CONCLUSION

Accordingly, we order the judgment of conviction affirmed.

DOUGLAS, J., concurs.

GIBBONS, J., concurring in part and dissenting in part:

I concur with the majority in part. The district court properly allowed the State to argue twice during closing arguments at the penalty hearing. I further concur that the sentence is not excessive.

However, I would revisit this court's holding in *Flanagan v. State*, 107 Nev. 243, 247-48, 810 P.2d 759, 762 (1991), regarding the admission of sentences of codefendants in the penalty phase of a first-degree murder hearing. I agree with appellant that there should be a uniform rule for the district courts on this issue for all penalty hearings. Therefore, I would preclude allowing evidence of the codefendants' sentences.

GOLIGHTLY & VANNAH, PLLC, APPELLANT, *v.* TJ ALLEN, LLC; AND RENOWN REGIONAL MEDICAL CENTER, RESPONDENTS.

No. 67927

June 2, 2016 373 P.3d 103

Appeal from a final judgment in an interpleader action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Law firm that represented automobile accident client on contingency basis in personal injury action, resulting in settlement with automobile insurer, brought interpleader action on its own behalf to determine distribution of settlement proceeds, alleging that it had priority attorney lien on settlement amount, and seeking costs. The district court ordered a pro-rata distribution of settlement proceeds and denied costs. Law firm appealed. The supreme court, CHERRY, J., held that: (1) to perfect its lien, firm was required, prior to settlement, to serve notice stating both its percentage of the recovery and that the lien would include court costs and out-of-pocket costs advanced by the firm in an amount to be determined; and (2) firm was not a prevailing party entitled to recover costs.

Affirmed.

[Rehearing denied October 27, 2016]

Golightly & Vannah, PLLC, and *Robert D. Vannah* and *L. DiPaul Marrero, II*, Reno, for Appellant.

Maupin, Cox & LeGoy and *Kim G. Rowe* and *Paul J. Anderson*, Reno, for Respondent Renown Regional Medical Center.

TJ Allen, LLC, in Pro Se.

1. Attorney and Client.
   In order to perfect attorney charging lien arising from law firm's representation of client on contingency basis in personal injury action arising from automobile accident, firm was required, prior to settlement with automobile insurer, to serve notice stating both the firm's percentage of the recovery and that the lien would include court costs and out-of-pocket costs advanced by the firm in an amount to be determined. NRS 18.015(3), (4).
2. Attorney and Client.
   Attorney liens typically enjoy priority over those from medical providers.
3. Attorney and Client.
   An attorney lien is only enforceable when it is attached and perfected pursuant to statute. NRS 18.015.
4. Attorney and Client.
   Because an attorney's charging lien is a creature of statute, the attorney must meet all of the statutory requirements before the lien can be enforced. NRS 18.015.
5. Appeal and Error.
   The supreme court reviews questions of statutory interpretation de novo.
6. Interpleader.
   An attorney that initiates an interpleader action to determine distribution of contested funds is not required to deposit the contested funds with the district court so long as the funds remain in the attorney's trust account. NRCP 22.
7. Appeal and Error.
   When an award of costs is discretionary, rather than mandatory, the supreme court reviews for an abuse of discretion. NRS 18.020, 18.050.
8. Attorney and Client.
   Law firm that initiated interpleader action in which firm asserted that it had a priority lien on funds arising from settlement of client's personal injury case was not a prevailing party entitled to recover costs; although firm received some money, the district court ruled in favor of adverse party, another creditor, by awarding adverse party its full pro-rata share of funds, on the basis that firm's lien was not perfected and therefore had no priority. NRS 18.020, 18.050.
9. Costs.
   A prevailing party entitled to costs must win on at least one of its claims. NRS 18.020, 18.050.
10. Interpleader.
    Interpleader is an equitable proceeding to determine the rights of rival claimants to property held by a third person having no interest therein.

Before Douglas, Cherry and Gibbons, JJ.

OPINION

By the Court, Cherry, J.:

NRS 18.015(3) requires an attorney to perfect a lien by serving notice "upon the party against whom the client has a cause of action,

claiming the lien and stating the amount of the lien." NRS 18.015(4) provides that the lien attaches to recovery "from the time of service of the notices required." In contingency cases, it can be impossible for an attorney to know the exact amount of the lien because the attorney's percentage is based upon the ultimate recovery itself. Additionally, attorneys' costs often continue to accrue after the recovery. Therefore, we hold that in order to comply with both subsections of the statute, attorneys must, prior to recovery, perfect their liens by serving notice that states both the attorney's percentage of the recovery and that the lien will include court costs and out-of-pocket costs advanced by the attorney in an amount to be determined.

Golightly & Vannah (G&V) received settlement funds from a personal injury claim without first filing perfection notices. In fact, G&V waited until after initiating an interpleader action and moving for distribution, only to serve notices late in the process, after Renown pointed out that G&V had failed to do so. We affirm the district court's decision to order a pro-rata distribution because G&V did not perfect its lien until well after it recovered funds in the personal injury settlement. We also affirm the denial of costs. Additionally, we take this opportunity to clarify that an attorney need not deposit funds with the court in an interpleader action so long as the attorney keeps the funds in his or her client trust account for the duration of the interpleader action.

FACTS AND PROCEDURAL HISTORY

Underlying personal injury case

Juan Quinteros was injured in an automobile accident in February 2013. Quinteros hired G&V to represent him on a contingency basis for his personal injury claims. G&V was to receive 33 percent of the recovery. In July 2013, the insurer settled for $15,000, the upper limit of the insured's coverage.

Interpleader action

The settlement award was not enough to cover all of Quinteros' medical bills, as Quinteros owed over $34,000 to Renown Regional Medical Center (Renown) alone. There were at least five other potential creditors, including TJ Allen, LLC. To determine how the settlement money should be allocated, G&V filed an NRCP 22 interpleader action, on its own behalf, in March 2014, naming Quinteros, Renown, TJ Allen, and the other potential creditors as defendants. In the complaint, G&V alleged that it had an attorney lien on the $15,000 recovery and that its lien took priority. Because Renown and TJ Allen were the only creditors to answer the complaint, the other potential creditors defaulted in the interpleader action.

In January 2015, G&V filed a motion for distribution of the settlement award to defendants, to enforce its attorney lien, and to recover costs of the interpleader action. Specifically, G&V asked for $5,085.58 via its attorney lien and $630 in costs. Renown filed an opposition, arguing that G&V's lien should not be given priority because there was no evidence that it was ever perfected pursuant to NRS 18.015(3) or that G&V had ever deposited the funds with the district court.

After receiving Renown's opposition, G&V sent perfection notices to Quinteros, Renown, Renown's counsel, and TJ Allen on February 10, 2015. G&V sent a similar notice to the insured on February 12, 2015. G&V also deposited the $15,000 with the district court. In its reply, G&V stated that it had deposited the funds and perfected its attorney lien since the filing of Renown's opposition; therefore, Renown's argument was moot.

The district court disagreed, finding that the perfection notice was untimely because G&V mailed the notices long after reaching settlement in the underlying case. The district court also found that G&V was not entitled to its costs because there was no authority to grant such an award. Because G&V's lien was not perfected, the district court ordered a pro-rata distribution of the recovery: G&V received $1,800; TJ Allen received $975; and Renown received $12,225.

DISCUSSION

The district court did not err in ordering pro-rata distribution because G&V did not perfect its lien until after receiving the settlement funds

[Headnote 1]

G&V argues that perfection was not possible before it received the settlement because the exact amount of its lien would be unknown until after the settlement was reached and all costs could be calculated. G&V also argues that it could perfect any time before the district court ultimately distributed the funds in the interpleader action. Renown, however, argues that Nevada law mandates perfection before the attorney receives the funds. We agree with Renown.

[Headnotes 2-5]

Attorney liens typically enjoy priority over those from medical providers. *Michel v. Eighth Judicial Dist. Court*, 117 Nev. 145, 150, 17 P.3d 1003, 1007 (2001). An attorney lien, however, is only enforceable when it is attached and perfected pursuant to statute. *Leventhal v. Black & LoBello*, 129 Nev. 472, 478, 305 P.3d 907, 911 (2013). Because an attorney's charging lien is a creature of statute, the attorney must meet all of the statutory requirements before the lien can be enforced. *Id.* at 475-76, 305 P.3d at 909. This issue re-

quires us to interpret NRS 18.015, and we review questions of statutory interpretation de novo. *I. Cox Constr. Co., LLC v. CH2 Invs., LLC*, 129 Nev. 139, 142, 296 P.3d 1202, 1203 (2013).

An attorney "shall have a lien . . . (a) [u]pon any claim, demand or cause of action . . . upon which a suit or other action has been instituted." NRS 18.015(1). The lien "is for the amount of any fee which has been agreed upon by the attorney and client." NRS 18.015(2). To perfect such a lien, the attorney must "serv[e] notice in writing, in person or by certified mail, return receipt requested, upon his or her client and, if applicable, upon the party against whom the client has a cause of action, claiming the lien and stating the amount of the lien." NRS 18.015(3). This lien "attaches to . . . any money or property which is recovered on account of the suit . . . *from the time of service* of the notices." NRS 18.015(4)(a) (emphasis added).

We have previously held that when an attorney does not attempt to perfect his or her lien until after settlement is reached and the proceeds have been received, the lien does not attach to settlement proceeds. *Leventhal*, 129 Nev. at 478, 305 P.3d at 910-11. NRS 18.015(4) mandates that we hold no differently now.

In the present case, G&V represented its client in a personal injury claim and obtained a $15,000 settlement. It received the settlement on July 13, 2013, but did not send all of the required notices until February 12, 2015. NRS 18.015(4) provides that the lien attaches only to funds received after the notices are sent and G&V received the funds well before it sent the notices. Because a lien only attaches to proceeds received after the date of service of the notices, we conclude that the district court correctly found that G&V did not have a priority lien against the settlement funds received before those notices were served. Accordingly, we affirm the district court's pro-rata distribution of the settlement proceeds. Although we affirm the district court's order on this basis, we take this opportunity to address other aspects of attorney liens at issue in this case.

