IN THE MATTER OF THE BEATRICE B. DAVIS FAMILY HERITAGE TRUST, DATED JULY 28, 2000, AS AMENDED ON FEBRUARY 24, 2014.

CHRISTOPHER D. DAVIS, APPELLANT, *v.* CAROLINE DAVIS; DUNHAM TRUST COMPANY; STEPHEN K. LEHNARDT; TARJA DAVIS; WINFIELD B. DAVIS; ACE DAVIS; AND FHT HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY, RESPONDENTS.

No. 68542

CHRISTOPHER D. DAVIS, PETITIONER, *v.* THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE GLORIA STURMAN, DISTRICT JUDGE, RESPONDENTS, AND CAROLINE DAVIS, REAL PARTY IN INTEREST.

No. 68948

May 25, 2017 394 P.3d 1203

Petition for rehearing of an en banc opinion in a consolidated appeal from an order confirming appointment of a trustee and original petition for a writ of prohibition or mandamus in a trust matter. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Petition for rehearing granted; appeal dismissed; writ petition denied.

Goodsell & Olsen and *Michael A. Olsen* and *Thomas R. Grover*, Las Vegas, for Christopher D. Davis.

Solomon Dwiggins & Freer, Ltd., and *Joshua M. Hood* and *Mark A. Solomon*, Las Vegas, for Caroline Davis.

Lee, Hernandez, Landrum, Garofalo and *Charlene N. Renwick*, Las Vegas, for Dunham Trust Company.

Clear Counsel Law Group and *Jonathan W. Barlow*, Henderson, for Stephen K. Lehnardt.

FHT Holdings, LLC, Las Vegas, in Pro Se.

Ace Davis, Wakayama, Japan, in Pro Se.

Tarja Davis, Los Angeles, California, in Pro Se.

Winfield B. Davis, Wakayama, Japan, in Pro Se.

Before the Court EN BANC.[1]

OPINION

By the Court, GIBBONS, J.:

On January 26, 2017, this court issued an opinion examining a district court order accepting jurisdiction over a trust with a situs in Nevada and finding personal jurisdiction over an investment trust adviser (ITA). We ultimately dismissed appellant Christopher Davis' appeal and denied his original writ petition. We now grant Christopher's petition for rehearing to clarify an issue in the prior opinion: whether accepting a role as an ITA pursuant to NRS 163.5555 constitutes sufficient minimum contacts with Nevada to give rise to specific personal jurisdiction. We thus withdraw the January 26 opinion and issue this opinion in its place.

In this appeal and petition, we are asked to interpret (1) whether NRS 155.190(1)(h) grants this court appellate jurisdiction over all matters in an order instructing or appointing the trustee or if the statute only grants this court appellate jurisdiction over the instruction or appointment of the trustee, and (2) whether Nevada courts may exercise specific personal jurisdiction over persons accepting a position as an ITA in Nevada under NRS 163.5555. We conclude (1) NRS 155.190(1)(h) only grants this court appellate jurisdiction over the portion of an appealed order instructing or appointing a trustee, and (2) Nevada courts may exercise specific personal jurisdiction over persons accepting a position as an ITA under NRS 163.5555 should a suit arise out of a decision or action done while acting as an ITA. Accordingly, we dismiss Christopher Davis' appeal and deny his writ petition.

FACTS AND PROCEDURAL HISTORY

On July 28, 2000, Beatrice Davis, a Missouri resident, established the Beatrice B. Davis Family Heritage Trust (the FHT), under Alaska law, with the trust situs in the state of Alaska. The FHT was initially funded with a $35 million life insurance policy. Beatrice Davis died in January 2012.

On October 30, 2013, the trustee, Alaska USA Trust Company (AUTC), sent a letter of resignation indicating that its resignation would become official on December 5, 2013, or upon the appointment of a new trustee, whichever was earlier. On February 24, 2014, the trust protector executed the first amendment to the FHT,

[1]THE HONORABLE LIDIA S. STIGLICH, Justice, did not participate in the decision of this matter.

which transferred the trust situs to the state of Nevada and appointed appellant/petitioner Christopher Davis, Beatrice Davis' son, as the investment trust adviser (ITA). At the same time, AUTC signed a letter acknowledging that it was currently serving as trustee and agreeing to the transfer of situs and the appointment of the Dunham Trust Company (DTC) as the successor trustee.[2] Thereafter, the FHT created a Nevada limited liability corporation (FHT Holdings) and appointed Christopher as the sole manager.

On August 26, 2014, respondent and real party in interest Caroline Davis, Christopher's sister and a beneficiary of the FHT, requested information related to the activities of the FHT and FHT Holdings. When Christopher failed to produce the information in his role as the ITA and manager of FHT Holdings, Caroline filed a petition for the district court to assume jurisdiction over the FHT. The district court issued an order assuming jurisdiction over the FHT under a constructive trust theory, assuming jurisdiction over Christopher as ITA, and confirming DTC as trustee. Christopher filed a notice of appeal. Thereafter, Caroline filed a motion to amend or modify the initial order, and the district court later certified its intent that, if remanded, it would assume jurisdiction over the FHT and Christopher as the ITA. Christopher then filed an emergency writ petition. This court issued an order remanding the appeal to the district court to amend its order.

On December 31, 2015, the district court issued an amended order, which clarified that in its initial order it assumed jurisdiction over the FHT and found that, because the first amendment was properly executed, the trust situs is in Nevada. The amended order assumed jurisdiction over the FHT under NRS 164.010, found that the court had personal jurisdiction over Christopher as ITA and as the manager of FHT Holdings, and confirmed DTC's appointment as trustee and Christopher's appointment as ITA. Finally, the amended order required Christopher to produce the requested documents and all the information in his possession, custody, or control as the ITA and manager of FHT Holdings.

DISCUSSION

Christopher challenges the district court's exercise of jurisdiction over him under NRS 163.5555 through both his appeal and writ petition. In his appeal, we must interpret NRS 155.190(1)(h), the statute on which Christopher bases his appeal, to determine whether we have jurisdiction to consider the issues that Christopher raises in

[2]Despite the lapse in time between AUTC's resignation and the execution of the first amendment, we conclude the parties consented to the transfer of the FHT's situs from Alaska to Nevada.

his appeal. In his writ petition, we interpret NRS 163.5555's grant of personal jurisdiction over ITAs. This court reviews questions of statutory interpretation de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014).

Christopher's appeal of the district court's order assuming jurisdiction over the FHT and over Christopher is beyond the scope of NRS 155.190(1)(h)

First, we consider the scope of our jurisdiction in an appeal from an order instructing or appointing a trustee under NRS 155.190(1)(h). Christopher argues that, in addition to considering the district court's confirmation of DTC as trustee in the amended order, in an appeal under NRS 155.190(1)(h), we may also consider other issues addressed in the order: here, the district court's assumption of jurisdiction over the FHT and over Christopher as the ITA and as a manager of FHT Holdings, and its order directing Christopher to make the requested disclosures. We disagree.

NRS 155.190(1)(h) provides that "an appeal may be taken to the appellate court of competent jurisdiction . . . within 30 days after the notice of entry of an order: . . . [i]nstructing or appointing a trustee." This court has not yet addressed whether an appeal under NRS 155.190(1)(h) grants this court jurisdiction over all matters included in an order that instructs or appoints a trustee or if such an appeal grants this court jurisdiction only over the instruction or appointment of the trustee. Based on a plain reading of NRS 155.190(1)(h), we conclude that nothing in NRS 155.190(1)(h) expressly grants this court the authority to address the district court's findings of fact or conclusions of law beyond the instruction or appointment of a trustee. In his appeal, Christopher argues that the district court erred in assuming jurisdiction over the trust and over Christopher, and erred in its order directing Christopher to make the requested disclosures. We conclude that such matters are beyond the scope of our appellate jurisdiction under NRS 155.190(1)(h). *See Bergenfield v. BAC Home Loans Servicing, LP*, 131 Nev. 683, 684, 354 P.3d 1282, 1283 (2015) ("This court's appellate jurisdiction is limited to appeals authorized by statute or court rule."). Therefore, Christopher's appeal is dismissed.

