutory provisions. *See* Nev. Const. art. 4, § 30; NRS Chapter 115; *see also Jackman*, 109 Nev. at 718, 857 P.2d at 8 (''The homestead exemption, unknown to the common law, was given birth as a constitutional and statutory response to public policy and sentiment.''). In interpreting constitutional and statutory provisions, we look first to the provision's language. *See MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 228, 209 P.3d 766, 769 (2009). If the constitutional or statutory language ''is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.'' *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 295, 183 P.3d 895, 899 (2008) (internal quotations omitted).

[Headnote 7]

Under the United States Bankruptcy Code (Code), a debtor who files for bankruptcy may exempt certain assets from his or her estate, thus preventing creditors from reaching the exempted assets

to satisfy outstanding debts. 11 U.S.C. § 522(b)(1) (2006). The Code provides that states may opt out of the federal exemption scheme and instead provide for state law exemptions. *In re Virissimo*, 332 B.R. 201, 203 (Bankr. D. Nev. 2005); 11 U.S.C. § 522(b)(2) (2006). Nevada is an opt-out state and lists its property exemptions in NRS 21.090. NRS 21.090(1); *In re Christensen*, 122 Nev. 1309, 1314, 149 P.3d 40, 43 (2006). Under Nevada law, the ''homestead as provided for by law, including a homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable'' may be exempted from the bankruptcy estate.[1] *See* NRS 21.090(1)(*l*); *see also* Nev. Const. art. 4, § 30 (stating that ''[a] homestead as provided by law, shall be exempt from forced sale under any process of law'').

*Nevada law requires that a debtor must reside on real property in order to exempt that property as a homestead*

Because the Nevada bankruptcy exemption provisions do not define ''homestead,'' but instead refer to the ''homestead as provided for by law,'' we turn to Chapter 115 of the Nevada Revised Statutes, which governs homesteads in this state. *Savage*, 123 Nev. at 90-91, 157 P.3d at 700. As relevant here, NRS 115.005(2)(a) defines a homestead as property consisting of ''[a] quantity of land, together with the dwelling house thereon . . . to be selected by the husband and wife, or either of them, or a single person claiming the homestead.'' Thus, the statutory definition of ''homestead'' does not expressly state whether a party must reside on his or her homestead.[2] It does, however, require that the property ''be selected'' as a homestead by the party or parties. This requirement is governed by NRS 115.020, which provides that ''[t]he selection must be made by either the husband or wife, or both of them, or the single person, declaring an intention in writing to claim the property as a homestead.'' NRS 115.020(1).

[Headnote 8]

When married persons select their homestead by declaration, the declaration must state that they are married and that one or both of them are, ''at the time of making the declaration, residing with

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[1]The word allodial is defined as ''[h]eld in absolute ownership.'' *Black's Law Dictionary* 88 (9th ed. 2009).

[2]However, the Legislature's use of the term ''dwelling house'' suggests an intent that the party must reside on his or her homestead. *See Black's Law Dictionary* 582 (9th ed. 2009) (defining dwelling house as ''[t]he house or other structure in which a person lives; a residence or abode''); *see also Smart v. State*, 190 N.E.2d 650, 651-52 (Ind. 1963) (holding that a rural summer cottage was not a dwelling house within the meaning of Indiana's burglary statute because it was not the owners' primary residence and the owners only ''spent a two or three weeks' vacation and weekends there'').

their family . . . on the premises.'' NRS 115.020(2)(a)-(b). Although the statute does not require that a single person declaring an intention to claim a property as a homestead must declare that he or she resides on the property, it does require such a person to specify that ''he or she is a householder.'' NRS 115.020(2)(a). This court has defined the term householder as ''one who keeps house,'' further stating that a householder ''must be in actual possession of the house'' and must be ''the occupier of a house.'' *Goldfield Mohawk Mining Co. v. Frances-Mohawk Mining & Leasing Co.*, 31 Nev. 348, 354, 102 P. 963, 965 (1909). Therefore, based on the language of NRS 115.020(2)(a), a single person declaring an intention to claim a property as a homestead must be ''in actual possession of the house.'' *Id.*

[Headnote 9]