NRS 18.015(3) does not require attorneys to state an exact dollar amount for their liens

G&V argues that perfection was impossible prior to settlement because it did not know how much its lien would be worth until after settlement was reached and all costs were calculated. We agree that G&V could not state an exact dollar amount before settlement. However, NRS 18.015(3) does not require the attorney to state an exact dollar amount.

NRS 18.015(3) requires a lien notice to "stat[e] the amount of the lien." The statute does not require a specific dollar amount. NRS 18.015(4) requires that such notice be served before any funds are received. In general, attorneys working on a contingency basis can-

not state an exact dollar amount until a settlement or verdict is obtained and all costs are calculated.

In order to allow attorneys working on a contingency basis the ability to comply with NRS 18.015(4)'s requirement to perfect before receiving the funds, the notice of the lien must disclose an attorney's agreed upon contingency percentage and claim court costs and out-of-pocket costs advanced by the attorney in an amount to be determined. This rule enables attorneys who work on a contingency basis to notice their liens in a manner that satisfies both NRS 18.015(4)'s requirement of serving the notices before recovery and NRS 18.015(3)'s requirement of "stating the amount of the lien." Thus, G&V was not prohibited from perfecting their lien prior to settlement and receipt of the proceeds.

An attorney need not deposit contested funds with the district court so long as the funds remain in the attorney's trust account

[Headnote 6]

G&V argues that any requirement that an attorney deposit the contested funds with the district court makes it more difficult for all parties to eventually receive their awards. G&V further contends that it would be more prudent to allow the attorney in an interpleader action to keep the funds in the attorney's trust account and disburse according to the court's eventual order. We agree.

We previously held in *Michel*, 117 Nev. at 151, 17 P.3d at 1007, that in an NRCP 22 interpleader action, the attorney must tender the entirety of the disputed funds to the district court. We so held because the interpleader action would not protect the attorney "from liability arising out of disputed funds that were not covered by the adjudication." *Id*.

In revisiting this issue, we conclude that the attorney need not deposit the funds with the court so long as the attorney keeps the funds in his or her trust account. Keeping the funds in the trust account enables the attorney to distribute the funds according to the court's order with maximum efficiency. Further, there is nothing within the text of NRCP 22 requiring funds to be deposited with the court. *See Gelfgren v. Republic Nat'l Life Ins. Co.*, 680 F.2d 79, 81-82 (9th Cir. 1982) (stating that although statutory interpleader under 28 U.S.C. § 1335 required the funds to be deposited with the court, FRCP 22 interpleader did not). Accordingly, we clarify *Michel* and note that an attorney may keep the funds in his or her trust account until the court directs disbursement.

The district court did not err in denying G&V costs in this case

G&V argues that because it had an equitable duty to file the interpleader action on behalf of its client, reason dictates that it should

not be forced to bear the entire cost of said action. G&V also argues that a party need only seek in excess of $2,500, but not necessarily recover that much to be eligible for costs. Renown argues that because G&V did not prevail and recover more than $2,500 in the district court, it was not entitled to an award of costs. We agree with Renown to the extent that G&V did not prevail because G&V asserted a priority lien, and the district court ruled that the lien did not have priority.

[Headnote 7]

This issue requires us to interpret NRS 18.020 and NRS 18.050, and we review questions of statutory interpretation de novo. *I. Cox Constr.*, 129 Nev. at 142, 296 P.3d at 1203. When an award of costs is discretionary, rather than mandatory, we review for an abuse of discretion. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015).

"Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered . . . [i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500." NRS 18.020(3). In actions not specifically enumerated in NRS Chapter 18, the district court has discretion in awarding fees to the prevailing party. NRS 18.050. Under either statute, a party must prevail before it may win an award of costs.

[Headnotes 8, 9]

This decision turns on the definition of prevailing party as used in NRS 18.020(3) and NRS 18.050. A prevailing party must win on at least one of its claims. *See Close v. Isbell Constr. Co.*, 86 Nev. 524, 531, 471 P.2d 257, 262 (1970). In *Close*, this court held that a party prevailed when it won on its mechanic's lien claim but had its damages reduced significantly by the adverse party's counterclaim. *Id.* at 525, 531, 471 P.2d at 258, 262. Although Isbell received net damages significantly less than the award on its successful claim, it nonetheless prevailed. *Id.* at 531, 471 P.2d at 262.

G&V's argument fails, however, because it was not a prevailing party in the interpleader action. G&V sought a ruling that its lien had priority and that it receive its contingency fee from the recovery. Renown, the adverse party, claimed that the lien was not perfected and therefore had no priority. The district court ruled in favor of Renown, awarding it a full pro-rata share at the expense of G&V's claimed recovery. Although G&V, like the respondent in *Close*, received some money, G&V did not prevail on its sole claim of priority, thus it did not prevail.[1] Accordingly, G&V is not entitled

[1]Because we conclude that G&V did not prevail, we decline to rule on its argument about whether a prevailing party who seeks in excess of $2,500, but wins a lesser amount, is entitled to costs.

to costs pursuant to NRS 18.020(3) or the discretionary provisions contained in NRS 18.050 because both require the party to prevail.

[Headnote 10]

G&V also argues that it should recover its costs because interpleader is an equitable proceeding. "Interpleader is an equitable proceeding to determine the rights of rival claimants to property held by *a third person having no interest therein*." *Balish v. Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976) (emphasis added); *see also Perkins State Bank v. Connolly*, 632 F.2d 1306, 1311 (5th Cir. 1980) (stating that although an attorney who initiates an interpleader as a neutral stakeholder is typically awarded costs, an attorney who enters the conflict by contesting ownership or disputing the correct amount of his recovery is not). G&V is not a neutral third party in this case, but one of the rival claimants seeking its share of the funds.

Because G&V did not prevail below and the applicable statutes only award costs to prevailing parties, we conclude that the district court was correct to deny the request for costs.

CONCLUSION

Accordingly, we affirm the judgment of the district court. An attorney must serve perfection notices as required by statute before receiving any funds he or she claims a lien against. Attorneys working on a contingency basis, however, may perfect their liens by stating the agreed-upon contingency percentage, and claim court costs and out-of-pocket costs advanced by the attorney in an amount to be determined. We further clarify that attorneys are not required to deposit the subject funds with the district court so long as those funds remain in the attorney's trust account.

DOUGLAS and GIBBONS, JJ., concur.

QUINZALE MASON, Appellant, *v.*
THE STATE OF NEVADA, Respondent.

No. 67830

June 16, 2016 373 P.3d 116

Appeal from a judgment of conviction, pursuant to a jury verdict, of battery with a deadly weapon, assault with a deadly weapon, and being a felon in possession of a firearm. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

The supreme court held that: (1) the district court was required to pronounce aggregate minimum and maximum terms of imprisonment in imposing consecutive sentences, but (2) the district court's error did not warrant new sentencing hearing.

Affirmed and remanded with instruction.

Jeremy T. Bosler, Public Defender, and *John Reese Petty*, Chief Deputy Public Defender, Washoe County, for Appellant.

Adam Paul Laxalt, Attorney General, Carson City; *Christopher J. Hicks*, District Attorney, and *Joseph R. Plater*, Deputy District Attorney, Washoe County, for Respondent.

1. Sentencing and Punishment.
   When imposing consecutive sentences, the district court must pronounce the aggregate minimum and maximum terms of imprisonment. NRS 176.035(1).
2. Criminal Law.
   The district court's error in failing to aggregate consecutive sentences did not warrant new sentencing hearing; error did not affect sentences imposed for each offense. NRS 176.035(1).

Before Hardesty, Saitta and Pickering, JJ.

OPINION

Per Curiam:

In this opinion, we address the mandatory duty of the district court judges under NRS 176.035(1) to pronounce the aggregate minimum and maximum terms of imprisonment when imposing consecutive sentences for offenses committed on or after July 1, 2014.

Appellant Quinzale Mason fired several shots at another male outside an apartment building in August 2014; the bullets missed the male but a ricochet from one of the bullets hit and injured a girl nearby. Following a jury trial, Mason was convicted of battery

with a deadly weapon as to the girl (count 1), assault with a deadly weapon as to the male (count 2), and being a felon in possession of a firearm (count 3). The district court imposed a prison term of 3 to 10 years for count 1, a consecutive prison term of 2 to 5 years for count 2, and a concurrent prison term of 2 to 5 years for count 3.

On appeal, Mason argues that the district court erred at sentencing by failing to pronounce the aggregate minimum and maximum terms of imprisonment as required by statute.[1] NRS 176.035(1) provides in relevant part, "For offenses committed on or after July 1, 2014, if the court imposes the sentences to run consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment." Here, the district court imposed consecutive sentences for offenses committed after July 1, 2014, but failed to state the minimum and maximum aggregate terms of imprisonment.

[Headnotes 1, 2]

The district court's mandatory duty under NRS 176.035(1) to pronounce the aggregate terms of imprisonment in the judgment of conviction is of significant importance. The Legislature placed this statutory duty on district courts in an effort to simplify the sentence structure and, in turn, promote confidence in the criminal justice system and reduce confusion as to when an inmate is eligible for parole to the street. *See* Hearing on S.B. 71 Before the Assembly Judiciary Comm., 77th Leg. 5-6 (Nev., April 19, 2013). Whereas previously inmates had to be paroled from or expire a sentence before beginning to serve the next consecutive sentence, the effect of aggregating consecutive sentences is that inmates will now serve the minimum time for the total consecutive sentences before being eligible for a parole hearing. *Id.* Thus, the aggregation of consecutive sentences is a necessary step for the district court to take to apprise all parties, as well as the Department of Corrections and the public, as to when an inmate is actually eligible for parole. Accordingly, we conclude that it was error for the district court not to aggregate the sentences in the judgment of conviction but that error does not warrant a new sentencing hearing as it does not affect the sentences imposed for each offense.