Christopher's writ petition is denied because Christopher accepted a position as an ITA and therefore submitted to personal jurisdiction in Nevada under NRS 163.5555

Next, we consider Christopher's writ petition, challenging whether a person accepting an appointment as a trust adviser under NRS 163.5555 submits to personal jurisdiction in Nevada. Christo-

pher contends that the district court's exercise of jurisdiction over him as ITA is an abuse of discretion warranting extraordinary writ relief.[3]

This court has original jurisdiction to issue writs of mandamus. Nev. Const. art. 6, § 4. "A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion." *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev. 578, 581, 331 P.3d 876, 878 (2014); *see also* NRS 34.160. A writ of prohibition, in turn, may be available "when the district court exceeds its jurisdiction." *Las Vegas Sands*, 130 Nev. at 581, 331 P.3d at 878; *see also* NRS 34.320. "Neither form of relief is available when an adequate and speedy legal remedy exists." *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 128 Nev. 635, 639, 289 P.3d 201, 204 (2012). However, even if an adequate legal remedy exists, this court will consider a writ petition if an important issue of law needs clarification. *See Diaz v. Eighth Judicial Dist. Court*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000). We have not previously interpreted NRS 163.5555 and conclude this is an important issue of law in need of clarification. Accordingly, we exercise our discretion to consider this issue in Christopher's writ petition.

Christopher argues that the district court may not exercise personal jurisdiction over him because, despite accepting a position as an ITA for a trust with a situs in Nevada, he is a nonresident and doing so would offend traditional notions of fair play and substantial justice. We disagree.

NRS 163.5555 provides:

> If a person accepts an appointment to serve as a trust protector or a trust adviser of a trust subject to the laws of this State, the person submits to the jurisdiction of the courts of this State, regardless of any term to the contrary in an agreement or instrument. A trust protector or a trust adviser may be made a party to an action or proceeding arising out of a decision or action of the trust protector or trust adviser.[4]

An exercise of personal "[j]urisdiction over a nonresident defendant is proper only if the plaintiff shows that the exercise of jurisdiction satisfies the requirements of Nevada's long-arm statute and does not offend principles of due process." *Viega GmbH v. Eighth*

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[3]Christopher also argues Caroline's mailed notice under NRS 155.010 did not comport with due process. We disagree and conclude Christopher was properly served. We also conclude that the district court's conclusion that it had personal jurisdiction over Christopher as manager of FTC Holdings was not in error.

[4]Christopher argues the second sentence of the statute grants only in rem jurisdiction over an ITA. We disagree. We conclude that, when read in its entirety, the statute grants courts in personam jurisdiction over a nonresident ITA, subject to the rigors of minimum contacts analysis.

Judicial Dist. Court, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014). NRS 14.065, Nevada's long-arm statute, "reaches the constitutional limits of due process under the Fourteenth Amendment, which requires that the [nonresident] defendant have such minimum contacts with the state that the [nonresident] defendant could reasonably anticipate being haled into court [in Nevada], thereby complying with traditional notions of fair play and substantial justice." *Id.* (internal quotation marks omitted). "Due process requirements are satisfied if the nonresident defendants' contacts [with Nevada] are sufficient to obtain either (1) general jurisdiction, or (2) specific personal jurisdiction and it is reasonable to subject the nonresident defendants to suit here." *Id.*

"A court may exercise general jurisdiction over a [nonresident defendant] when its contacts with the forum state are so continuous and systematic as to render [the defendant] essentially at home in the forum State." *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 131 Nev. 30, 36, 342 P.3d 997, 1001-02 (2015) (alteration in original) (internal quotation marks omitted). General jurisdiction analysis "calls for an appraisal of a [defendant's] activities in their entirety, nationwide and worldwide." *Id.* at 36-37, 342 P.3d at 1002 (alteration in original) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.20 (2014)).

"Unlike general jurisdiction, specific jurisdiction is proper only where the cause of action arises from the defendant's contacts with the forum." *Id.* (internal quotation marks omitted). More specifically, in order for Nevada courts to exercise specific personal jurisdiction over a nonresident defendant,

> [t]he defendant must purposefully avail himself of the privilege of acting in [Nevada] or of causing important consequences in [Nevada]. The cause of action must arise from the consequences in the forum state of the defendant's activities, and those activities, or the consequences thereof, must have a substantial enough connection with [Nevada] to make the exercise of jurisdiction over the defendant reasonable.

Consipio Holding, BV v. Carlberg, 128 Nev. 454, 458, 282 P.3d 751, 755 (2012) (first alteration in original) (quoting *Jarstad v. Nat'l Farmers Union Prop. & Cas. Co.*, 92 Nev. 380, 387, 552 P.2d 49, 53 (1976)).

We conclude Nevada courts may exercise specific personal jurisdiction over persons accepting a position as an ITA in Nevada should the suit "arise[ ] out of a decision or action of the trust protector or trust adviser." NRS 163.5555. Accepting a role as an ITA manifests a defendant's purposeful availment of the privilege of acting in Nevada; where, as here, a suit arises out of a nonresident defendant's role as an ITA, the exercise of specific personal jurisdiction would satisfy the requirements of Nevada's long-arm statute, as well

as traditional notions of fair play and substantial justice. Accordingly, we deny Christopher's writ petition.

CONCLUSION

We conclude that (1) NRS 155.190(1)(h) only grants this court appellate jurisdiction over the instruction or appointment of a trustee, and (2) Nevada courts may exercise specific personal jurisdiction over a person accepting a position as an ITA under NRS 163.5555 should the suit arise out of a decision or action of that ITA. Therefore, we dismiss Christopher's appeal and deny his writ petition.

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

MICHAEL SARGEANT, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED, APPELLANT, *v.* HENDERSON TAXI, RESPONDENT.

No. 69773

June 1, 2017 394 P.3d 1215

Appeal from an order granting summary judgment and an order denying class certification in a Minimum Wage Amendment case, Nev. Const. art. 15, § 16. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Affirmed.

Leon Greenberg Professional Corporation and *Leon M. Greenberg* and *Dana Sniegocki*, Las Vegas, for Appellant.

Holland & Hart LLP and *Anthony L. Hall* and *R. Calder Huntington*, Las Vegas; *Holland & Hart LLP* and *Ricardo N. Cordova*, Reno, for Respondent.

Before DOUGLAS, GIBBONS and PICKERING, JJ.

OPINION

By the Court, PICKERING, J.:

Appellant Michael Sargeant filed a class-action lawsuit against respondent Henderson Taxi seeking back pay and equitable relief under the Minimum Wage Amendment of the Nevada Constitution, Article 15, Section 16 (MWA). In response to Sargeant's motion to certify the class action, Henderson Taxi produced an agreement that

resolved an earlier-filed grievance for wage adjustments under the MWA brought by the union that represented Henderson Taxi cab drivers. Based on the grievance's resolution, the district court denied class certification. Thereafter, the district court granted Henderson Taxi's motion for summary judgment against Sargeant. We affirm.

SUMMARY JUDGMENT

The district court granted summary judgment against Sargeant, in part, because Sargeant did not file a substantive opposition to the summary judgment motion. The summary judgment order recites:

> Not only did the opposition not include any facts contradicting the fact that the Union settled any minimum wage claims Henderson Taxi's drivers may have had prior to the settlement, none were presented at oral argument either. Further, at the hearing on Henderson Taxi's Motion, [Sargeant's] counsel conceded that if this Court construed its prior order as holding Mr. Sargeant's right to bring any legal action as alleged in his complaint was extinguished by the Union's grievance settlement with Henderson Taxi, nothing would substantively remain in this case to litigate as a settlement had occurred and judgment would be proper.

