KIMBERLY D. TAYLOR, an Individual, Appellant, *v.* KEITH BRILL, M.D., FACOG, FACS, an Individual; and WOMEN'S HEALTH ASSOCIATES OF SOUTHERN NEVADA-MARTIN, PLLC, a Nevada Professional Limited Liability Company, Respondents.

No. 83847

December 15, 2022 521 P.3d 782

Motion for disqualification of a supreme court justice in an appeal from a judgment on a jury verdict in a medical malpractice action.

Motion denied.

Breeden & Associates, PLLC, and *Adam J. Breeden*, Henderson, for Appellant.

McBride Hall and *Robert C. McBride* and *Heather S. Hall*, Las Vegas, for Respondents.

Before the Supreme Court, En Banc.[1]

OPINION

By the Court, Hardesty, J.:

Nevada Code of Judicial Conduct 2.11(A)(6)(d) requires judges to disqualify themselves from cases where they "previously presided as a judge over the matter in another court." Here, we consider whether a former district judge, now a supreme court justice, who was assigned a case in district court but never heard or decided any matters in that case before it was reassigned, "presided" over that case such that the justice must be disqualified from hearing the case on appeal. We conclude that disqualification is not required under these facts, as the justice did not preside over the case in district court, and therefore deny the motion to disqualify.

BACKGROUND

Following briefing in this appeal, Justice Douglas Herndon filed a notice of voluntary disclosure informing the parties that he had inherited the underlying matter on September 8, 2020, while serving as a district judge and that he had retained it until he left the bench on December 31, 2020. His disclosure stated that the matter never appeared on his calendar and that he had no knowledge about the case before the instant appeal. He explained that he had no bias

[1]The Honorable Douglas W. Herndon, Justice, did not participate in the decision of this motion. And, the Honorable Abbi Silver having retired, this matter was decided by a five-justice court.

or prejudice as to any of the parties or issues and concluded there was no basis for disqualification.

Now, appellant Kimberly D. Taylor moves to disqualify Justice Herndon, contending that NCJC 2.11(A)(6)(d) is a mechanical rule that requires disqualification whenever a judge previously presided over a matter. Taylor points to the mandatory nature of the rule in asserting that it contains no exceptions and does not require an inquiry into the judge's involvement in the case. Justice Herndon responds that he saw no documents and performed no work on the case in district court and "had no knowledge at all of the [case's] existence." He therefore asserts that his impartiality could not reasonably be questioned, that the rule does not require disqualification, and that he has a general duty to hear and decide cases where disqualification is not required. Respondents Keith Brill and Women's Health Associates of Southern Nevada-Martin, PLLC (collectively, Brill) also oppose the disqualification motion. Brill's counsel asserts that he was counsel of record in the district court proceedings and that Justice Herndon did not hear or decide any matters while the case was assigned to him. Brill argues that because Justice Herndon took no action in the case, he does not need to disqualify himself.

DISCUSSION

NCJC 2.11(A)(6)(d) provides as follows: "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: . . . [t]he judge . . . previously presided as a judge over the matter in another court." Our code of judicial conduct is based on the American Bar Association's (ABA) model code. *See In re Nev. Code of Judicial Conduct*, ADKT No. 427 (Order) (Nev. Dec. 17, 2009) (recognizing that Nevada adopted the ABA's revised Model Code of Judicial Conduct). Using the comments to Model Rule 2.11(A)(6)(d) as a starting point, we observe that they do not discuss the judicial activity encompassed by the phrase "previously presided as a judge over" so as to clarify when the rule would require disqualification. *See generally* Model Code of Judicial Conduct 2.11, cmts. Indeed, Taylor and Brill do not point to, and we did not find, many decisions where courts have considered the meaning of "preside[s]" in the context of this rule, despite its wide adoption. *See* Charles Gardner Geyh et al., *Judicial Conduct and Ethics* § 4.14[1] at 4-57 (6th ed. 2020) (noting that Model Rule 2.11(A)(6)(d) is "relatively clear" and therefore has not been a "litigation-breeder[ ]"); Dana Ann Remus, *Just Conduct: Regulating Bench-Bar Relationships*, 30 Yale L. & Pol. Rev. 123, 138-39 n.74 (2011) (listing 18 states aside from Nevada that adopted the 2007 ABA Model Code).