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[1]Mason's remaining contention—that the district court plainly erred in instructing the jury on the doctrine of transferred intent with respect to the battery count—lacks merit. The instruction did not relieve the State of its burden to prove that Mason willfully used force or violence upon the victim, the jury was properly instructed on the elements of battery and the definition of "willful," and sufficient evidence was adduced at trial to support the battery conviction. *See* NRS 200.481(1)(a). Accordingly, Mason fails to demonstrate plain error affecting his substantial rights. *See Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (applying plain error analysis to unpreserved claims of instructional error).

Because Mason's arguments fail to demonstrate that his convictions or sentences are infirm, we affirm the judgment of conviction. However, we remand for the district court to correct the judgment of conviction to include the aggregate minimum and maximum terms of his consecutive sentences as required by NRS 176.035(1).[2]

LAWRENCE SPARKS, Petitioner, *v.* THE HONORABLE ROB BARE, District Judge, Eighth Judicial District Court; STEVEN GRIERSON, Clerk of the Eighth Judicial District Court; HENDERSON CLERK OF THE MUNICIPAL COURT; and THE HONORABLE MARK STEVENS, Respondents, and CITY OF HENDERSON, Real Party in Interest.

No. 69073

June 16, 2016 373 P.3d 864

Original pro se petition for a writ of mandamus, writ of prohibition, and writ of certiorari.

Defendant was convicted in the municipal court of failing to stop at a stop sign. Defendant appealed to the district court. City moved to dismiss the appeal after defendant failed to obtain transcripts from the municipal court. The district court granted the motion. Defendant petitioned for writ of mandamus, writ of prohibition, and writ of certiorari. The supreme court, Pickering, J., held that: (1) the municipal court did not have a duty to prepare and provide transcripts for defendant's misdemeanor appeal, and (2) the district court's dismissal of appeal was warranted.

Petition denied.

[Rehearing denied August 10, 2016]

[En banc reconsideration denied October 21, 2016]

Lawrence Sparks, Henderson, in Pro Se.

Adam Paul Laxalt, Attorney General, Carson City, for Respondents.

Josh M. Reid, City Attorney, and *Laurie A. Iscan*, Assistant City Attorney, Henderson, for Real Party in Interest.

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[2]The corrected judgment of conviction should be entered nunc pro tunc to the original sentencing date of March 17, 2015.

1. Criminal Law.
   The municipal court did not have a duty to prepare and provide transcripts for defendant's misdemeanor appeal to the district court challenging his conviction for failing to stop at a stop sign; statute governing transmission of papers did nothing more than require the municipal court to transmit its record, including any transcripts, within a specified time after the notice of appeal is filed, and it remained defendant's duty to request and pay for the transcripts for his appeal. NRS 189.030(1).
2. Mandamus.
   A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. NRS 34.160.
3. Prohibition.
   A writ of prohibition may issue when a district court acts without or in excess of its jurisdiction. NRS 34.320.
4. Courts; Mandamus.
   Whether to consider a writ petition is within the supreme court's discretion, and a petitioner bears the burden of demonstrating that extraordinary relief is warranted.
5. Courts.
   The district court has final appellate jurisdiction in all cases arising in the municipal court. Const. art. 6, § 6.
6. Criminal Law.
   An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law.
7. Courts.
   When an appeal is taken from the judgment of a municipal court that is a court of record, the district court decides the appeal on the municipal court record. NRS 5.073(1), 189.050.
8. Courts.
   Rules of appellate procedure may provide guidance to the district courts acting in their appellate capacity even though they are not binding on the district courts. NRAP 1(a).
9. Criminal Law.
   The costs of transcripts from a municipal court may not be assessed to an indigent appellant on appeal to the district court, although an appellant who is indigent still bears the burden of requesting transcripts for a misdemeanor appeal. NRS 189.030(1).
10. Criminal Law.
    The district court acting in its appellate capacity may require a nonindigent misdemeanor appellant to obtain and pay for transcripts for a misdemeanor appeal. NRS 189.030.
11. Criminal Law.
    The district court's dismissal of misdemeanor defendant's appeal from his conviction for failure to stop at a stop sign, based on his repeated failure to comply with court's direction to obtain transcripts from the municipal court, was warranted; the district court's decisions to dismiss appeal was not founded on prejudice or preference, nor was it contrary to established law.
12. Courts.
    A court's inherent authority includes those powers that are necessary to the exercise of all others.

13. Criminal Law.
A court exercising its appellate jurisdiction must be able to require the orderly and timely processing of appeals with rules and sanctions for the failure to follow those rules.

14. Criminal Law.
Inherent authority of the district court acting in its appellate jurisdiction permits the court to dismiss an appeal for failure to prosecute or comply with the court's orders, including the failure to comply with an order to obtain transcripts for the appeal.

15. Criminal Law.
Although the district court exercising its appellate jurisdiction has the inherent authority to dismiss an appeal for the failure to prosecute or comply with the court's orders, this power should be exercised circumspectly.

16. Costs; Courts.
Inherent powers of courts, because of their very potency, must be exercised with restraint and discretion, and a primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct that abuses the judicial process.

17. Criminal Law.
Dismissal of an appeal is an extreme remedy.

18. Criminal Law.
A more appropriate sanction than dismissal for the failure to obtain transcripts in most circumstances would be to allow a misdemeanor appellant to proceed with the appeal and bear the risk that the court will reject any arguments on appeal that are not supported by the record transmitted by the trial court.

Before Hardesty, Saitta and Pickering, JJ.

OPINION

By the Court, Pickering, J.:

NRS 189.030(1) provides that, after a notice of appeal is filed, a municipal court has ten days to "transmit to the clerk of the district court the transcript of the case [and] all other papers relating to the case [along with] a certified copy of the docket." In this original proceeding, we are asked to decide whether NRS 189.030(1) confers a duty on a municipal court, rather than a misdemeanor appellant, to provide a transcript for a defendant's misdemeanor appeal and whether a district court may dismiss an appeal for an appellant's failure to obtain transcripts from the municipal court. We hold that a misdemeanor appellant is responsible for requesting transcripts and, if not indigent, paying for those transcripts. We further hold that the district court has the inherent authority to dismiss a misdemeanor appeal where the appellant fails to prosecute an appeal or comply with the court's orders. Although the district court has that authority, dismissal is an extreme remedy, and therefore, the better practice is to allow the appeal to proceed and to decide the case based upon the documents submitted and any briefs filed. Because the district

court in this case acted within its jurisdiction and did not exercise its discretion in an arbitrary or capricious manner, we deny the petition.

I.

Petitioner Lawrence Sparks was convicted in municipal court of failing to stop his vehicle at a stop sign, a misdemeanor offense. He appealed the conviction to the district court on April 8, 2015. Less than ten days later, the municipal court transmitted the record of its proceedings to the district court, which did not include a transcript of the trial. At the initial hearing on the appeal in May 2015, the district court gave Sparks the name and phone number of a transcriptionist to prepare the transcripts for the appeal. The matter was set for a status check in July 2015. Before the status check, Sparks filed a document labeled "notice of perfection of appeal," in which he argued that he was not required to obtain the transcripts pursuant to NRS 189.030. At the status hearing on July 22, 2015, the district court advised Sparks he was required to obtain the transcripts and indicated that it would continue the matter to a later time. About a week later, the City of Henderson filed a motion to dismiss the appeal because Sparks had not obtained the transcripts. After Sparks confirmed that he had not obtained the transcripts, the district court granted the City's motion to dismiss the appeal. Sparks then filed this petition challenging the district court's order.

II.

[Headnote 1]

Sparks seeks writs requiring the municipal court to provide the transcripts for his misdemeanor appeal and prohibiting the district court from requiring a misdemeanor appellant to obtain and pay for transcripts. Sparks further seeks a writ directing the district court to reinstate his appeal because the district court acted arbitrarily and capriciously in dismissing his appeal based on his failure to obtain transcripts and a writ prohibiting the district court from dismissing an appeal based on the appellant's failure to obtain transcripts.[1]

[Headnotes 2-4]

"A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (footnotes omitted); *see also* NRS 34.160. A writ of prohibition may issue when a district court acts without or in excess of its jurisdiction. *See* NRS 34.320.

[1]Sparks raises a number of other claims challenging his misdemeanor conviction and the proceedings below. We decline to consider them. *See* NRS 34.020; NRS 34.160; NRS 34.170; NRS 34.320; NRS 34.330.

Whether to consider a writ petition is within this court's discretion, *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991), and a petitioner bears the burden of demonstrating that extraordinary relief is warranted, *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

[Headnotes 5, 6]

The Nevada Constitution vests the district courts with final appellate jurisdiction in all cases arising in the municipal court. *Tripp v. City of Sparks*, 92 Nev. 362, 363, 550 P.2d 419, 419 (1976); *see* Nev. Const. art. 6, § 6. As a general rule, this court has "declined to entertain writs that request review of a decision of the district court acting in its appellate capacity unless the district court has improperly refused to exercise its jurisdiction, has exceeded its jurisdiction, or has exercised its discretion in an arbitrary or capricious manner." *State v. Eighth Judicial Dist. Court (Hedland)*, 116 Nev. 127, 134, 994 P.2d 692, 696 (2000). An arbitrary or capricious exercise of discretion is "one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law." *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (internal citation and quotation marks omitted).

A.

Sparks argues that the duty of requesting and providing transcripts for his misdemeanor appeal rests with the municipal court pursuant to NRS 189.030. Sparks further argues that the district court should be prohibited from requiring him to obtain and pay for the transcripts for his appeal. These issues involve statutory interpretation, which we review de novo even in the context of a writ petition. *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 808, 312 P.3d 491, 498 (2013).