The appellate appendix does not include a transcript of the oral argument on the summary judgment motion, copies of most of the exhibits to the motion, including the charge Sargeant filed with the National Labor Relations Board (NLRB) protesting the union's resolution of its grievance against Henderson Taxi, or Henderson Taxi's reply. Although we review an order granting summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), to the extent these omissions impair meaningful review of the summary judgment proceedings, we presume the omitted materials support the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 604, 172 P.3d 131, 135 (2007).

The district court's description of Sargeant's opposition to Henderson Taxi's motion for summary judgment is accurate. The opposition did not comply with NRCP 56(b), which requires "a concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies." And the opposition offered no facts or legal authority to counter Henderson Taxi's arguments that (1) under the Collective Bargaining Agreement (CBA), the union was "'the exclusive representative for all taxicab drivers employed by the Company in accordance with the certification of the National Labor Relations

Board Case # 31-RC-5197'" (quoting the CBA § 1.1); (2) "[w]hen *Yellow Cab*[1] was issued, the Union exercised the right granted to it by the CBA and the NLRA [(National Labor Relations Act)] to negotiate and resolve 'matters of wages, hours, and other conditions of employment'" by grieving and then resolving Henderson Taxi's payment of MWA wages (quoting CBA § 2.1 and citing 29 U.S.C. § 158(d)); (3) there existed a "bona fide dispute as to whether Henderson Taxi's cab drivers were owed minimum wage for any period of time prior to the issu[ance] of the *Yellow Cab* decision and what the statute of limitations was when the Union filed its Grievance," making it permissible to settle the accrued claims (citing *Chindarah v. Pick Up Stix, Inc.*, 90 Cal. Rptr. 3d 175, 180 (Ct. App. 2009)); and (4) if Sargeant believed the union acted against the interest of its members in resolving the MWA grievance it lodged against Henderson Taxi, Sargeant's recourse lay in a breach of duty of fair representation claim against the union (citing and then distinguishing *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 249 (2009)).

In opposing summary judgment, Sargeant focused not on his individual claims but on his then-pending motion for partial reconsideration of the earlier order denying class certification (and on the battle over fees and costs he saw coming). Thus, Sargeant confined his opposition to the argument that he did not know about the union's grievance or its resolution when he filed his complaint and moved for class certification. In his opposition, Sargeant stated that: (1) the motion for class certification "was predicated upon there being *no* union involvement with defendant's 'settlement' payment conduct"; (2) if judgment was to be entered, it should be entered in Sargeant's favor for $107.23 (this being the sum due Sargeant under Henderson Taxi's settlement with the union); and (3) Henderson Taxi should interplead any funds not yet distributed pursuant to the settlement with the union.

Henderson Taxi presented a properly supported motion for summary judgment that Sargeant did not meaningfully oppose. And, on appeal, Sargeant does not reraise the issues he raised in district court to oppose summary judgment. On this record, we affirm summary judgment in favor of Henderson Taxi. *See Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) (noting that, in general, a party may not seek reversal of summary judgment based on theories not presented to the district court).[2]

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[1]*Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. 484, 327 P.3d 518 (2014).

[2]Sargeant's complaint was pleaded in two counts: The first sought back pay and equitable relief based on Henderson Taxi's alleged failure to pay the minimum wage required by the MWA; the second sought penalties of up to 30 days' pay under NRS 608.040 for Henderson Taxi not having paid the full wage

CLASS CERTIFICATION

Our affirmance of the district court's order granting summary judgment against Sargeant raises a potential mootness issue with respect to our review of the order denying class certification, since Sargeant is the sole named plaintiff. *See* William B. Rubenstein, *Newberg on Class Actions* § 7:10 (5th ed. 2013) (noting that, "[i]f the defendant prevails on [a] summary judgment motion [against the named plaintiff], in most circumstances the court will be relieved of the need to rule on the issue of class certification"); *cf. Greenlee Cty. v. United States*, 487 F.3d 871, 880 (Fed. Cir. 2007) (recognizing that "issues related to class certification were moot in light of our resolution against the plaintiff of a motion to dismiss or for summary judgment"). We nonetheless address the order denying class certification for two reasons. First, neither side addressed mootness in their briefs, so resolving this appeal on that basis would likely require supplemental briefing and consequent delay. *See* IOP Rule 10. Second, fairness to the potential class members, some of whom attempted unsuccessfully to intervene in this appeal, makes it appropriate to examine the order denying class certification since, if we were to reverse the order, further proceedings as to the class might be apt. *See generally Mira v. Nuclear Measurements Corp.*, 107 F.3d 466, 475 (7th Cir. 1997) (suggesting the district court should address class certification before granting the defendant summary judgment).

The district court "has broad discretion in deciding whether to certify a class action and its decision will be reversed only if an abuse of discretion is shown." 7 AA Charles Alan Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil* § 1785 (3d ed. 2005); *accord Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 846, 124 P.3d 530, 537 (2005). Under NRCP 23(a), a plaintiff seeking to certify a case as a class action has the burden of showing that: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims for defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class."

Sargeant moved for class certification without conducting discovery. In his motion, Sargeant asked the court to certify a class

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due when he left the company in July 2013. Sargeant did not argue in opposition to summary judgment, and does not meaningfully argue on appeal, that his penalty claim, as opposed to his back pay or equitable claim, separately survived resolution of the grievance between the union and Henderson Taxi. Accordingly, we do not consider whether the district court should have excluded the penalty claim from its summary judgment order. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that it is a party's responsibility to present cogent arguments supported by authority).

of all current and former taxi drivers of Henderson Taxi and to declare void all letters of "Acknowledgment and Agreement Regarding Minimum Wage Payment," which Henderson Taxi had sent to potential class members. It was not until Henderson Taxi filed its opposition to Sargeant's motion for class certification that Sargeant learned that the acknowledgment and agreement letters were the result of an MWA grievance that the union had filed against Henderson Taxi the year before.

Henderson Taxi's opposition established that, almost eight months before Sargeant filed his complaint, the union as the taxi cab drivers' "exclusive representative" had, "[o]n behalf of all affected drivers," grieved Henderson Taxi's "failure to pay at least the minimum wage under the [MWA]." The grievance was resolved with Henderson Taxi agreeing to pay the MWA-required wage "on a going forward basis," to "compensate all of its current taxi drivers, and make reasonable efforts to compensate all former taxi drivers employed during the prior two year period, the difference between wages paid and the state minimum wage going back two years," and to "make reasonable efforts to obtain acknowledgments of the payments to employees and former employees and give them an opportunity to review records if the individual driver questions the amount calculated by Henderson Taxi." The opposition further established, and Sargeant concedes, that a "significant majority" of Henderson Taxi's drivers, including all current drivers, had accepted two years of back pay and voluntarily returned signed Acknowledgments. This evidence fundamentally changed the assumptions on which Sargeant based his class certification motion. In his reply in support of his motion for class certification, Sargeant attempted to address some of the new issues. After hearing oral argument on the motion, however, the district court denied class certification.

The district court found that "the majority of Henderson Taxi cab drivers have [validly] acknowledged that they have no claim against Henderson Taxi and that they have been paid all sums owed to them." This finding required the district court to reach the merits, at least to the extent of considering and rejecting Sargeant's challenge to the validity of the payments and acknowledgments the grievance resolution produced. While Rule 23 "grants courts no license to engage in free-ranging merits inquiries at the certification stage[, m]erits questions may be considered to the extent—but only to the extent—that they are relevant to determine whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013); *see Beazer Homes Holding Corp. v. Eighth Judicial Dist. Court*, 128 Nev. 723, 734 n.4, 291 P.3d 128, 136 n.4 (2012) (recognizing that NRCP 23 and FRCP 23 are analogous). Here, whether and to what extent

the grievance resolution defeated Sargeant's proposed MWA claims on behalf of the current and former Henderson Taxi drivers who embraced the union grievance resolution materially affected class certification.