In addition to declaring his or her residence or householder status, any claimant selecting property as his or her homestead must state ''that it is their or his or her intention to use and claim the property as a homestead.'' NRS 115.020(2)(c). David argues that under NRS 115.020(2)(c), a single person, as ''any claimant,'' may file a declaration of homestead for a parcel of real property that he does not reside on because this subsection does not contain its own residency or householder requirement. But this reading of the homesteading statutes ignores the requirement in NRS 115.020(2)(a) that single individuals selecting a homestead must declare that they are householders. Thus, based on the language of the statute, we conclude that in order to select property as a homestead, an individual must reside on that property. *See* NRS 115.020(2)(a); *Goldfield Mohawk Mining Co.*, 31 Nev. at 354, 102 P. at 965.

*David may not exempt the Reno property as a homestead under the doctrine of constructive occupancy*

[Headnote 10]

David argues that he should be able to claim constructive occupancy of the Reno property because he originally resided on the property and only moved because of the divorce. Further, he argues that he should be able to claim constructive occupancy in order to protect his children who still reside on the property. David cites a number of cases from other jurisdictions in support of his proposition that he can claim constructive occupancy. *See In re Thomas*, 27 B.R. 367, 370-71 (Bankr. S.D.N.Y. 1983) (finding that a debtor driven from her residence by domestic violence may still claim an exemption in the home); *see also Beltran v. Kalb*, 63 So. 3d 783, 787 (Fla. Dist. Ct. App. 2011) (applying Florida's constitutional provision that allows homestead exemptions for ''the residence of the owner or the owner's family,'' thus ruling that an

owner of a house may claim a homestead as long as his family resides there).[3] We do not find these cases persuasive.

[Headnote 11]

In Nevada, ''[i]t is axiomatic there can not be a homestead absent residence[,] . . . when a declaration of homestead is filed the declarant must be residing on the premises with the intent to use and claim the property as a homestead.'' *In re Sullivan*, 200 B.R. 682, 685 (Bankr. D. Nev. 1996), *aff'd*, 163 F.3d 607 (9th Cir. 1998). While the statutory provisions relating to homesteads should be liberally construed, this liberal interpretation ''can be applied only where there is a substantial compliance with [the homestead] provisions.'' *McGill*, 61 Nev. at 40, 116 P.2d at 583; *see Maxwell v. State Indus. Ins. Sys.*, 109 Nev. 327, 330, 849 P.2d 267, 269 (1993) (''Where the language of the statute is plain and unambiguous[,] . . . a court should not add to or alter [the language] to accomplish a purpose not on the face of the statute . . . .'' (internal quotation marks omitted)).

[Headnote 12]

We conclude that under NRS 115.020(2), a homestead declaration must concern the claimant's ''bona fide residence.'' *See Jackman*, 109 Nev. at 721, 857 P.2d at 10 (concluding that a building used partly as a business could be claimed as a homestead, so long as the property remained the family's ''bona fide residence''); *McGill*, 61 Nev. at 39-40, 116 P.2d at 583 (requiring proof of actual bona fide residence at the time the homestead declaration is filed). As such, we conclude that David may not validly file a homestead declaration on the Reno property because it was not his bona fide residence, and we decline David's invitation to extend Nevada homestead law based on constructive occupancy.[4]

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[3]David's reliance on these cases is misplaced because they are distinguishable from this situation for a number of reasons. First, many deal with situations in which a debtor spouse left the marital residence but was still awaiting final resolution of the pending divorce—thus each spouse's possessory right to the property had yet to be determined. *See In re Moulterie*, 398 B.R. 501, 505 (Bankr. E.D.N.Y. 2008). In these situations, many courts have found that the debtor spouse was entitled to a homestead because the possessory right to the preexisting homestead was not yet finalized in state court. *Id.* That is not the case here. Additionally, several of the cited cases apply homestead statutes that allow for a much more liberal scrutiny of the homestead residence requirement. *See Beltran*, 63 So. 3d at 787.