[Headnote 7]

When an appeal is taken from the judgment of a municipal court that is a court of record, the district court decides the appeal on the municipal court record.[2] *See* NRS 5.073(1) (providing that "municipal court must be treated and considered as a justice court whenever the proceedings thereof are called into question" and that an appeal "transfers the action to the district court for trial anew, unless the municipal court is designated as a court of record"); NRS 189.050 ("An appeal duly perfected transfers the action [from justice court] to the district court to be judged on the record."). In such an appeal, NRS 189.030(1) provides that the municipal court shall "transmit

[2]The Henderson Municipal Court is a court of record. *See* Henderson, Nev., Mun. Code § 2.06.010 (2014).

to the clerk of the district court the transcript of the case, all other papers relating to the case and a certified copy of the docket" within ten days after the notice of appeal is filed. Sparks reads this provision as requiring the municipal court to order the preparation of transcripts of its proceedings in the case. Sparks further reasons that if the statute does not require him to request transcripts, then he is not required to pay for the transcripts. We disagree.

[Headnote 8]

NRS 189.030 does nothing more than require the municipal court to transmit its record, including any transcripts, within a specified time after the notice of appeal is filed. NRS 189.030 does not expressly require the municipal court to order the preparation of transcripts that are not already part of the municipal court record.[3] And absent such a statutory requirement, the district court is not precluded by law from requiring the appellant to request transcripts that are not part of the trial court record at the time the notice of appeal is filed.[4]

[Headnote 9]

Practical considerations provide further support for our reading of NRS 189.030. It would be difficult, if not impossible, for the municipal court to have hearings transcribed and transmitted to the district court within the ten days allocated in NRS 189.030(1). More importantly, the transcripts necessary for appellate review will be determined by the issues the appellant wishes to raise on appeal, and only the appellant knows what the issues will be. Thus, it makes sense to place the burden of requesting transcripts that are not already in the municipal court record on the appellant. Further, because the costs of transcripts may be assessed to a nonindigent misdemeanor appellant, *see Braham v. Fourth Judicial Dist. Court*, 103 Nev. 644, 647, 747 P.2d 1390, 1392 (1987), it is reasonable to require the appellant

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[3]We reject any reading of this court's decision in *State v. O'Donnell*, 98 Nev. 305, 646 P.2d 1217 (1982), as requiring the municipal court to order the preparation of transcripts for a misdemeanor appeal. *O'Donnell* merely holds that "the late filing of the transcript by the justice's court does not warrant [the district court's] dismissal of the underlying criminal charges against the defendant" on appeal from the justice court judgment, *id.* at 306, 646 P.2d at 1218; it does not address the issues presented in this case.

[4]This understanding of NRS 189.030 and the district court's authority is consistent with the procedure followed in the First Judicial District Court with respect to appeals of criminal matters from justice and municipal court. *See* FJDCR 33(2) ("At the time of filing of the Notice of Appeal, the appellant shall file a request with the Justice Court or Municipal Court that proceedings be transcribed."). It also is consistent with our own appellate rules, *see* NRAP 9(a)(1)(B), which may provide guidance to the district courts even though they are not binding on the district courts acting in their appellate capacity, *see* NRAP 1(a).

to designate the transcripts necessary for the appeal so that the appellant may control the costs of the appeal.[5]

[Headnote 10]

Because the municipal court did not have a duty to order the preparation of the transcripts for Sparks' misdemeanor appeal and the district court may require a nonindigent misdemeanor appellant to obtain and pay for transcripts for a misdemeanor appeal, we conclude that extraordinary relief is not warranted.[6]

B.

[Headnote 11]

Sparks argues that the district court should decide misdemeanor appeals on the merits and that the district court acted arbitrarily and capriciously in dismissing his appeal because he failed to obtain the transcripts. The City of Henderson argues that dismissal is an appropriate sanction when a misdemeanor appellant fails to obtain transcripts after being directed to do so.

[Headnotes 12-14]

The statutory provisions relating to misdemeanor appeals in NRS Chapter 189 do not expressly address dismissal of an appeal for the failure to obtain transcripts. *Cf.* NRS 189.060(1)(a), (b) (providing that a misdemeanor appeal may be dismissed for "failure to take the same in time" and for "failure to appear in the district court when required"); NRS 189.065(1) (requiring dismissal if an appeal is not perfected by application by the appellant within 60 days after the filing of the notice of appeal to have the appeal set for a hearing). We have recognized, however, the court's power to dismiss an appeal outside of any statutory authority. For instance, this court's appellate rules recognize the authority of the appellate court to dismiss an appeal if the parties fail to comply with this court's rules regarding transcripts. *See* NRAP 9(a)(7). Such authority derives from the court's inherent authority, which includes those powers "which 'are necessary to the exercise of all others.'" *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980) (quoting *United States v. Hudson*, 11 U.S. 32, 34 (1812)). A court exercising its appellate jurisdiction must be able to require the orderly and timely processing of appeals with rules and sanctions for the failure to follow those rules. And while not specifically addressing the appellate jurisdiction of the court, this court has recognized the district court's inherent "power to dismiss a case for failure to prosecute or to comply with its

[5]The costs of transcripts may not be assessed to an indigent appellant, although an appellant who is indigent still bears the burden of requesting transcripts for a misdemeanor appeal.

[6]There has been no allegation that Sparks is indigent.

orders . . . within the bounds of sound judicial discretion, independent of any authority granted under statutes or court rules." *Moore v. Cherry*, 90 Nev. 390, 393, 528 P.2d 1018, 1020 (1974). We conclude that the inherent authority of the district court acting in its appellate jurisdiction permits the court to dismiss an appeal for failure to prosecute or comply with the court's orders, including the failure to comply with an order to obtain transcripts for the appeal.

[Headnotes 15-18]

Although the district court exercising its appellate jurisdiction has the inherent authority to dismiss an appeal for the failure to prosecute or comply with the court's orders, this power should be exercised circumspectly. Inherent powers, "[b]ecause of their very potency, . . . must be exercised with restraint and discretion" and a "primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991). The failure to obtain transcripts for the court's review undoubtedly presents an obstacle to the court's ability to efficiently process an appeal and to consider the merits of an appeal. But dismissal of an appeal is an extreme remedy. A more appropriate sanction for the failure to obtain transcripts in most circumstances would be to allow the misdemeanor appellant to proceed with the appeal and bear the risk that the court will reject any arguments on appeal that are not supported by the record transmitted by the trial court. *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."); *State v. Stanley*, 4 Nev. 71, 75 (1868) ("[T]he burden of establishing error is upon the appellant.").

In this case, Sparks disregarded the district court's repeated directions to obtain the transcripts, and this resulted in his failure to prosecute his appeal. The district court's decision to dismiss Sparks' appeal was not founded on prejudice or preference, nor was it contrary to established law. *See Armstrong*, 127 Nev. at 931-32, 267 P.3d at 780. Accordingly, we conclude that the district court did not act arbitrarily and capriciously in dismissing Sparks' appeal and therefore extraordinary relief is not warranted.[7]

HARDESTY and SAITTA, JJ., concur.

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[7]We deny Sparks' motions to file a reply and for leave to file additional pro se documents.

ANTHONY CASTANEDA, APPELLANT, *v.*
THE STATE OF NEVADA, RESPONDENT.

No. 64515

June 16, 2016 373 P.3d 108

Appeal from a judgment of conviction, pursuant to jury verdict, of 15 counts of possession of child pornography. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

The supreme court, PICKERING, J., held that: (1) defendant's simultaneous possession at one time and place of 15 images depicting child pornography constituted a single violation of statute, prohibiting possession of visual presentation depicting sexual conduct of child; and (2) the district court did not abuse its discretion in denying defendant's request to call an unnoticed expert witness.

Affirmed in part, vacated in part, and remanded.

Philip J. Kohn, Public Defender, and *P. David Westbrook* and *Audrey M. Conway*, Deputy Public Defenders, Clark County, for Appellant.

Adam Paul Laxalt, Attorney General, Carson City; *Steven B. Wolfson*, District Attorney, *Steven S. Owens*, Chief Deputy District Attorney, and *Alexander G. Chen*, Deputy District Attorney, Clark County, for Respondent.

1. DOUBLE JEOPARDY.
   Determining the appropriate unit of prosecution, for double jeopardy purposes, presents an issue of statutory interpretation and substantive law. U.S. CONST. amend. 5.
2. CRIMINAL LAW.
   The supreme court's review is de novo with respect to questions of statutory interpretation.
3. CRIMINAL LAW.
   Criminal statutes may use the word "any" to catalog the objects of the prohibition the statute states.
4. CRIMINAL LAW.
   On appeal, the rule of lenity, which teaches that ambiguity in a statute defining a crime or imposing a penalty should be resolved in a defendant's favor, applies only if a reasonable doubt persists after all the legitimate tools of statutory interpretation have been used.
5. OBSCENITY.
   Purpose of Nevada's child pornography statutes is to protect children from the harms of sexual exploitation and prevent the distribution of child pornography. NRS 200.700 *et seq.*
6. CRIMINAL LAW; OBSCENITY.
   Intent of the Legislature in passing child pornography statutes is to criminalize the use of children in the production of child pornography, not to punish a defendant for multiple counts of production dictated by the number of images taken of one child, on one day, all at the same time. NRS 200.700 *et seq*.

7. Criminal Law.
   Consistent with the rule of lenity, the supreme court is obligated to construe statutes that contain ambiguity in the proscribed conduct in the accused's favor.
8. Criminal Law.
   Defendant's simultaneous possession at one time and place of 15 images depicting child pornography constituted a single violation of statute, prohibiting possession of visual presentation depicting sexual conduct of person under 16 years of age. NRS 200.730.
9. Criminal Law.
   Conviction will survive a sufficiency of the evidence challenge if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.
10. Obscenity.
    Evidence was sufficient to support defendant's conviction for knowingly and willfully possessing image files depicting sexual conduct of a child; although defendant elicited testimony that a virus could have accessed the files, other testimony established that the downloads were more likely the product of conscious human endeavor, and while defendant's housemates at one time had access to defendant's desktop, other evidence indicated that they did not have access to defendant's password-protected user account on the desktop or his laptop, and same images appeared on more than one device, and when defendant saw that a detective had opened one of the illegal images, defendant commented that "Those are kids," and he was sorry. NRS 200.730.
11. Criminal Law.
    The district court did not abuse its discretion in denying defendant's request to call an unnoticed expert witness in prosecution of defendant for knowingly and willfully possessing image files depicting sexual conduct of a child; detective testified at the preliminary hearing that the recovery of the file remnants meant that it was viewed or was on that computer at one time and was possibly or probably deleted, or it was being downloaded from a website and did not completely download, it was defendant, not the State, who elicited the surprise testimony from detective on cross-examination, defendant was able to develop the points he wanted to make on further cross-examination, and defendant had already obtained a continuance of the trial to permit him to retain a computer expert, which he did, and he simply elected not to notice that expert as a potential witness. NRS 200.730.