The district court properly considered and rejected Sargeant's request that it invalidate the grievance resolution as a matter of law. The resolution did not "waive" MWA rights prospectively, which is what the MWA forbids (except in collective bargaining agreements). Nev. Const. art. 15, § 16B. It settled, under the direction of the union as the drivers' elected representative, disputed claims that had already accrued. And, far from waiving future MWA rights, the grievance resolution required Henderson Taxi to *comply* with the MWA on a going-forward basis. *Cf. Faris v. Williams WPC-1, Inc.*, 332 F.3d 316, 321 (5th Cir. 2003) (interpreting a no-waiver regulation as "prohibit[ing] [the] prospective waiver of rights, not the post-dispute settlement of claims"). At the time the union and Henderson Taxi resolved their grievance, *Yellow Cab*'s retroactivity and the statute of limitations applicable to MWA claims were the subject of ongoing dispute. *See, e.g.*, *Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 132 Nev. 784, 792-93, 383 P.3d 246, 252 (2016) (holding that the statute exempting taxi drivers from state minimum wage law was repealed when the MWA was enacted in 2006, not when *Yellow Cab* was decided in 2014); *Perry v. Terrible Herbst, Inc.*, 132 Nev. 767, 768, 383 P.3d 257, 258 (2016) (holding that MWA claims are subject to the two-year statute of limitations in NRS 608.260). Thus, the union's settlement with Henderson Taxi of the drivers' accrued MWA claims did not violate the MWA or public policy. *Cf. Chindarah*, 90 Cal. Rptr. 3d at 180.[3]

The district court did not abuse its discretion in holding that the settlement of the union's grievance against Henderson Taxi made class certification inappropriate.[4] Sargeant and several other former drivers presented affidavits contesting Henderson Taxi's back pay calculation, but the majority of drivers accepted the payments and returned the acknowledgments. Our review is, again, hampered by the lack of a transcript of the hearing on the motion for class certification. However, given the absence of a valid legal basis for the district court to overturn the settlement between the union and Henderson Taxi, we agree with the district court that Sargeant did not meet his burden of demonstrating numerosity, commonality, and typical-

[3]We recognize but do not opine on the merits of the breach of the duty of fair representation claim that Sargeant initiated with the NLRB against the union and/or Henderson Taxi under the NLRA. Henderson Taxi, Case No. 28-CA-161998 (October 14, 2015).

[4]Sargeant sought to certify a smaller class in a later motion for partial reconsideration, the denial of which does not appear to be challenged on appeal.

ity. Furthermore, to the extent he sought to invalidate the grievance resolution that the union negotiated and all current drivers accepted, Sargeant could not represent all members of the broad class he proposed, whose interests conflicted with his. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625-26 (1997) ("[A] class representative must . . . 'possess the same interest and suffer the same injury' as the class members.").

As the district court properly denied class action certification and granted summary judgment to Henderson Taxi, we affirm.

DOUGLAS and GIBBONS, JJ., concur.

A.J., PETITIONER, *v.* THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE WILLIAM O. VOY, DISTRICT JUDGE, RESPONDENTS, AND THE STATE OF NEVADA, REAL PARTY IN INTEREST.

No. 70119

June 1, 2017 394 P.3d 1209

Original petition for writ of mandamus or prohibition challenging a district court order adjudicating a minor as a delinquent.

Petition granted.

[Rehearing denied July 27, 2017]

[En banc reconsideration denied December 19, 2017]

Philip J. Kohn, Public Defender, and *Susan D. Roske*, Chief Deputy Public Defender, Clark County; *S. Alex Spelman*, Law Student, SCR 49.5, Las Vegas, for Petitioner.

Adam Paul Laxalt, Attorney General, Carson City; *Steven B. Wolfson*, District Attorney, and *Brandon L. Lewis*, Deputy District Attorney, Clark County, for Real Party in Interest.

Before HARDESTY, PARRAGUIRRE and STIGLICH, JJ.

OPINION[1]

By the Court, HARDESTY, J.:

In this original proceeding, we are asked to determine whether minors who are arrested for solicitation or prostitution, as demon-

[1]We direct the clerk of this court to amend the caption to name the petitioner as "A.J."

strated by the referral charge, facts of arrest, or other persuasive evidence, but are charged in juvenile court with offenses other than prostitution or solicitation, are entitled to the benefits of NRS 62C.240 precluding formal adjudication of delinquency and ensuring counseling and medical treatment services as part of a consent decree. We conclude that where a minor is arrested solely for solicitation or prostitution, NRS 62C.240 applies.

FACTS AND PROCEDURAL HISTORY

Petitioner A.J. has been in foster care for most of her life. When A.J. was 15 years old, she was recruited by an older man into the Las Vegas sex trade. In July 2015, A.J. was stopped by a Las Vegas Metropolitan Police Department (LVMPD) officer while she was walking back and forth on Tropicana Avenue. A.J. initially refused to provide her identifying information to the police officers but later provided the requested information. During the stop, A.J. admitted that she had been working as a prostitute for the last three months. A.J. was then arrested for soliciting prostitution and loitering for the purpose of prostitution and transferred to Clark County Juvenile Hall.

Due to the nature of her charges, A.J.'s case was transferred to the juvenile court's sexually exploited youth calendar. The State filed a delinquency petition charging A.J. with only obstructing an officer based on her refusal to provide identifying information (Petition 1). A.J. entered an admission to the charge and was adjudicated as a delinquent. She was placed on formal probation for a period of 12 months, with a suspended commitment to the Division of Child and Family Services (DCFS), and with various conditions, including no contact with persons and places involved in prostitution and home placement through the Clark County Department of Family Services (CCDFS).

A.J. was placed at St. Jude's Ranch for Children on GPS monitoring. Less than a month after placement, GPS monitoring was removed and A.J. ran away from St. Jude's. In September, LVMPD again stopped A.J. on Tropicana Avenue for suspected solicitation of prostitution. A.J. was subsequently arrested for soliciting prostitution after agreeing to perform a sexual act for a fee with an undercover police officer.

A.J. again appeared in juvenile court. A.J. was released to Child Haven because she lost her placement at St. Jude's after running away. The State filed a second petition (Petition 2), alleging a violation of probation for violating curfew and associating with places involved in prostitution. A.J. ran away again, resulting in the State filing a third petition (Petition 3), alleging violation of probation for being in an unauthorized location. The juvenile court then determined that A.J. would remain detained pending entry of a plea.

In October, A.J. admitted to a violation of probation on Petition 2, and Petition 3 was dismissed. A.J. was continued on formal probation and was released to CCDFS once placement was located. A placement home was located in November, and the GPS ankle monitor was removed. A.J. ran away from her placement, and a writ of attachment was issued. A.J. was arrested on the writ, and the State filed a fourth petition alleging another violation of probation (Petition 4). A.J. appeared in juvenile court again and was ordered detained. A formal report and disposition was set and the juvenile court subsequently committed A.J. to DCFS for placement at the Caliente Youth Center.

A.J. petitions this court for a writ of mandamus or prohibition directing the juvenile court to vacate its orders adjudicating her as a delinquent and apply the provisions of NRS 62C.240.

DISCUSSION

Consideration of the writ petition

A writ of mandamus is available "to compel the performance of an act" that the law requires or to control an arbitrary or capricious exercise of discretion.[2] NRS 34.160. "Because . . . writs of mandamus are extraordinary remedies, we have complete discretion to determine whether to consider them." *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008).

Generally, we will not consider petitions for extraordinary relief when there is a "plain, speedy and adequate remedy in the ordinary course of law." *State v. Eighth Judicial Dist. Court (Logan D.)*, 129 Nev. 492, 497, 306 P.3d 369, 373 (2013) (internal quotation marks omitted). Under NRS 62D.500(1), juvenile court orders are expressly appealable in an appellate court of competent jurisdiction, and this court has specifically stated that a minor generally has "a plain, speedy, and adequate remedy in the form of an appeal from any judgment adjudicating [the minor] a delinquent." *Cote H.*, 124 Nev. at 39, 175 P.3d at 908.