Those courts that have adopted this rule and addressed the issue, however, have recognized that a judge's mere administrative

contact with a case is not enough to trigger the rule's mandatory disqualification requirement. For example, the Ohio Supreme Court concluded that a challenged appellate judge did not "preside[ ]" over a matter where he, while tasked with overseeing case assignments in the trial court, only signed an order transferring the case from one department to another. *In re Disqualification of Tucker*, 193 N.E.3d 593, 594 (Ohio 2022). The court thus rejected the appellant's argument that Ohio's equivalent rule to NCJC 2.11(A)(6)(d) mandated disqualification under those facts. *Id.* An Oklahoma appellate court similarly rejected an argument that this rule required disqualification of a judge sitting on an appeal from a parental rights termination order where the judge previously had limited involvement in the appellant's criminal case. *In re L.M.*, 276 P.3d 1088, 1108 (Okla. Civ. App. 2012) (describing the judge's involvement in the criminal case as "accepting [the appellant's] waiver of preliminary hearing, his stipulation to the State's application to revoke, and sentencing [him] pursuant to a negotiated plea agreement").

These authorities demonstrate an understanding that a judge does not "preside[ ]" over a matter, as that term is used in the disqualification rule, merely because a case was administratively assigned to a judge. Rather, to preside over a matter within the meaning of the disqualification rule, the judge must have exercised some control or authority over the matter in the lower court. And here, it is undisputed that the parties filed no motions in the case while it was assigned to Justice Herndon in district court and he neither decided any matters nor heard any argument. Thus, he exercised no control or authority over the matter in district court. If Justice Herndon participates in this matter as an appellate justice, he will not be reviewing his own decisions on appeal, as he made none while the case was assigned to him in district court. Thus, while Justice Herndon technically was assigned to the case in district court, the relevant facts demonstrate that he took no action in it during the period of his assignment and so did not "preside[ ]" over it in such a way that NCJC 2.11(A)(6)(d) mandates his disqualification.

CONCLUSION

NCJC 2.11(A)(6)(d) requires disqualification where a judge's "impartiality might reasonably be questioned" because the judge "previously presided as a judge over the matter in another court." As he did not "preside[ ]" over this matter in the district court within the meaning of the disqualification rule, the rule does not require Justice Herndon's disqualification. We therefore deny Taylor's motion.

Parraguirre, C.J., and Stiglich, Cadish, and Pickering, JJ., concur.

JANE NELSON, Petitioner, *v.* THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for THE COUNTY OF CLARK; and THE HONORABLE SUSAN JOHNSON, District Judge, Respondents, and MUHAMMAD SAEED SABIR, M.D.; and PIONEER HEALTH CARE, LLC, Real Parties in Interest.

No. 84006

December 22, 2022 521 P.3d 1179

Original petition for writ of mandamus challenging a district court order denying a motion to disqualify counsel.

Petition denied.

Breeden & Associates, PLLC, and *Adam J. Breeden*, Las Vegas, for Petitioner.

McBride Hall and *Robert C. McBride* and *Sean M. Kelly*, Las Vegas, for Real Parties in Interest.

Before the Supreme Court, Cadish and Pickering, JJ., and Gibbons, Sr. J.[1]

OPINION

By the Court, Cadish, J.:

Petitioner challenges a district court order denying her motion to disqualify real parties in interest's law firm based on an alleged conflict of interest resulting from that firm hiring a paralegal who had previously worked for petitioner's attorney. Petitioner argues that the facts, including that the paralegal worked on petitioner's case while employed by petitioner's attorney, require automatic disqualification and she need not show actual prejudice for such disqualification. Alternatively, petitioner argues that the district court improperly declined to hold an evidentiary hearing to determine the sufficiency of the other firm's screening practices.