Before the Court En Banc.

OPINION

By the Court, Pickering, J.:

Nevada law makes it a felony to possess child pornography. The question before the court is whether appellant Anthony Castaneda committed 15 felonies or one when he simultaneously possessed 15 digital images of children engaged in sexual conduct. We hold that, in the circumstances of this case, he committed a single, category B felony. Castaneda's remaining claims of error fail. We therefore affirm in part, vacate in part, and remand.

I.

[Headnotes 1, 2]

The charges against Castaneda originated in a report by a former housemate of his to the Las Vegas Metropolitan Police Department (LVMPD). The former housemate reported that, after moving out of Castaneda's house, she and her boyfriend found mixed in with their belongings a USB flash drive similar to one Castaneda customarily kept on his key chain. When they opened the flash drive, they discovered that it held copies of Castaneda's driver's license, birth certificate, Social Security card and military records, as well as a file of pornographic images, some depicting children.

LVMPD obtained a search warrant to view the contents of the flash drive. On the flash drive, in addition to Castaneda's identification, detectives found a subfolder named "girl pics." This subfolder contained pornographic images, including several that an FBI database established as known images of child pornography downloadable from the World Wide Web. Based on this evidence, detectives obtained a search warrant for Castaneda's home and home computers. The home computers, a desktop and a laptop, contained each of the child pornography images found on the flash drive and several additional known images of child pornography as well, for a total of 15 separate depictions, with most being found on both the desktop and the laptop. Castaneda was interviewed by a detective while the search was underway. After the interview concluded, he came into the room where another detective had one of the illegal images open on the computer. Reportedly, Castaneda saw what was on the screen and said, "Those are kids, I'm sorry."

The State charged Castaneda with 15 counts of knowingly and willfully possessing 15 image files depicting sexual conduct of a child in violation of NRS 200.730. Before trial, the State and Castaneda stipulated not to publish the charged images in open court but, rather, to put copies of them into evidence in a sealed envelope for the jury to examine if it so chose. They further stipulated, quoting language from NRS 200.730, that each of the 15 charged images depicted a child "under the age of 16 years as the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct."

After a six-day trial, the jury convicted Castaneda on all 15 counts. The district court judge sentenced Castaneda to a minimum of 28 months and maximum of 72 months on each count, the sentences to run concurrently. The district court suspended the sentences and placed Castaneda on probation for a 5-year term. Castaneda appeals.

II.

[Headnotes 1, 2]

Castaneda argues that 14 of his 15 convictions for possessing child pornography must be vacated because NRS 200.730 penal-

izes possession, and the State proved only "a singular act of digital possession of items seized on the day the police took the computers into police custody."[1] Castaneda casts his argument in constitutional terms, citing the protection against "multiple punishments for the same offense" afforded by the double jeopardy clauses of the United States and Nevada Constitutions. U.S. Const. amend. V; Nev. Const. art. 1, § 8. But what Castaneda's challenge asks us to do is to read NRS 200.730, the statute under which he was charged, and determine the unit of prosecution it allows in this case, specifically, whether Castaneda's simultaneous possession of 15 digital images of child pornography constitutes one crime or 15 crimes. "While often discussed along with double jeopardy," *Wilson v. State*, 121 Nev. 345, 355, 114 P.3d 285, 292 (2005), "determining the appropriate unit of prosecution presents an issue of statutory interpretation and substantive law." *Jackson v. State*, 128 Nev. 598, 612, 291 P.3d 1274, 1278 (2012) (internal quotations omitted); *see* Akhil Reed Amar, *Double Jeopardy Law Made Simple*, 106 Yale L.J. 1807, 1817-18 (1997) (noting that "it is up to the legislature to decide whether planting and exploding a bomb should be one crime or two (because the bomb was first planted, then exploded) or fifty (because fifty people died) or 500 (because 450 more were at risk) or 1,000,500 (because the bomb also destroyed one million dollars of property and each dollar of bomb damage is defined as a separate offense"); on such questions, the double jeopardy clause is "wholly agnostic" and "imposes no limits on how the legislature may carve up conduct into discrete legal offense units"). As with other questions of statutory interpretation, our review is de novo, *Firestone v. State*, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004), and begins with the statutory text, *Wilson*, 121 Nev. at 356, 114 P.3d at 293.

A.

Castaneda was charged with violating NRS 200.730, which reads in full as follows:

> *A person who knowingly and willfully has in his or her possession* for any purpose *any film, photograph or other visual presentation* depicting a person under the age of 16 years as the subject of a sexual portrayal or engaging in or simulating, or assisting others to engage in or simulate, sexual conduct:
>
> 1. For the first offense, *is guilty of a category B felony* and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than $5,000.

[1]The State does not question that Castaneda's post-trial motion to vacate the jury's verdict as to counts 2-15 adequately preserved this issue.

> 2. For any subsequent offense, is guilty of a category A felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of life with the possibility of parole, and may be further punished by a fine of not more than $5,000.

(Emphases added.)

To the State, NRS 200.730 is plain and unambiguous: It authorizes a separate conviction for each pornographic image possessed. Emphasizing the word "any" in the phrase "*any* film, photograph or other visual presentation," the State maintains that NRS 200.730 makes it a crime to possess even a single photograph depicting child pornography. From this it follows, the State submits, that each such photograph or image a person possesses constitutes a separate crime.

The State's explication of NRS 200.730's text is flawed. To be sure, the statute authorizes prosecution based on possession of a single image depicting child pornography. But this does not mean that each additional image possessed necessarily gives rise to a separate prosecutable offense.

[Headnote 3]

A number of disparate criminal statutes use "any" as NRS 200.730 does: to catalog the objects of the prohibition the statute states. *See United States v. Kinsley*, 518 F.2d 665, 667-68 (8th Cir. 1975) (providing examples of such statutes and the cases construing them, including *Bell v. United States*, 349 U.S. 81 (1955), in which the Supreme Court famously held that the simultaneous transportation of two women across state lines constituted one, not two, violations of the Mann Act, which was ambiguous in that it made it a crime to knowingly transport "any woman or girl" across state lines for immoral purposes without defining the unit of prosecution). The word "'any' has multiple, conflicting definitions, including (1) one; (2) one, some, or all regardless of quantity; (3) great, unmeasured, or unlimited in amount; (4) one or more; and (5) all." *State v. Sutherby*, 204 P.3d 916, 920 (Wash. 2009) (citing *Webster's Third New International Dictionary* 97 (1976)). For this reason, courts interpreting forms of criminal statutes similar to NRS 200.730 have rejected the proposition that the use of the word "any" to introduce a list of prohibited objects automatically authorizes a per-object unit of prosecution. In fact, contrary to the reading the State advocates in this case, "the word 'any' has 'typically been found ambiguous in connection with the allowable unit of prosecution,' for it contemplates the plural, rather than specifying the singular." *United States v. Coiro*, 922 F.2d 1008, 1014 (2d Cir. 1991) (quoting *Kinsley*, 518 F.2d at 668).

> Significantly, in many of the cases in which the courts have found a *Bell*-type ambiguity [as to the proper unit of pro-

> secution], the object of the offense has been prefaced by the word "any." Seemingly this is because "any" may be said to fully encompass (*i.e.*, not necessarily exclude any part of) plural activity, and thus fails to unambiguously define the unit of prosecution in singular terms.

Kinsley, 518 F.2d at 667.

B.

[Headnote 4]

Since the text of NRS 200.730 does not unambiguously establish whether Castaneda was properly prosecuted on a per-image basis, we turn to other legitimate tools of statutory interpretation, including related statutes, relevant legislative history, and prior judicial interpretations of related or comparable statutes by this or other courts. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 298-99 (2012). Only then, if "a reasonable doubt persists" after "all the legitimate tools of interpretation have been applied," do we reach the rule of lenity urged on us by Castaneda, which teaches that "[a]mbiguity in a statute defining a crime or imposing a penalty should be resolved in a defendant's favor." *Id.* at 299 (quotation and footnotes omitted); *see State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1227 (2011).

1.

NRS 200.730 is one of a series of statutes, NRS 200.700 through NRS 200.760, codified under the heading "Pornography Involving Minors." The lead definitional statute, NRS 200.700, defines "sexual conduct" and "sexual portrayal," both phrases that are used in NRS 200.730, but it does not define "film, photograph or other visual presentation," the objects whose possession NRS 200.730 prohibits. The terms "film," "photograph," and "other visual presentation" appear, though, in NRS 200.700(1), which defines "[p]erformance," the use of a minor in which is made criminal by NRS 200.710 and NRS 200.720, to mean "any play, *film*, *photograph*, computer-generated image, electronic representation, dance *or other visual presentation*." (emphases added).[2]

The legislative history of NRS 200.730 sheds little light on the unit of prosecution it authorizes. Enacted in 1983, NRS 200.730's prohibition against possession of child pornography was added al-

[2]As originally enacted, NRS 200.700(1) more closely tracked NRS 200.730, in that it defined "performance" as to include "any play, film, photograph, dance or other visual presentation." *See* 1983 Nev. Stat., ch. 337, § 2, at 814. The 1995 Legislature amended NRS 200.700(1) to add "computer-generated image" and "electronic representation" to its definition of performance, *see* 1995 Nev. Stat., ch. 389, § 4, at 950, but it did not make parallel conforming amendments to NRS 200.730.

most as an afterthought to A.B. 189, which proposed the statutes criminalizing the production and distribution of child pornography that became NRS 200.700 through NRS 200.760. Hearing on A.B. 189 Before the Senate Judiciary Comm., 62d Leg. (Nev., March 31, 1983). As originally adopted, NRS 200.730 made the possession of child pornography a misdemeanor. *See* 1983 Nev. Stat., ch. 337, § 4, at 814. The Legislature has since amended NRS 200.730 several times, but each amendment only increased the penalties for possession without providing insight into the unit of prosecution. 1985 Nev. Stat., ch. 459, § 1, at 1412-13; 1987 Nev. Stat., ch. 369, § 1, at 846; 1995 Nev. Stat., ch. 443, § 77, at 1196; 2005 Nev. Stat, ch. 507, § 29, at 2876. For the near quarter century NRS 200.730 has been on the books, its core prohibition—"possession" of "any film, photograph or other visual presentation" of a minor engaged in sex—has not changed, despite the advent of the Internet and the explosion in the market for child pornography that advanced digital technology has brought.[3] While digital images downloaded from the Internet no doubt qualify as a type of "film, photograph or other visual presentation," neither the text of NRS 200.730 nor its legislative history answers the unit-of-prosecution question this case poses.