We routinely exercise our discretion to consider petitions for extraordinary relief in the interest of judicial economy when we are faced with important legal questions that need clarification. *Logan D.*, 129 Nev. at 497, 306 P.3d at 373. "In addition, [when a] petition involves a question of first impression that arises with some frequency, the interests of sound judicial economy and administration

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[2]Because the juvenile court acted within its jurisdiction in this case, we treat A.J.'s petition as one seeking mandamus. *See Goicoechea v. Fourth Judicial Dist. Court*, 96 Nev. 287, 289, 607 P.2d 1140, 1141 (1980) (holding that a writ of prohibition "will not issue if the court sought to be restrained had jurisdiction to hear and determine the matter under consideration"); *see also* NRS 34.320.

favor consideration of the petition." *Cote H.*, 124 Nev. at 39-40, 175 P.3d at 908.

The question of whether NRS 62C.240 applies where a minor is arrested for prostitution or solicitation, but the ensuing delinquency petition does not allege that the minor engaged in either of those offenses, is an important issue of first impression that juvenile courts will likely face in the future. *See* Chariane K. Forrey, *America's "Disneyland of Sex": Exploring the Problem of Sex Trafficking in Las Vegas and Nevada's Response*, 14 Nev. L.J. 970, 971 (2014) ("The [FBI] listed Las Vegas as a top thirteen city for high intensity child prostitution."). Thus, in the interest of judicial economy and because this case presents a significant and potentially recurring question of law, we exercise our discretion to consider the merits of A.J.'s petition.

Interpretation of NRS 62C.240

In 2015, the Legislature unanimously passed Assembly Bill (A.B.) 153, later codified as NRS 62C.240.[3] A.B. 153, 78th Leg. (Nev. 2015); 2015 Nev. Stat., ch. 146, § 6.5, at 570-71. NRS 62C.240 provides, in relevant part:

> 1. If the district attorney files a petition with the juvenile court alleging that a child who is less than 18 years of age has engaged in prostitution or the solicitation of prostitution, the juvenile court:
>
> (a) Except as otherwise provided in paragraph (b),[4] shall:
>
> (1) Place the child under the supervision of the juvenile court pursuant to a supervision and consent decree, without a formal adjudication of delinquency; and
>
> (2) Order that the terms and conditions of the supervision and consent decree include, without limitation, services to address the sexual exploitation of the child and any other needs of the child, including, without limitation, any counseling and medical treatment for victims of sexual assault in accordance with the provisions of NRS 217.280 to 217.350, inclusive.

The parties agree that NRS 62C.240 was enacted to "ensure[ ] that children are treated as victims of commercial sexual exploitation rather than juvenile delinquents." Hearing on A.B. 153 Before

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[3]NRS 62C.240 became effective upon passage on May 25, 2015. *See* 2015 Nev. Stat., ch. 146, § 7, at 571. Therefore, the statute was in effect at all relevant times regarding A.J.'s case history before the court.

[4]NRS 62C.240(1)(b) provides: "If the child originated from a jurisdiction outside this State, [the juvenile court] may return the child to the jurisdiction from which the child originated."

the Assembly Judiciary Comm., 78th Leg. (Nev., March 3, 2015) (statement of Susan Roske, Chief Deputy Public Defender, Clark County Public Defender's Office). The parties disagree, however, as to what would trigger the application of NRS 62C.240. The State argues that, under the plain language of the statute, the application of NRS 62C.240 depends on the charges alleged in the petition filed by the district attorney. Specifically, the State contends that, because the triggering event for the application of NRS 62C.240 is the district attorney charging prostitution or solicitation, the statute does not limit prosecutorial discretion, and the charges alleged in the petition control.

A.J. argues that the statute's legislative history does not support the State's interpretation as it would allow the district attorney to avoid triggering the statute by alleging fictitious conduct that does not involve prostitution or solicitation even if the juvenile's conduct puts her within the class of those intended to be protected. Therefore, A.J. argues, an interpretation of NRS 62C.240 in line with the legislative intent and public policy dictates that when the underlying circumstances of the arrest, the referral charge, or other persuasive evidence demonstrate that prostitution or solicitation was the basis for the juvenile's arrest, the court must apply NRS 62C.240. We agree.

"[W]hen raised in a writ petition, this court reviews questions of statutory interpretation de novo." *Cote H.*, 124 Nev. at 40, 175 P.3d at 908. "[W]hen examining a statute, this court . . . ascribe[s] plain meaning to its words, unless the plain meaning was clearly not intended." *Id.* (internal quotation marks omitted). As noted, the State maintains that NRS 62C.240 unambiguously provides that the statute is triggered when the district attorney files a petition alleging solicitation or prostitution, and this court cannot look beyond that plain language. "However, ambiguity is not always a prerequisite to using extrinsic aids." 2A Norman J. Singer & Shambie Singer, *Statutes and Statutory Construction* § 48:1, at 554 (7th ed. 2014).

"[T]he plain meaning rule . . . is not to be used to thwart or distort the intent of [the Legislature] by excluding from consideration enlightening material from the legislative" history. *Id*. at 555-56 (first alteration in original) (internal quotation marks omitted). As the United States Supreme Court declared, "even the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent." *Nat'l R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 458 (1974). "And courts even have concluded that statutory interpretation necessarily begins with consideration of the legislative history to uncover any indications of legislative intent." 2A *Statutes and Statutory Construction*,

supra, § 48:1, at 556 (internal quotation marks omitted). Thus, we next consider the Legislature's intent in enacting NRS 62C.240.

"[T]his court determines the Legislature's intent by evaluating the legislative history and construing the statute in a manner that conforms to reason and public policy." *Great Basin Water Network v. Taylor*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010). Furthermore, "statutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained." *Cote H.*, 124 Nev. at 40, 175 P.3d at 908 (internal quotation marks omitted).

The legislative history of NRS 62C.240 indicates that the Legislature intended for the conduct and circumstances surrounding an arrest to trigger NRS 62C.240, not fictitious conduct the district attorney alleges in the petition. Indeed, Jason Frierson, Chair of the Legislative Committee on Child Welfare and Juvenile Justice at the time, described factual scenarios that are nearly identical to the circumstances in this case. Mr. Frierson testified that "[u]nder [NRS 62C.240], a juvenile *arrested* for solicitation will be given a consent decree rather than being treated as a juvenile delinquent." Hearing on A.B. 153 Before the Senate Judiciary Comm., 78th Leg. (Nev., April 29, 2015) (emphasis added).

Here, the arresting officer stated in the declaration of arrest that A.J. was arrested for soliciting prostitution and loitering for the purpose of prostitution. The declaration of arrest does not indicate that A.J. was arrested for obstruction, yet that was the only charge the district attorney alleged in Petition 1. The circumstances leading to A.J.'s original delinquency adjudication are precisely those which the Legislature intended to trigger the application of NRS 62C.240.

The legislative history further demonstrates the intent for NRS 62C.240 was not to allow additional delinquency petitions to be filed for certain violations of the conditions of a consent decree. In contemplating a situation in which a juvenile was under court supervision and a consent decree pursuant to NRS 62C.240, Mr. Frierson testified that "[i]f conditions [of the consent decree] are violated, the district attorney *will not* be able to file a delinquent petition as a result of that violation." *Id.* (emphasis added); *see also* NRS 62C.240(3)(a). However, "[t]he district attorney *can* file an additional petition if it is an act not relating to the *circumstance surrounding the decree*." Hearing on A.B. 153 Before the Senate Judiciary Comm., 78th Leg. (Nev., April 29, 2015) (testimony of Assemblyman Jason Frierson) (emphases added). Here, as a result of Petition 1, A.J. was placed on formal probation, the terms of which included no contact with persons and places involved in prostitution. A.J. subsequently violated the terms of her probation, and the district attorney filed Petition 2. In the petition, the district attorney alleged

that A.J. violated the terms of her probation by associating with places involved in prostitution. A.J. was then adjudicated as a delinquent for a second time based on an act that would have triggered NRS 62C.240 protection if she had been under court supervision pursuant to a consent decree rather than formal probation.