[4]We note that David may still be able to file a homestead declaration after he filed his bankruptcy petition, since we have held that a declaration may be filed at any time before the actual sale under execution. *See Myers v. Matley*, 318 U.S. 622, 627-28 (1943); *In re Zohner*, 156 B.R. 288, 290 (Bankr. D. Nev. 1993); *Massey-Ferguson, Inc. v. Childress*, 89 Nev. 272, 272, 510 P.2d 1358, 1358 (1973). However, such a declaration would still be invalid due to the fact that the Reno property is not David's bona fide residence.

We therefore conclude that a debtor must actually reside on real property in order to properly claim a homestead exemption for that property.[5]

PICKERING, C.J., and HARDESTY, PARRAGUIRRE, DOUGLAS, CHERRY, and SAITTA, JJ., concur.

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THE STATE OF NEVADA, APPELLANT, *v.*
MICHAEL ALAN KINCADE, RESPONDENT.

No. 61262

THE STATE OF NEVADA, APPELLANT, *v.*
MICHAEL ALAN KINCADE, RESPONDENT.

No. 61263

December 26, 2013 317 P.3d 206

Appeal from a district court order granting a motion to suppress evidence. Seventh Judicial District Court, Lincoln County; Steve L. Dobrescu, Judge.

Defendant moved to suppress evidence seized during execution of search warrant that did not include statement of probable cause or attached affidavit upon which probable cause was based. The district court granted motion. State appealed. The supreme court, PARRAGUIRRE, J., held that: (1) search warrant was invalid as non-compliant with statutory mandates, and (2) good-faith exception to exclusionary rule did not apply.

**Affirmed.**

*Catherine Cortez Masto*, Attorney General, Carson City; *Daniel M. Hooge*, District Attorney, Lincoln County, for Appellant.

*Dylan V. Frehner*, Public Defender, Lincoln County, for Respondent.

1. CRIMINAL LAW; OBSCENITY.

Search warrant's failure to include statement of probable cause or attached warrant affidavit upon which probable cause was based, as mandated by search warrant statute, rendered the search warrant invalid and the evidence of child pornography seized from defendant's computer subject to exclusion; Legislature established requirements for a valid warrant and had provided for suppression of evidence obtained based on a warrant that was insufficient on its face. U.S. CONST. amend. 4; NRS 179.045(5).

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[5]We have considered the parties' remaining arguments and conclude that they are without merit.

2. CRIMINAL LAW.
   Exclusion of evidence is proper upon failure to leave a copy of an affidavit with a search warrant where the warrant does not itself include a statement of probable cause, even if the affidavit is incorporated by reference into the warrant. U.S. CONST. amend. 4; NRS 179.045(5).
3. CONSTITUTIONAL LAW.
   States are permitted to provide broader protections and rights than provided by the United States Constitution.
4. CRIMINAL LAW.
   Good-faith exception to exclusionary rule did not apply with respect to evidence seized pursuant to search warrant that did not include statement of probable cause or attached affidavit upon which probable cause was based, as required pursuant to search warrant statute. U.S. CONST. amend. 4; NRS 179.045(5).
5. CRIMINAL LAW.
   The exclusionary rule is a judicial remedy designed to deter law enforcement from future Fourth Amendment violations. U.S. CONST. amend. 4.
6. CRIMINAL LAW.
   Good-faith exception to exclusionary rule does not apply and suppression of evidence is warranted, without engaging in a case-by-case analysis, where: (1) the probable cause determination is based on misleading information in the affidavit that the affiant knew was false or would have known was false absent a reckless disregard for the truth, (2) the magistrate wholly abandoned a detached or neutral role, (3) the warrant is so facially deficient that the officers executing it cannot reasonably presume its validity, or (4) the supporting affidavits are so lacking in probable cause as to render official belief in its existence entirely unreasonable. U.S. CONST. amend. 4.
7. CRIMINAL LAW.
   Under the good-faith exception to the exclusionary rule, a search based on a deficient warrant is not unreasonable where the officer executing the warrant has an objective good-faith belief that the warrant is valid. U.S. CONST. amend. 4.

Before the Court EN BANC.