2.

In *Wilson v. State*, 121 Nev. 345, 114 P.3d 285 (2005), we considered the unit of prosecution authorized by NRS 200.710, which punishes as a category A felony the use of a minor in a "performance" involving the minor in "sexual conduct" or "sexual portrayal." Wilson took four Polaroid photographs of a child he persuaded to undress and sexually pose for him. *Id.* at 357, 114 P.3d at 293. For this he was charged with and convicted of four counts of violating NRS 200.710, penalizing the use of a minor in a "performance." *Id*. at 355, 114 P.3d at 292.

[Headnotes 5, 6]

On appeal, Wilson contended that NRS 200.710 outlawed the use of a child in a performance and that, because the child engaged in

[3]Richard Wortley & Stephen Smallbone, U.S. Dep't of Justice, *Child Pornography on the Internet* 12 (2006); *see Child Pornography*, U.S. Dep't of Justice, https://www.justice.gov/criminal-ceos/child-pornography (last updated June 3, 2015) ("By the mid-1980's, the trafficking of child pornography within the United States was almost completely eradicated through a series of successful campaigns waged by law enforcement. . . . Unfortunately, the child pornography market exploded in the advent of the Internet and advanced digital technology."); *see also Overview and History of the Violent Crimes Against Children Program*, FBI, https://www.fbi.gov/about-us/investigate/vc_majorthefts/cac/overview-and-history (last visited June 6, 2016) ("More online incidents of these crimes are being identified for investigation than ever before. Between fiscal years 1996 and 2007, the number of cases opened throughout the FBI catapulted from 113 to 2,443.").

a single performance during which Wilson took four separate pictures, only one violation of NRS 200.710 had occurred. *Id*. at 357, 114 P.3d at 293. The State countered that, because NRS 200.700(1) defines "performance" to include "any . . . film, photograph, . . . or other visual presentation," it had proven four "performances" and, so, four violations of NRS 200.710. *Id*. We reversed three of the four counts of violating NRS 200.710 that Wilson had been convicted of. *Id*. at 358, 114 P.3d at 294. "[N]otwithstanding th[e] broad definition [of performance], it is the use of a child in a sexual performance that is prohibited under NRS 200.710, and that performance can be of any type and documented in any manner." *Id.* at 357, 114 P.3d at 294.

> The purpose of Nevada's child pornography statutes is to protect children from the harms of sexual exploitation and prevent the distribution of child pornography. As such, the intent of the Legislature in passing NRS 200.700 to 200.760, inclusive, was to criminalize the use of children in the production of child pornography, not to punish a defendant for multiple counts of production dictated by the number of images taken of one child, on one day, all at the same time. *If the Legislature intended this statute to punish a party for every individual photograph produced of a sexual performance, it certainly could have effectuated that intent in the statute.* Therefore, we conclude that the facts of this case demonstrate a single violation of NRS 200.710, not multiple acts in violation of the law.

Id. at 358, 114 P.3d at 294 (footnote omitted; emphasis added); *see Casteel v. State*, 122 Nev. 356, 362, 131 P.3d 1, 5 (2006) (upholding multiple convictions of violating NRS 200.710 where the minor was photographed in separate sexual episodes but reversing all but one of the convictions where the photographs were taken during a single episode).

The State argues that *Wilson* requires affirmance of Castaneda's per-image-based convictions. In addition to his convictions for violating NRS 200.710, Wilson was, like Castaneda, charged with and convicted of four counts of possession of child pornography under NRS 200.730 based on the four Polaroid pictures he took during the child's performance. While the State is correct that this court affirmed Wilson's convictions under NRS 200.730, Wilson did not raise a unit of prosecution challenge to his possession-of-child-pornography charges, as Castaneda does here. We decline to read into *Wilson* a holding this court was not asked to consider and did not make.

3.

While *Wilson* does not directly decide the unit of prosecution question this case presents, it does suggest the appropriate approach to

take. Much as NRS 200.710 outlaws a pornographic "performance" by a child, which NRS 200.700(1) broadly defines to include "any play, film, photograph, computer-generated image, electronic representation, dance or other visual presentation," NRS 200.730 outlaws "possession" of "any film, photograph or other visual presentation" constituting child pornography. *Wilson* was concerned that counting each photograph as a separate "performance" for purposes of NRS 200.710 would lead, in the case of a moving-picture performance, to thousands of separate offenses, one per each screen comprising the film, a result the court deemed "absurd." *Wilson*, 121 Nev. at 357, 114 P.3d at 294. While NRS 200.730 presents a different question than NRS 200.710, given that it prohibits "possession" of child pornography, not "use" of a minor in a pornographic performance, the number of electronic images downloadable in a single Internet session similarly counsels against the rudimentary, per-image unit of prosecution for which the State advocates absent clear legislative direction to that effect.

Courts elsewhere have divided on the unit of prosecution in possession-of-child-pornography cases involving statutes like NRS 200.730. *Compare People v. Hertzig*, 67 Cal. Rptr. 3d 312, 316 (Ct. App. 2007) (holding that the defendant's possession of a laptop with 30 different child pornographic videos constituted a "solitary act of possessing the proscribed property," and reversing all but one count); *Commonwealth v. Rollins*, 18 N.E.3d 670, 678 (Mass. 2014) (holding that "a defendant's possession of a single cache of one hundred offending photographs in the same place at the same time gives rise to a single unit of prosecution" for illegal possession of child pornography); *State v. Liberty*, 370 S.W.3d 537, 548, 553 (Mo. 2012) (holding child pornography possession statute was ambiguous because "the proscription . . . against possession of '*any* obscene material' . . . reasonably could be interpreted to permit either a single prosecution or multiple prosecutions for a single incidence of possession of eight still photographs of child pornography," and concluding that, in light of its holding of ambiguity, "the rule of lenity *must* be applied and the statute *must* be interpreted favorably for the defendant"); *State v. Olsson*, 324 P.3d 1230, 1231, 1235, 1239 (N.M. 2014) (concluding that "the use of the word 'any' in the statute only compounds the ambiguity," and thus, "because the language is ambiguous and the history and purpose do not offer any further clarity," the rule of lenity applies, allowing only one count of possession of child pornography); *State v. Pickett*, 211 S.W.3d 696, 706 (Tenn. 2007) (holding that where the state failed to establish that the images of illegal child pornography were downloaded from more than one website at more than one time, the evidence established only one crime), *and Sutherby*, 204 P.3d at 922 ("Given the con-

text of the language used in the child pornography statute, and our repeated construction of 'any' as including 'every' and 'all,' we hold that the proper unit of prosecution under former RCW 9.68A.070 is one count per possession of child pornography, without regard to the number of images comprising such possession or the number of minors depicted in the images possessed."), *with State v. McPherson*, 269 P.3d 1181, 1184-85 (Ariz. Ct. App. 2012) ("[U]nder our own statutes, we can only conclude the legislature intended separate punishments for separate or duplicate images of child pornography, even when those images are acquired at the same time."); *Fink v. State*, 817 A.2d 781, 788 (Del. 2003) (holding that each individual visual depiction of child pornography possessed constituted a separate offense); *Williams v. Commonwealth*, 178 S.W.3d 491, 495 (Ky. 2005) ("The singular form of 'photograph' read in conjunction with the term 'any' clearly indicates that the Legislature intended prosecution for each differing photograph."); *State v. Fussell*, 974 So. 2d 1223, 1235 (La. 2008) ("[W]e hold that the language of [the statute] evidences a legislative intent to allow a separate conviction on a separate count for each child, in each sexual performance in which that child is victimized, that is captured in any photographs, films, videotapes, or other visual reproductions that a defendant intentionally possesses."); *Peterka v. State*, 864 N.W.2d 745, 750, 753-54 (N.D. 2015) (upholding conviction for 119 counts of possession of child pornography found on the defendant's computer); *and Commonwealth v. Davidson*, 938 A.2d 198, 219 (Pa. 2007) (concluding that the word "any" followed by a list of singular objects demonstrated the general assembly's intent to make each image of child pornography a separate crime).

[Headnote 7]

We recognize the policy goals behind tying punishment to the number of child victims depicted in, and thus harmed by, the images possessed. Consistent with the rule of lenity, though, we are obligated to construe statutes that contain ambiguity in the proscribed conduct in the accused's favor. *Firestone v. State*, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004) ("A court should normally presume that a legislature did not intend multiple punishments for the same offense absent a clear expression of legislative intent to the contrary. Criminal statutes must be strictly construed and resolved in favor of the defendant.") (footnote and internal quotation omitted); *see Liberty*, 370 S.W.3d at 551 ("While we agree with the State that each photograph exploits the minor and adds to the market, it is for the legislature to define what it desires to make the allowable unit of prosecution. The legislature has not made the number of children victimized the basis of separate units of prosecution in section 573.037.") (internal quotations and citations omitted).