Finally, the Legislature also discussed prosecutorial discretion during hearings on NRS 62C.240. Assemblyman P.K. O'Neill asked John T. Jones, Jr., representing the Nevada District Attorneys Association, if NRS 62C.240 would help juveniles in circumstances where a police officer makes an arrest for engaging in prostitution, but charges a different, nonprostitution crime, "just to get [the juvenile] off the street." Hearing on A.B. 153 Before the Assembly Judiciary Comm., 78th Leg. (Nev., March 3, 2015). Mr. Jones replied: "What happens now in practice is that the officers book the kids under solicitation or some other type of prostitution-related crime. The district attorneys, especially in Clark County, will work with . . . [the] defense attorneys to find some other non-prostitution-related crime to plead them to." *Id.* The situation Mr. Jones described is the exact situation in which A.J. finds herself. She was arrested for solicitation of prostitution, but charged with obstruction to avoid the solicitation charge. Before the enactment of NRS 62C.240, exercising that type of prosecutorial discretion may have been in the juvenile's best interest. However, it is clear from the testimony cited above that the Legislature intended to make the practice of filing fictitious charges in lieu of charges for solicitation or prostitution unnecessary by enacting NRS 62C.240.

Liberally construing the statute with what reason and public policy dictate, we hold that the Legislature clearly intended for NRS 62C.240 to be triggered when circumstances surrounding the arrest plainly demonstrate that the juvenile was arrested for engaging in prostitution or solicitation of prostitution. We further hold that the protections of NRS 62C.240 apply to prostitution-related crimes committed contemporaneous to an act that would otherwise trigger those protections, including, without limitation, trespassing, loitering, or curfew violations. However, our decision should not be read to insulate juveniles from delinquency adjudication based on different, nonprostitution-related crimes committed contemporaneous to an act that would otherwise trigger NRS 62C.240. For example, NRS 62C.240 would not apply to a juvenile who engages in prostitution and commits a robbery in the course of such conduct. In that circumstance, a district attorney is not prevented from filing a delinquency petition based on the robbery charge, independent of any charges for engaging in prostitution.

CONCLUSION

The record before us clearly demonstrates that A.J. was arrested only for engaging in prostitution or the solicitation of prostitution.

Therefore, we conclude that A.J. was entitled to protections afforded under NRS 62C.240, and the juvenile court arbitrarily and capriciously abused its discretion by adjudicating her as a delinquent.

Accordingly, we grant A.J.'s petition for extraordinary relief and direct the clerk of this court to issue a writ of mandamus instructing the juvenile court to set aside its earlier orders adjudicating A.J. as a delinquent and to enter a supervision and consent decree that includes as part of its terms and conditions other services to address A.J.'s needs as specified in NRS 62C.240.[5]

PARRAGUIRRE and STIGLICH, JJ., concur.

JENNIFER O'NEAL, APPELLANT, *v.* SHARNA HUDSON, INDIVIDUALLY; AND GERALD LYLES, INDIVIDUALLY, RESPONDENTS.

No. 70446

June 1, 2017 394 P.3d 1220

Jurisdictional prescreening of an appeal from a judgment on a short trial verdict and a post-judgment order denying a motion for judgment notwithstanding the verdict, or alternatively for a new trial. Eighth Judicial District Court, Clark County; James Crockett, Judge; Robert A. Goldstein, Short Trial Judge.

Appeal may proceed.

Kirk T. Kennedy, Las Vegas, for Appellant.

The Howard Law Firm and *James W. Howard*, Las Vegas, for Respondents.

Before HARDESTY, PARRAGUIRRE and STIGLICH, JJ.

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[5]We note that although NRS 62C.240 prevents a formal adjudication of delinquency for juveniles who fall within its purview, that statute does not appear to prevent a juvenile court from issuing an order for "any placement of the child that the juvenile court finds to be in the child's best interest," NRS 62C.240(3)(b), including commitment to a facility for detention of children, *see, e.g.*, NRS 62E.510-.540. However, this appears to conflict with this court's caselaw regarding placement of nondelinquent children in detention facilities. *See Minor v. Juvenile Div. of Seventh Judicial Dist. Court*, 97 Nev. 281, 287-88, 630 P.2d 245, 249-50 (1981) (specifically mentioning the training center located in Caliente, Nevada, and determining that "[t]raining centers are meant to house delinquents and delinquents only," and holding "that nondelinquent children coming within the jurisdiction of the juvenile court *may not be committed to the juvenile correctional institutions*" (emphasis added) (citation omitted)); *see also* NRS 63.030(1) (defining Caliente Youth Center as a "facility for the detention or commitment of children").

While we recognize this potential conflict, the issue is not before us in this case. Thus, we do not address it here.

OPINION

Per Curiam:

In this appeal, we consider whether a motion for a new trial was filed with the district court where it was accepted by the short trial judge for filing, but there is no indication that the short trial judge complied with NRCP 5(e) by noting the date of filing on the document and promptly transmitting it to the office of the clerk. We conclude that a document is filed with the district court upon acceptance for filing by the judge, and his or her failure to note the date of filing thereon and transmit it to the clerk of the court is a ministerial error not to be held against the parties. Accordingly, the motion for a new trial was timely filed when the short trial judge accepted it for filing.

FACTS AND PROCEDURAL HISTORY

Appellant filed a complaint against respondents for negligence related to a motor-vehicle accident. After a trial in the short trial program, the district court entered a judgment on jury verdict in favor of respondents. Notice of entry of judgment was electronically served on March 24, 2016. No post-judgment motions appear on the district court docket sheet; however, appellant represented in her docketing statement that she filed a motion for a new trial with the short trial judge on March 24, 2016. The short trial judge entered an order on April 25, 2016, denying a motion for judgment notwithstanding the verdict or in the alternative, motion for a new trial. Appellant filed the notice of appeal on May 19, 2016.

This court entered an order directing appellant to show cause why this appeal should not be dismissed in part for lack of jurisdiction. We explained that the notice of appeal was filed more than 30 days after service of notice of entry of the judgment on jury verdict. Thus, the notice was untimely as to the final judgment unless a timely tolling motion was filed. *See* NRAP 4(a)(1), (4). It was not clear whether the motion for a new trial tolled the time to file the notice of appeal where the district court docket entries did not indicate that any such motion was filed in the district court, and the copy of the motion for new trial included with the docketing statement did not bear the file-stamp of the district court clerk or a notation of the filing date made by the judge.

In response, appellant points to an email exchange between appellant and the short trial judge. Appellant emailed the short trial judge and inquired whether the new trial motion should be e-filed. A copy of the new trial motion was attached to the email. The short trial judge responded that he did not know and directed appellant to contact the Alternative Dispute Resolution (ADR) office. Appellant then informed the short trial judge that she was instructed by the

ADR office to file the motion directly with the short trial judge by service and not to file the motion with the clerk's office. Once a ruling was made, the short trial judge's order was to be filed with the motion as an exhibit. Appellant asked that the short trial judge accept the earlier emailed motion as "my submission to you for consideration and decision." The short trial judge then set a briefing schedule for the motion.

Based on this exchange, appellant asserts that the new trial motion was filed in accordance with the direction of the ADR office, and the short trial judge accepted the motion as properly filed. Respondents concede that if emailing the motion to the short trial judge was the correct manner of proceeding, the notice of appeal was timely filed. However, respondents argue that emailing the motion does not meet the definition of filing set forth in NRCP 5(e) because the motion was not filed with the clerk. Respondents thus request that this appeal be dismissed for lack of jurisdiction.