## OPINION

By the Court, PARRAGUIRRE, J.:

In this case, we consider whether the district court properly excluded evidence seized pursuant to a search warrant where the warrant did not comply with NRS 179.045(5)'s requirement that a warrant include a statement of probable cause or have the affidavit upon which probable cause was based attached. Recognizing that a state may provide broader protections to its citizens than provided by the U.S. Constitution, we reaffirm our decision in *State v. Allen*, 119 Nev. 166, 69 P.3d 232 (2003) (*Allen II*), and conclude that failure to comply with NRS 179.045(5) triggers exclusion despite the U.S. Supreme Court's contrary holding in *United States v. Grubbs*, 547 U.S. 90, 97 (2006).

*FACTS*

The Lincoln County Sheriff's Department initiated an investigation of respondent Michael Kincade following reports that he was sexually abusing minor relatives. In the course of the investigation, a detective filed an affidavit for a warrant to search Kincade's residence for evidence related to the allegations. A justice of the peace issued a warrant, but when it was served on Kincade, the warrant did not include a statement of probable cause and the affidavit setting forth the basis for probable cause was not attached to the warrant. The subsequent search revealed images of child pornography on Kincade's computer and external hard drive. The State pursued numerous charges against Kincade for sexual assault and possession of child pornography.[1] Kincade moved to suppress the evidence found on his computer, which the district court granted. The district court concluded that the affidavit did not support a probable cause finding and that the execution of the warrant violated NRS 179.045(5), which requires a warrant to either include a statement of probable cause or have the affidavit supporting the warrant attached. The State now brings this appeal.

*DISCUSSION*

The State argues that the district court erred by excluding evidence under NRS 179.045(5), which requires the warrant to include a statement of probable cause or have the affidavit upon which it is based attached, because the omission was merely a ministerial violation. The State also argues that the district court erred in suppressing the evidence because the detective relied in good faith on the validity of the warrant issued by the justice of the peace.

*The search warrant's failure to comply with NRS 179.045(5) mandates exclusion of evidence seized pursuant to the warrant*

[Headnotes 1, 2]

NRS 179.045(5) provides that a warrant must either include a statement of probable cause or have the affidavit upon which probable cause is based attached. NRS 179.085 provides that a person may move to suppress evidence on the ground that ''[t]he warrant is insufficient on its face.'' NRS 179.085(1)(b). In a case factually similar to this one, we held that failure to include a statement of probable cause or to attach a valid affidavit to a search warrant in violation of NRS 179.045 triggers exclusion under NRS 179.085. *State v. Allen*, 119 Nev. 166, 168, 69 P.3d 232, 233 (2003) (*Allen II*), *modifying State v. Allen*, 118 Nev. 842, 60 P.3d 475 (2002)

[1]The sexual assault charges and child pornography charges were bifurcated into separate cases.

(*Allen I*). In *Allen II*, a deputy conducted a home search pursuant to a warrant, but the warrant did not include a statement of probable cause and the deputy did not leave a copy of the affidavit with the warrant following the search as required by NRS 179.045. 119 Nev. at 168, 69 P.3d at 233-34. We held that exclusion is proper upon failure to leave a copy of an affidavit with a warrant where the warrant does not itself include a statement of probable cause, even if the affidavit is incorporated by reference into the warrant. *Id.* at 171-72, 69 P.3d at 235-36.[2]

The State argues, however, that *United States v. Grubbs*, a more recent U.S. Supreme Court case, abrogates *Allen II*. 547 U.S. 90, 97 (2006). In *Grubbs*, the Court considered the issue of whether a triggering clause, which was part of the basis for the magistrate's probable cause determination, was required in a warrant that anticipated the future presence of contraband at a defendant's residence. *Id.* The *Grubbs* court held that the Fourth Amendment does not require an anticipatory warrant to include a triggering condition. *Id.* Instead, the Court narrowly construed the Fourth Amendment to only require that a warrant state with particularity the place to be searched and the items subject to seizure. *Id.* Indeed, the Court confirmed that ''the Fourth Amendment does not require that the warrant set forth the magistrate's basis for finding probable cause, even though probable cause is the quintessential precondition to the valid exercise of executive power.'' *Id.* at 98 (internal quotations omitted).