[Headnote 8]

Here, the State defends Castaneda's multiple convictions on the basis that police found 15 distinct images depicting child pornography on his home computers. When LVMPD searched Castaneda's home, they found both the laptop and the desktop, which together held all 15 charged images, some of them evident duplicates, in the same room in his home. And though the flash drive came into law enforcement's possession before the search and from a third party, the flash drive contained images that Castaneda copied from or to the laptop and desktop. The State's theory presented in closing was that Castaneda downloaded the images to the laptop, then copied those images to the flash drive and the desktop, assertions supported by LVMPD detectives' testimony. The State prosecuted the images as a group and did not attempt to show, other than that there were 15 different images, individual distinct crimes of possession. *See, e.g.*, *Pickett*, 211 S.W.3d at 706 (holding that evidence of possessing multiple images of child pornography on a computer constituted one crime because the "State did not otherwise attempt to distinguish the offenses by showing that the crimes were separated by time or location or by otherwise demonstrating that Pickett formed a new intent as to each image"). This case does not require us to decide whether distinct downloads at different times and in different locations would establish separate units of prosecution as some courts have held. *See State v. Roggenbuck*, 387 S.W.3d 376, 381-82 (Mo. 2012) (distinguishing *Liberty*, 370 S.W.3d at 551, on the basis that "the charges and the evidence established only that Liberty possessed multiple images of child pornography at the same time," thus constituting a single offense, and upholding multiple convictions where the acts of acquiring and possessing pornography were separated by time and place); *State v. Sutherby*, 158 P.3d 91, 94 n.4 (Wash. Ct. App. 2007) (holding that the simultaneous possession of pornographic images constituted a single offense but stressing that, "We do not address special circumstances not present here, such as possession in two distinct locations or at two distinct times."), *aff'd*, 204 P.3d 916 (Wash. 2009). As in *Liberty* and *Sutherby*, we hold only that, consistent with their reasoning and the rule of lenity long established in our law, Castaneda's simultaneous possession at one time and place of 15 images depicting child pornography constituted a single violation of NRS 200.730.

III.

[Headnotes 9, 10]

Castaneda raises a number of other issues on appeal, which we conclude are either meritless or harmless and, thus, only briefly address. Chief among them is Castaneda's challenge to the sufficiency

of the evidence. This challenge rests on Castaneda's charge that the State failed to prove "that it was Castaneda, and not a virus, automated program, or another individual who knowingly and willfully possessed the [pornographic] images." A criminal conviction will survive a sufficiency of the evidence challenge if, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Grey v. State*, 124 Nev. 110, 121, 178 P.3d 154, 162 (2008) (quoting *Nolan v. State*, 122 Nev. 363, 377, 132 P.3d 564, 573 (2006)). Here, although Castaneda elicited testimony that a virus *could* have accessed the files, other testimony established that the downloads were more likely the product of conscious human endeavor. Similarly, while Castaneda's housemates at one time had access to Castaneda's desktop, other evidence indicated that they did not have access to Castaneda's password-protected user account on the desktop or his laptop. The jury also was entitled to consider the fact that the same images appeared on more than one device and that, when he saw that a detective had opened one of the illegal images, Castaneda commented that "Those are kids, I'm sorry." Viewed in the light most favorable to the State, the evidence was sufficient to support the jury's conviction of Castaneda for knowingly and willfully possessing the charged images in violation of NRS 200.730.

[Headnote 11]

Castaneda next challenges the district court's refusal to permit him to call a previously unnoticed expert witness, a decision we review for an abuse of discretion. *See Mitchell v. State*, 124 Nev. 807, 819, 192 P.3d 721, 729 (2008). Castaneda asks us to excuse his tardy notice because Detective Ehlers's testimony that the files found in the unallocated space of Castaneda's desktop and laptop had previously been deleted by a user caught him by surprise. But Castaneda's argument misses the facts that Detective Ehlers testified at the preliminary hearing that the recovery of the file remnants "means that it was viewed or was upon that computer at one time and was possibly or probably deleted, or as in this case, it was being downloaded from a website [and] did not completely download," that it was Castaneda, not the State, who elicited the surprise testimony from Detective Ehlers on cross-examination, and that Castaneda was able to develop the points he wanted to make on further cross-examination. Also, Castaneda had already obtained a continuance of the trial to permit him to retain a computer expert, which he did; he simply elected not to notice that expert as a potential witness. The district court did not abuse its discretion in denying his request to call an unnoticed expert witness.

IV.

We hold that the State proved one, not 15, violations of NRS 200.730 but otherwise find no reversible error. We therefore affirm in part, vacate in part, and remand for entry of an amended judgment of conviction.

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

IN THE MATTER OF THE GUARDIANSHIP OF THE PERSON AND ESTATE OF JEAN RUTH ECHEVARRIA, AN ADULT WARD.

MICHAEL A. ECHEVARRIA, APPELLANT, *v.* ROBERT L. ANSARA; AND ANGEL ECHEVARRIA, RESPONDENTS.

No. 65598

June 30, 2016 373 P.3d 883

Appeal from a district court order in a guardianship proceeding under NRS Chapter 159, authorizing the distribution of estate funds to pay administrative claims. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

In guardianship proceedings, successor guardian of ward's estate petitioned for distribution of funds held in operating account tied to real property in which ward had held partnership interest prior to sale of property. The district court entered judgment on stipulation reached by guardian, guardian's attorney, and other attorney. Ward's judgment creditor appealed. The supreme court, SAITTA, J., held that: (1) finding that guardian, guardian's attorney, and attorney for former guardian could stipulate to distribution of funds amongst themselves, without approval of ward's judgment creditor, was clearly erroneous; (2) statute governing distribution of ward's property controlled distribution of funds if source of funds was proceeds from sale of property; (3) distribution order controlled distribution of funds if source of funds was not proceeds from sale of property but instead was excess monthly rental income that ward received prior to sale; (4) distribution of funds was governed by statutes governing claims against ward's estate, payment of guardian's and guardian's attorney fees, and compensation and expenses of guardian if source of funds was neither proceeds from sale of property nor rental income; and (5) stipulation offered as against judgment creditor for distribution of funds in account was invalid.

Vacated and remanded.

Karen K. Wong, Las Vegas, for Appellant.

Trent, Tyrell & Phillips and *Elyse M. Tyrell*, Las Vegas, for Respondent Robert L. Ansara.

Solomon Dwiggins & Freer, Ltd., and *Mark A. Solomon*, Las Vegas, for Respondent Angel Echevarria.

1. Appeal and Error.
   A district court's factual determinations will be upheld if not clearly erroneous and if supported by substantial evidence.
2. Mental Health.
   The district court's finding that successor guardian of ward's estate, guardian's attorney, and attorney for former guardian could stipulate to distribution amongst themselves of funds in operating account tied to real property in which ward had partnership interest before property was sold, without approval of ward's judgment creditor, was clearly erroneous, when the district court made no finding as to whether source of funds in account was sale of property, and therefore subject to statute governing distribution of ward's property, and record was silent as to whether sale proceeds were source of funds in operating account. NRS 159.1365.
3. Mental Health.
   Statute governing distribution of property of ward's estate controlled distribution of funds in operating account tied to real property in which ward had partnership interest if source of funds was sale of real property, and thus, if source of funds in account was sale of real property, then proceeds remaining following payment of expenses of sale and mortgage should have been distributed to ward's judgment creditor who had judgment lien on property. NRS 159.1365.
4. Mental Health.
   Distribution order that directed successor guardian of ward's estate to utilize up to $3,000 of ward's monthly income to satisfy, on pro-rated basis, judgment lien in favor of ward's judgment creditor, attorney fees and costs, and guardian fees and costs, governed distribution of funds in operating account tied to real property in which ward had held partnership interest prior to its sale, if source of funds was not proceeds from sale of property but instead was excess monthly rental income that ward received prior to sale.
5. Mental Health.
   If source of funds in operating account tied to real property in which ward had held partnership interest in prior to sale of property was neither proceeds from sale nor ward's monthly rental income received from property prior to its sale, then distribution of funds was governed by statutes governing claims against ward's estate, payment of guardian's and guardian's attorney fees, and compensation and expenses of guardian. NRS 159.103, 159.105, 159.183, 159.1365.
6. Stipulations.
   Stipulation between ward's successor guardian, guardian's attorney, and other attorney as to distribution of funds in operating account tied to real property that ward had partnership interest in prior to sale of property, was invalid, when stipulation, which was offered against claim to funds made by ward's judgment creditor who held judgment lien on property, was entered into without judgment creditor's approval.

7. Stipulations.

A valid stipulation requires mutual assent to its terms and either a signed writing by the party against whom the stipulation is offered or an entry into the court minutes in the form of an order.

Before Hardesty, Saitta and Pickering, JJ.

OPINION

By the Court, Saitta, J.:

This opinion addresses whether NRS 159.1365 governs the distribution of funds in an operating account tied to real property. We hold that the determination of whether NRS Chapter 159 or a district court's distribution order applies requires a finding by the district court identifying the source of the funds. If the source of the funds is the sale of real property, NRS Chapter 159 applies. If the source of the funds was not the sale of the California property, the district court must determine whether its distribution order or NRS 159.103, NRS 159.105, and NRS 159.183 apply.

This opinion further addresses the requirements for a valid stipulation. We hold that a valid stipulation requires mutual assent to its terms and either the presence of all interested parties or a signed writing indicating assent by the party against whom the stipulation is offered.

FACTUAL AND PROCEDURAL HISTORY

Robert Ansara is the successor guardian of the estate of Jean Ruth Echevarria, having been appointed to serve in that capacity in 2007, and is also the successor trustee of Jean's living trust. Angel Echevarria is Jean's daughter and previous guardian. Michael Echevarria is Jean's son and judgment creditor, pursuant to an earlier judgment against his mother and her trust entered in the state of Tennessee, which he later domesticated in California and Nevada.[1] Michael's judgment lien was in the amount of $625,814.

During the course of the guardianship proceedings, the district court entered several orders authorizing the payment of Ansara's guardian fees and costs, as well as payment of attorney fees and costs incurred by Elizabeth Brickfield of Lionel Sawyer & Collins and Trent, Tyrell & Associates, on behalf of the original and successor guardian and trustee. This included a district court distribution order entered on August 15, 2012.