DISCUSSION

In order to qualify as a tolling motion under NRAP 4(a)(4), a motion for a new trial must be timely filed in the district court under the Nevada Rules of Civil Procedure. NRAP 4(a)(4). Documents may be filed with the court "by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk." NRCP 5(e). When a case is in the short trial program, unless otherwise specified in the rules, all documents must be served and filed in accordance with the Nevada Rules of Civil Procedure. NSTR 6.

We must decide whether appellant's motion for a new trial was filed with the short trial judge pursuant to NRCP 5(e) where there is no indication that the judge noted the date of filing upon the document and transmitted it to the district court clerk. We agree with other courts that the failure of the judge to perform these ministerial tasks, over which the parties have no control, should not be the determinative factor. Instead, in determining whether a document has been filed with the judge, the focus is on whether the judge has allowed the paper to be filed with the judge. *See Sprott v. Roberts*, 390 P.2d 465, 466 (Colo. 1964) (holding that judge's failure to note time and date of filing upon document and timely transmit it to clerk as required by Colorado Rule of Civil Procedure 5(e)[1] not to be held against party filing document); *Fisher v. Small*, 166 A.2d 744, 746-47 (D.C. 1960) (ruling no error to conclude that failure of the

[1]"Rule 5(e) requires filings to be with the clerk of the court but permits filing with the judge provided 'he shall (then) note thereon the filing date and forthwith transmit them (i.e. the papers) to the office of the clerk.'" *Sprott*, 390 P.2d at 466.

court to note the time of filing of a motion by the judge, as required by rule, was merely a clerical error that did not render a motion untimely filed); *J.A. Tobin Constr. Co., Inc. v. Kemp*, 721 P.2d 278, 283 (Kan. 1986) (concluding that under K.S.A. 60-205(e), which is substantially similar to NRCP 5(e),[2] "filing is complete when the judge personally accepts custody of the papers"); *see also DeMarines v. KLM Royal Dutch Airlines*, 580 F.2d 1193, 1195 n.4 (3d Cir. 1978) (concluding that a motion handed to a law clerk was not filed with the judge under former Fed. R. Civ. P. 5(e),[3] which is substantially similar to NRCP 5(e), where permission to file with the judge "was neither sought nor given"); *Clifford v. Bundy*, 747 N.W.2d 363, 366 (Minn. Ct. App. 2008) (interpreting former Fed. R. Civ. P. 5(e) and concluding that a party did not file a motion with the judge where the party did not request that the judge accept the motion for filing, the judge did not request that the paper be filed directly with him, and the party did not pay the filing fee, but the judge ruled on a courtesy copy of the motion given to him). *But see Hale v. Union Foundry Co*., 673 So. 2d 762, 763-64 (Ala. Civ. App. 1995) (concluding that under Alabama Rule of Civil Procedure 5(e), which is substantially similar to NRCP 5(e),[4] a document was not filed with the judge where the judge was provided with a copy of the document, he did not mark it "filed," note a filing date upon it, or transmit it to the clerk's office, and the case action summary sheet did not indicate that the document was filed).

Here, appellant specifically asked that the short trial judge accept the motion as submitted to him, and the short trial judge set a briefing schedule on the motion and entered a written order denying the motion and stating that the motion was filed. Under these circumstances, we conclude that the short trial judge permitted the motion to be filed with him.[5] Thus, appellant's motion for a new trial was timely filed on March 24, 2016.

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[2]At the time of the opinion, K.S.A. 60-205(e) required that pleadings and other papers be filed with the clerk, "except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk." *See J.A. Tobin Constr.*, 721 P.2d at 280.

[3]Fed. R. Civ. P. 5(e) has since been renumbered as Fed. R. Civ. P. 5(d)(2).

[4]Alabama Rule of Civil Procedure 5(e) provided that papers were to be filed with the clerk, "except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk." *See Hale*, 673 So. 2d at 763.

[5]Although we conclude that the failure of a judge to note the date of filing on a document and transmit it to the clerk of the court does not affect whether a document was filed with the judge, such failure results in the omission of the document from the district court docket sheet. In turn, this omission can

CONCLUSION

Appellant's post-judgment motion for a new trial was filed with the short trial judge on the date the short trial judge accepted the motion for filing, despite the apparent failure of the short trial judge to note the date of filing upon the motion and transmit it to the district court clerk. The motion was timely filed after entry of the final judgment and tolled the time to file the notice of appeal from the final judgment. Because appellant timely filed the notice of appeal after entry of the order denying the new trial motion, this appeal may proceed.

Appellant shall have 90 days from the date of this opinion to file and serve the opening brief and appendix. Thereafter briefing shall proceed in accordance with NRAP 31(a)(1). We caution the parties that failure to comply with this briefing schedule may result in the imposition of sanctions. NRAP 31(d).

ROBERT SCOTLUND VAILE, APPELLANT, *v.*
CISILIE A. VAILE, NKA CISILIE A. PORSBOLL, RESPONDENT.

No. 61415

ROBERT SCOTLUND VAILE, APPELLANT, *v.*
CISILIE A. VAILE, NKA CISILIE A. PORSBOLL, RESPONDENT.

No. 62797

June 22, 2017 369 P.3d 791

Consolidated appeals from district court orders in a child support arrearages matter. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

Affirmed.

Robert Scotlund Vaile, Wamego, Kansas, in Pro Se.

Willick Law Group and *Marshal S. Willick*, Las Vegas, for Respondent.

Before the Court EN BANC.

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unnecessarily hinder this court's ability to conduct an accurate jurisdictional review because it is not apparent if or when a tolling motion has been filed. We thus stress the importance of compliance with NRCP 5(e) and remind judges, including pro tempore short trial judges, of their obligation to note the date of filing upon any documents filed with the judge and promptly transmit the documents to the district court clerk.

OPINION

By the Court, Douglas, J.:

In this appeal, we are asked to consider: (1) whether a Nevada child support order controlled over a Norway order, and (2) whether this court lacks jurisdiction over appellant's challenges to contempt findings. We conclude that pursuant to NRS 130.207, the Nevada child support order controls. We further conclude that this court has jurisdiction over the challenges to contempt findings and sanctions in the order appealed from in Docket No. 61415, but we need not consider them because appellant has failed to assert cogent arguments or provide relevant authority in support of his claims. Thus, we affirm the judgments of the district court.

FACTS AND PROCEDURAL HISTORY

This appeal involves a complex factual background that culminated in a divorce decree entered by a Nevada district court and a dispute over custody of the parties' children. This court first encountered this case in 2000 and resolved the matter in 2002. *See Vaile v. Eighth Judicial Dist. Court (Vaile I)*, 118 Nev. 262, 44 P.3d 506 (2002). Appellant Robert Scotlund Vaile and respondent Cisilie Porsboll were married in Utah in 1990 and filed for divorce in Nevada in 1998. *Id.* at 266-67, 44 P.3d at 509-10. Vaile is a citizen of the United States, while Porsboll is a citizen of Norway. *Id.* at 266, 44 P.3d at 509. Their children habitually resided in Norway. *Id.* at 277, 44 P.3d at 516.

We encountered the case again in 2009 and resolved the matter in 2012. *See Vaile v. Porsboll (Vaile II)*, 128 Nev. 27, 268 P.3d 1272 (2012). Following their divorce, the district court entered an order imposing statutory penalties against Vaile due to child support arrearages. *Id.* at 29, 268 P.3d at 1273. "[W]e address[ed] the district court's authority to enforce or modify a child support order that a Nevada district court initially entered," even though "neither the parties nor the children reside[d] in Nevada." *Id.* at 28, 268 P.3d at 1273. Ultimately, we reversed the district court's order and remanded the matter, holding that: (1) the district court lacked subject matter jurisdiction to modify the child support obligation pursuant to the Uniform Interstate Family Support Act (UIFSA), and (2) setting the support obligation at a fixed amount constituted a modification of the support obligation. *Id.* at 33-34, 268 P.3d at 1276-77. However, we noted that because no other jurisdiction had entered an order regarding child support, the order from Nevada controlled. *Id.* at 31, 268 P.3d at 1275. In a footnote, we stated that because the parties alluded to a Norway child support order, "on remand, the district court must determine whether such an order exists and assess its bearing, if any, on the district court's enforcement of the Nevada support or-

der." *Id.* at 31 n.4, 268 P.3d at 1275 n.4. On remand, the district court determined that Norway entered a child support order; however, the court concluded that the Nevada support order controlled because Norway lacked jurisdiction to modify the Nevada order.