While we elect to entertain this writ petition because it is the appropriate mechanism to challenge an order denying a motion to disqualify counsel and it presents important legal issues needing clarification, we nevertheless deny writ relief. We conclude that automatic disqualification was not required despite the paralegal's significant work on the case at the prior firm because petitioner failed to show any actual disclosure of confidences or ineffectiveness

[1]The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

of the screening measures implemented by real parties in interest's firm. Thus, the district court acted within its discretion by denying the motion to disqualify. Given that there were no specific factual or credibility disputes, we further conclude the district court did not abuse its discretion by ruling on the motion without an evidentiary hearing.

FACTS AND PROCEDURAL HISTORY

McBride Hall represents real parties in interest Dr. Muhammad Saeed Sabir and Pioneer Health Care, LLC (collectively, Sabir) in a medical malpractice action brought by petitioner Jane Nelson. Nelson's attorney, Adam Breeden, owns a small, solo practice known as Breeden & Associates, PLLC. Kristy Johnson worked full time as his sole paralegal and assistant for roughly four years. In that role, Johnson worked closely with Breeden, as he purportedly shared his mental impressions and evaluations of every case with her.

While Johnson was employed by Breeden & Associates, Breeden represented plaintiffs in two cases for which McBride Hall acted as defense counsel, including Nelson's underlying malpractice case against Sabir. While Nelson's case was ongoing, Johnson interviewed with and ultimately began working as a paralegal for McBride Hall. Upon notice of Johnson's departure, Breeden asked McBride Hall whether it intended to withdraw from the matters Johnson worked on at his firm. McBride Hall responded that it did not intend to withdraw and, instead, detailed the various screening measures imposed on Johnson as part of her employment.

The stated screening mechanisms first required a conflicts check to ensure that Johnson would be screened off any conflicting matters. Before beginning her position, McBride Hall further informed Johnson that she could not discuss any of the cases she worked on at Breeden's firm, including Nelson's case, with any staff at McBride Hall. As stated in her affidavit, Johnson agreed. The affidavit also indicated that McBride Hall (1) blocked Johnson's access to the Nelson computer file, (2) locked her out of the physical file, (3) instructed all staff not to discuss Nelson's case with Johnson, (4) circulated two memos to all staff detailing these screening mechanisms, and (5) assigned Johnson to different cases while another paralegal was assigned to the Nelson case.

Nelson moved to disqualify McBride Hall from representing Sabir given Johnson's purported direct involvement in the pleadings, filings, communications, and discovery and her knowledge of Breeden's legal conclusions on Nelson's case. Nelson argued that Johnson's employment presented a paradigmatic case for imputed disqualification. Johnson's intimate knowledge, Nelson argued, posed a significant risk to Nelson's confidential information that

should render McBride Hall presumptively disqualified from continued representation. Relying on Nevada caselaw, she further maintained that Sabir could overcome this presumption only if they met their burden of showing sufficient screening, and that *Ryan's Express Transportation Services, Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 279 P.3d 166 (2012), mandated an evidentiary hearing to ascertain the sufficiency of such screening. Accordingly, Nelson asked the district court to either (1) hold an evidentiary hearing and issue findings of fact as to the sufficiency of the screening mechanisms or (2) rule that McBride Hall is immediately disqualified under the facts at bar. In response, Sabir contended that the screening mechanisms were effective under existing caselaw to prevent imputed disqualification. In addition, they claimed that they would suffer undue prejudice upon McBride Hall's disqualification when there was no allegation or evidence that their counsel acquired privileged or confidential information about Nelson's case, such that Nelson would be prejudiced by McBride Hall's continued representation.

Following a nonevidentiary hearing, the district court denied the motion to disqualify McBride Hall. It noted both that McBride Hall properly screened Johnson and that Nelson did not establish any specific prejudice she would experience in light of this screening. Nelson now seeks a writ of mandamus instructing the district court to either grant her disqualification motion or vacate its ruling and hold an evidentiary hearing to make findings of facts and conclusions of law.