Ansara also filed a report with the district court regarding Jean's trust asset, in which it was reported that an offer had been submitted

[1]In the interest of clarity, because some of the parties involved share a last name, they are referred to by their first names.

and that it had been accepted by Ansara for the purchase of real property located in California, in which Jean had a partnership interest. Ansara indicated to the district court that Michael's judgment lien from an earlier judgment that he obtained against Jean and her trust in the state of Tennessee would be partially satisfied from the proceeds of the sale. Ansara further informed the court that Jean would not receive any funds from the sale but that Michael had agreed to assist in funding the guardianship estate so as to provide for his mother's basic needs.

The district court approved and ratified Ansara's plan to sell the California property and authorized and directed the sale thereof. Ansara stated that after transaction costs, satisfaction of the existing mortgage, and an IRS lien, the remaining sale proceeds of approximately $200,000 were to be paid to Michael to partially satisfy his judgment claim.

After the sale of the California property had closed, Angel petitioned the district court for distribution of money held in an operating account associated with the California property. The district court held a hearing on the distribution petition. Ansara, Brickfield, and Ansara's attorney Elyse M. Tyrell of Trent, Tyrell & Associates were present for the hearing. Michael did not attend the hearing. Ansara represented that there were funds currently held in the operating account and that he objected to Michael receiving any of those funds as Michael had already received the net proceeds from the sale of Jean's property. Ansara proposed that he, Brickfield, and Tyrell distribute the funds amongst themselves, and they stipulated to an agreement on the appropriate distribution.

Following the hearing, the district court entered the stipulation and order, without obtaining Michael's participation, signature, or agreement. On appeal, Michael raises the following issues: (1) whether the district court erred by failing to distribute the operating account funds in accordance with NRS 159.1365; and (2) whether the district court erred by approving the stipulation without Michael's participation, signature, or agreement.

DISCUSSION

The district court erred by failing to identify the source of the funds in the operating account

[Headnotes 1, 2]

A district court's factual determinations will be upheld if not clearly erroneous and if supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

Michael argues that the source of the funds in the operating account was the sale of the California real property, and therefore, the distribution of those funds is governed by NRS 159.1365. In the alternative, Michael argues that the funds should be distributed in

accordance with the district court's August 15, 2012, order. Conversely, Ansara argues that the funds were not from the sale of the real property, and therefore, NRS 159.1365, regarding distribution of money from the sale of a ward's real property, does not apply to them.

The record is devoid of any indication of the source of the funds in the operating account. The transcript of the district court's hearing on the distribution petition; the minutes of the district court; and the August 15, 2012, order suggest that neither the guardianship commissioner nor the district court reached this dispositive issue. Furthermore, neither party provides any evidence regarding the source of funds, and the purchase agreement for the sale of the California property is silent on whether any of the proceeds from the sale would be deposited into the operating account. Therefore, the district court's finding that Ansara, Brickfield, and Tyrell could stipulate as to the distribution terms of the funds in the operating account was made in clear error and was not supported by substantial evidence.

If the funds in the operating account are proceeds from the sale of Jean's real property, NRS 159.1365 governs

[Headnote 3]

NRS 159.1365, dealing with the sale of a ward's property, states:

> If real property of the estate of a ward is sold that is subject to a mortgage or other lien which is a valid claim against the estate, *the money from the sale must be applied in the following order*:
>
> 1. To pay the necessary expenses of the sale.
> 2. To satisfy the mortgage or other lien, including, without limitation, payment of interest and any other lawful costs and charges. If the mortgagee or other lienholder cannot be found, the money from the sale may be paid as ordered by the court and the mortgage or other lien shall be deemed to be satisfied.
> 3. To the estate of the ward, unless the court orders otherwise.

(Emphasis added.) Thus, if the funds in the operating account were proceeds from the sale of Jean's real property, NRS 159.1365 applies to those funds and dictates the order in which those funds must be distributed.[2]

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[2]Ansara argues that Michael's judgment was not properly domesticated in this jurisdiction pursuant to NRS 17.350 and, as such, was not a valid lien and would be excluded from the payment priority outlined in NRS 159.1365. This argument is without merit. Michael complied with all of the requirements of NRS 17.350. First, he filed an exemplified copy of the Tennessee judgment, attested "to be a true and perfect copy of the original instrument on file in this case." Second, he filed an affidavit on June 27, 2007, including the judgment debtor's name and last known address, a statement that the foreign judgment

Here, Jean's property located in California was sold with court approval for $6,570,000. The record indicates that Ansara complied with NRS 159.1365. Specifically, Ansara reported that the transaction costs, satisfaction of the existing mortgage, and the IRS lien were paid first from the sale proceeds. The remainder of the sale proceeds, in the amount of $200,000, was paid to Michael to partially satisfy his judgment claim of $625,814.

However, the funds in the operating account were not distributed to Michael. If the funds in the operating account were sale proceeds from Jean's real property, those funds should have also been distributed to Michael pursuant to NRS 159.1365 because the sale proceeds only partially satisfied Michael's judgment claim.

If the source of the funds was not the sale of the California property, then the August 15, 2012, distribution order partially governs

[Headnote 4]

If the source of the funds was not the sale of the California property, the August 15, 2012, distribution order governs to the extent that the source of the funds was the rental income from the real property.

On August 15, 2012, the district court directed Ansara:

> to utilize up to $3,000.00 of [Jean's] monthly income, to satisfy, on a pro-rated basis, the following expenses, until the same are paid in full, or until there is no income with which to satisfy the same, to-wit:
>
> a. Michael Echevarria, in the original amount of $625,814.00 + 10% interest per year, for a judgment which was secured by him.
>
> b. Elizabeth Brickfield, in the amount of $103,032.10, for attorney[ ] fees and costs.
>
> c. Trent, Tyrell & Associates, in the amount of $13,203.25, as and for attorney[ ] fees and costs.
>
> d. Robert L. Ansara, in the amount of $20,771.75, as and for the Guardian's fees and costs, as well as Successor Trustee's fees and costs.

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was valid and enforceable, and the extent to which it had been satisfied. Third, Michael filed a notice of lien and judgment in Clark County on May 16, 2007, to all interested persons, including Angel, who was Jean's guardian at the time. Although the record indicates that this filing contained an illegible exhibit containing the exemplified copy of the Tennessee judgment, the record also indicates that the guardianship court recognized the Tennessee judgment and that counsel for Jean's successor guardian, Ansara, acknowledged as much. Furthermore, in 2013, Michael filed an affidavit of renewal of judgment pursuant to NRS 17.214 and filed a notice of levy for enforcement of judgment with the district court. As such, we hold that Michael's judgment was properly domesticated.

In his petition for his instructions preceding the August 15, 2012, order, Ansara indicated that since Jean's trust was generating approximately $3,000 in excess income per month, Ansara requested that he be authorized to use up to that amount to satisfy the payments owed to him; Michael; Brickfield; and Trent, Tyrell & Associates. In his status narrative filed near the time of the order, as part of his fourth account and report, Ansara reported that Jean's income was solely comprised of social security and rental income from the real property. He further reported that "so long as [the property] remains fully leased, it will continue to augment Jean's monthly income."

Therefore, the August 15, 2012, order only governs if the funds in the operating account are attributable to the excess monthly rental income that Jean received prior to the sale of the California property. This is because Jean's income was solely comprised of social security and rental income from the real property and because she no longer owns the real property. Indeed, the operating account is acknowledged to be the final asset of any value in Jean's estate.

If the source of the funds is neither the sale of real property nor Jean's excess monthly income, then NRS 159.103, NRS 159.105, and NRS 159.183 apply

[Headnote 5]

It is entirely possible for the funds in the operating account to be attributable to something other than the sale of real property or Jean's excess monthly income. For example, the operating account may have been holding money that was originally deposited to cover any necessary maintenance that the property needed. If the funds from the operating account are determined to be from a source other than the sale of real property or Jean's excess monthly income, the district court must determine distribution in accordance with NRS 159.103, NRS 159.105, and NRS 159.183. *See* NRS 159.103 (dealing with claims against the estate of the ward); NRS 159.105 (dealing with payment of claims of a guardian and claims for attorney fees); NRS 159.183 (dealing with compensation and expenses of a guardian).

The district court erred by approving the stipulation

[Headnotes 6, 7]

"This court has recognized that [valid] [s]tipulations are of an inestimable value in the administration of justice, and valid stipulations are controlling and conclusive and both trial and appellate courts are bound to enforce them." *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1118, 197 P.3d 1032, 1042 (2008) (second alteration in original) (internal quotations omitted). A valid stipulation requires "mutual assent to its terms and either a signed writing by the party against whom the stipulation is offered

or an entry into the court minutes in the form of an order." *Id.*; *see also Taylor v. State Indus. Ins. Sys.*, 107 Nev. 595, 598, 816 P.2d 1086, 1088 (1991) ("A stipulation is an agreement made before a judicial tribunal which requires, as does a contract, the assent of the parties to its terms.").

Here, although Michael had notice of the hearing during which the stipulation was created, he was not present at that hearing. The record does not show that Michael, as the party against whom the stipulation is now being offered, assented to the terms of the parties' stipulation. Therefore, we hold that the district court erred by approving the stipulation without Michael's presence or signature indicating Michael's assent.

It is axiomatic that a valid stipulation requires mutual assent by *all* interested parties. Without mutual assent, the stipulation is void.

CONCLUSION

We, therefore, vacate the district court order and remand for further proceedings. Upon remand, the district court will determine the source of funds in the operating account. If the source of the funds was the sale of the California property, then NRS 159.1365 applies. If the source of the funds was not the sale of the California property, the August 15, 2012, order applies, to the extent that the source of the funds was the rental income from the real property. Finally, if the funds from the operating account are determined to be from a source other than the sale of real property or Jean's excess monthly income, NRS 159.103, NRS 159.105, and NRS 159.183 apply.

HARDESTY and PICKERING, JJ., concur.