[Headnote 3]

However, states are permitted to provide broader protections and rights than provided by the U.S. Constitution. *Virginia v. Moore*, 553 U.S. 164, 171 (2008); *Osburn v. State*, 118 Nev. 323, 326, 44 P.3d 523, 525 (2002). Thus, to the extent that *Allen II* promulgates a statutory rule of criminal procedure, the more permissive standard of *Grubbs* does not vitiate this court's holding in *Allen II*.

Regardless, the State argues that this court should adopt *Grubbs* because *Allen II* was an application of the Fourth Amendment and not of Nevada statutory or constitutional law. The State is incorrect. In *Allen II*, we determined that NRS 179.045 is plain and unambiguous and held that failure to comply with NRS 179.045 warrants exclusion. *Id.* at 168, 170, 69 P.3d at 233, 235. The Legislature established these requirements for a valid warrant in Nevada and has provided for suppression of evidence obtain-

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[2]The requirement that the affidavit must be attached does not apply to sealed warrants or to telephonic warrants issued pursuant to NRS 179.045(2). *See Allen II*, 119 Nev. at 167-68, 69 P.3d at 233; *State v. Gameros-Perez*, 119 Nev. 537, 541, 78 P.3d 511, 514 (2003).

ed based on a warrant that is insufficient on its face. NRS 179.085(1)(b). Thus, the holding of *Allen II* need not necessarily be affected by developments in federal Fourth Amendment jurisprudence. *Moore*, 553 U.S. at 171; *Osburn*, 118 Nev. at 326, 44 P.3d at 525. Accordingly, we decline to depart from *Allen II*'s holding that failure to comply with NRS 179.045 mandates exclusion.

*Leon's good-faith exception does not apply*

[Headnote 4]

The State next argues that the district court excluded evidence without first determining whether suppression would further the purposes of the exclusionary rule under the balancing test of *United States v. Leon*, 468 U.S. 897, 906 (1984).

[Headnotes 5-7]

The U.S. Constitution does not provide for exclusion of evidence obtained in violation of the Fourth Amendment. *Arizona v. Evans*, 514 U.S. 1, 10 (1995). Instead, the exclusionary rule is a judicial remedy designed to deter law enforcement from future Fourth Amendment violations. *Leon*, 468 U.S. at 906. Accordingly, ''suppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule.'' *Id.* at 918. However, exclusion is warranted without engaging in a case-by-case analysis where (1) the probable cause determination is based on misleading information in the affidavit that the affiant knew was false or would have known was false absent a reckless disregard for the truth, (2) the magistrate wholly abandoned a detached or neutral role, (3) the warrant is so facially deficient that the officers executing it cannot reasonably presume its validity, or (4) the supporting affidavits are so lacking in probable cause as to render official belief in its existence entirely unreasonable. *Id.* at 923. Outside of those four exceptions, a search based on a deficient warrant is not unreasonable where the officer executing the warrant has an objective good-faith belief that the warrant is valid.

In *Allen II*, this court held that failure of a police officer to follow the requirements of NRS 179.045(5) rendered reliance on the warrant unreasonable, thus the warrant in question did not trigger *Leon*'s good-faith exception. 119 Nev. at 172, 69 P.3d at 236. We see no reason to disturb our holding in *Allen II* that exclusion is the appropriate remedy when a warrant does not comply with the statute. Thus, as the instant warrant similarly does not comply with NRS 179.045(5)'s requirements, the *Leon* exception is inapplicable.

*CONCLUSION*

In conclusion, *Allen II* is still controlling law despite *Grubbs* because this court may grant broader protections to its citizens than required by the U.S. Constitution, and *Leon*'s good-faith exception will not apply where statutory requirements are not followed. Thus, failure to comply with NRS 179.045 justifies the exclusion of evidence obtained in a search pursuant to a defective warrant. *See Allen II*, 119 Nev. at 171-72, 69 P.3d at 235-36.[3]

Accordingly, we affirm the district court's order.

PICKERING, C.J., and GIBBONS, HARDESTY, DOUGLAS, CHERRY, and SAITTA, JJ., concur.

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[3]Although we affirm the district court's order solely on the ground that the warrant did not comply with NRS 179.045, we also note with approval the district court's determination that the affidavit was ''wholly insufficient'' and did not provide a substantial basis for the justice of the peace to find probable cause that would justify issuing a search warrant.