These consolidated appeals followed. In Docket No. 61415, Vaile challenges a district court order awarding Porsboll child support arrearages and penalties and reducing them to judgment, as well as finding him in contempt of court. In Docket No. 62797, Vaile challenges an order finding him in default for failure to appear, sanctioning him for violating court orders, and finding him in further contempt of court for failing to pay child support.

On appeal, the court of appeals issued an order, in pertinent part, concluding that Nevada's child support order controlled over Norway's order. *See Vaile v. Vaile*, Docket Nos. 61415 & 62797 (Order Affirming in Part, Dismissing in Part, Reversing in Part, and Remanding, Dec. 29, 2015). The court further concluded that it lacked jurisdiction to consider Vaile's challenges to his contempt findings. *Id.* On rehearing, the court of appeals clarified its previous order but still affirmed its conclusions that Norway lacked jurisdiction to modify the Nevada decree and the Nevada decree was the controlling child support order. *See Vaile v. Vaile*, Docket Nos. 61415 & 62797 (Order Granting Rehearing in Part, Denying Rehearing in Part, and Affirming, Apr. 14, 2016). Thereafter, Vaile filed a petition for review, which this court granted. *See Vaile v. Vaile*, Docket Nos. 61415 & 62797 (Order Granting Petition for Review, Sept. 22, 2016). This court determined that two issues in the petition warrant review: (1) "whether the Nevada child support order controlled under the appropriate [UIFSA] statute," and (2) "whether the Court of Appeals lacked jurisdiction to consider [Vaile's] challenges to the district court's contempt findings and sanctions." *Id.*[1]

DISCUSSION

Whether the Nevada child support order controls

The parties dispute whether the Nevada or Norway child support order controls in this case. According to Vaile, the Norway child support order controls pursuant to NRS 130.207. We disagree and conclude that the Nevada order controls.

The UIFSA, codified in NRS Chapter 130, is a uniform act enacted in all 50 states that "creates a single-order system for child support orders, which is designed so that only one state's support order is effective at any given time."[2] *Vaile II*, 128 Nev. at 30, 268 P.3d

[1]As to Vaile's remaining issues that are not addressed in our opinion, we affirm the district court.

[2]NRS 130.105 provides that tribunals in Nevada will apply NRS Chapter 130 to foreign support orders. Further, 42 U.S.C. § 659a(a) (2012) provides that the U.S. government can enter into a reciprocating agreement concerning

at 1274. "To facilitate this single-order system, UIFSA provides a procedure for identifying the sole viable order, referred to as the controlling order . . . ." *Id.*

NRS 130.205(1) requires three things in order for Nevada to have continuing and exclusive jurisdiction to modify a child support order: (1) a court in this state issued the order consistent with the laws of this state; (2) the order is the controlling order; and (3) either the state is the residence of one of the parties or of the child, or the parties have consented to the court's continuing jurisdiction. Thus, even if no party resides in Nevada, "the parties [may] consent in a record or in open court that the tribunal of this State may continue to exercise jurisdiction to modify its order." NRS 130.205(1)(b).

Under two circumstances Nevada may modify a registered child support order from another state. NRS 130.611. The first requires that (1) none of the parties, including the child, reside in the issuing state; (2) the party seeking modification is a nonresident of Nevada; and (3) "[t]he respondent is subject to the personal jurisdiction of the tribunal of this State." NRS 130.611(1)(a). The second requires that (1) Nevada is the child's state of residence or a party is subject to the personal jurisdiction of the tribunal of Nevada, and (2) all parties have consented to Nevada's jurisdiction in the issuing state. NRS 130.611(1)(b).

NRS 130.611 only applies, however, when the tribunal of Nevada attempts to modify another state's child support order. If, on the other hand, two competing child support orders exist, NRS 130.207 will establish which order controls. NRS 130.611(3). Here, the Norway order did not claim to modify the Nevada order. As a result, the requirements for modification jurisdiction pursuant to NRS 130.611 do not apply. Because there were two competing child support orders in this case, the correct inquiry is which order controlled under NRS 130.207.

NRS 130.207(2) determines which child support order controls when both a Nevada court and a foreign country issue child support orders. In relevant part, a tribunal of Nevada with personal jurisdiction shall apply the following specific rules to conclude which order controls: (1) "[i]f only one of the tribunals would have continuing and exclusive jurisdiction under [NRS Chapter 130], the order of that tribunal controls"; (2) "[i]f more than one of the tribunals would have continuing and exclusive jurisdiction, . . . an order issued by a tribunal in the current home state of the child controls, or if an order has not been issued in the current home state of the child, the order most recently issued controls"; and (3) "[i]f none of the tribunals

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support orders with a foreign country and the U.S. has, in fact, entered into such an agreement with Norway, *see* Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations, 79 Fed. Reg. 49,368 (Aug. 20, 2014).

would have continuing and exclusive jurisdiction, . . . the tribunal of [Nevada] shall issue a child-support order which controls." NRS 130.207(2)(a)-(c).

Here, Porsboll applied for stipulation of child support in Norway, and an administrative order concerning child support was ultimately issued. However, the order does not clearly establish Norway's continuing and exclusive jurisdiction under NRS Chapter 130. Further, the record does not establish that both parties consented to Norway's continuing and exclusive jurisdiction over this matter. Accordingly, NRS 130.207(2)(a) applies and the Nevada order controls. Thus, while the district court did not apply our procedural analysis, its conclusion was ultimately correct. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("This court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason."). We affirm on this issue.

Whether this court lacks jurisdiction to consider the contempt challenges

Vaile contends that this court has jurisdiction to consider his challenges to his contempt sanctions because those sanctions arose from the underlying child support order. We agree.

As a preliminary matter, the order appealed from in Docket No. 62797 is not an appealable order because it solely concerns contempt. *See Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000) (stating that "[n]o rule or statute authorizes an appeal from an order of contempt"). Thus, this court lacks jurisdiction to consider Vaile's challenges to that order. Nevertheless, the order appealed from in Docket No. 61415 pertained to child support and contempt. Pursuant to NRAP 3A(b)(8), Vaile can appeal from a special order entered after a final judgment, including an order determining which child support order controls. *See Lewis v. Lewis*, 132 Nev. 453, 457-58, 373 P.3d 878, 881 (2016) (considering challenges to contempt findings and sanctions in an order that modified child custody). As a result, if the contempt finding or sanction is included in an order that is otherwise independently appealable, this court has jurisdiction to hear the contempt challenge on appeal. Therefore, Vaile can challenge the contempt findings and sanctions in the order appealed from in Docket No. 61415. However, because Vaile has failed to assert cogent arguments or provide relevant authority in support of his claims, we need not consider his contempt challenges to the order appealed from in Docket No. 61415. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider claims that are not cogently argued or supported by relevant authority).

CONCLUSION

We conclude that pursuant to NRS 130.207, the Nevada child support order controls. We further conclude that this court has jurisdiction over the challenges to contempt findings and sanctions in the order appealed from in Docket No. 61415, but we need not consider them because Vaile failed to provide cogent arguments or relevant authority in support of his claims. Thus, we affirm the judgments of the district court.

CHERRY, C.J., and GIBBONS, PICKERING, HARDESTY, PARRAGUIRRE, and STIGLICH, JJ., concur.