DISCUSSION

We elect to entertain the writ petition

A writ of mandamus is appropriate to "compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion." *Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007). A petition for mandamus relief is generally a proper means to challenge a district court order regarding disqualification of a lawyer. *See Liapis v. Second Judicial Dist. Court*, 128 Nev. 414, 418, 282 P.3d 733, 736 (2012). Nelson contends, therefore, that we should consider the petition on its merits and for the additional reason that it concerns an important issue regarding the scope of imputed disqualification of nonlawyers. *See City of Mesquite v. Eighth Judicial Dist. Court*, 135 Nev. 240, 243, 445 P.3d 1244, 1248 (2019) (noting that this court may appropriately exercise its discretion to consider a writ petition when "an important issue of law needs clarification" (quoting *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008))). We agree and thus elect to entertain the petition.

Given McBride Hall's screening mechanisms, the district court did not err in denying the motion

District courts have broad discretion in determining whether disqualification is required in a particular case. *Leibowitz v. Eighth Judicial Dist. Court*, 119 Nev. 523, 529, 78 P.3d 515, 519 (2003). Sabir maintains that our caselaw explicitly permits the type of screening utilized here. Nelson urges us to instead recognize automatic disqualification due to Johnson's previous work on the case.

As a threshold matter, Nevada's ethics rules governing the legal profession generally prohibit representation of a client whose interests are adverse to those of a former client in the "same or substantially related matter." *See* RPC 1.9(a). This disqualification rule is based on a presumption that confidences were shared during the prior representation. *See Ryan's Express*, 128 Nev. at 295, 279 P.3d at 170 (observing that "ethical principles and public policy considerations . . . lead us to impose a presumption of shared confidence"). Imputation arises based on a second presumption that such confidences are shared with members of the new firm. *See id.* at 295 n.2, 279 P.3d at 170 n.2 (recognizing that the imputation provisions of our ethical rules presume "that an attorney takes with him or her any confidences gained in a former relationship and shares them with the firm").

Nonlawyer employees, like the attorneys with whom they work, receive confidential information in the course of employment and thereby stand in a fiduciary relationship with the client. *See* 2 Ronald E. Mallen, *Legal Malpractice* § 18:53 (2022 ed.). We first recognized this principle in *Ciaffone v. Eighth Judicial District Court*, in which we denied writ relief to a plaintiff who challenged a district court decision applying imputed disqualification to her attorney based on the attorney's employment of a nonlawyer who previously worked on the same matter for the defendant's firm. 113 Nev. 1165, 1166-67, 1170, 945 P.2d 950, 951-53 (1997), *overruled in part by Leibowitz*, 119 Nev. at 532, 78 P.3d at 521.

Our holding stood on a reading of former ethics rules SCR 160(2) and SCR 187.[2] *Id.* at 1167-68, 945 P.2d at 952-53. SCR 160(2) imputed disqualification to lawyers associated with a lawyer already disqualified for involvement in the "same or a substantially related matter" and in possession of confidential information and communications. And SCR 160(2) did not permit screening to remedy this conflict of interest. *See id.* at 1168, 945 P.2d at 952 ("[T]his court has taken the position in SCR 160(2) that *lawyer screening* is prohibited."). Meanwhile, SCR 187 mandated that partners and lawyers with direct supervisory authority "make reasonable efforts" to ensure that a nonlawyer's "conduct is compatible with

[2]In 2006, these rules were revised and are now contained in RPC 1.10 and RPC 5.3, respectively.

the professional obligations of the lawyer." *Id.* at 1168, 945 P.2d at 952-53. Reading the rules together in *Ciaffone*, we held that SCR 160(2) and SCR 187 subjected nonlawyers to the same imputed disqualification rules as lawyers, such that screening could not cure a nonlawyer's imputed conflict of interest. *Id.* at 1168-69, 945 P.2d at 953 (declining to "carve out an exception allowing screening of nonlawyers in situations where lawyers would be similarly disqualified").

We partially overruled that holding in *Leibowitz*. In doing so, we sought to balance client confidentiality interests against nonlawyer employment interests. *Leibowitz*, 119 Nev. at 531-32, 78 P.3d at 520-21. While still applying SCR 160(2) to nonlawyers, we deemed "imputed disqualification . . . a harsh remedy" for nonlawyers because a nonlawyer, unlike an attorney, does not have the opportunity to practice their "profession regardless of an affiliation to a law firm." *Id.* at 532, 78 P.3d at 521.[3] With this new perspective, we delineated the screening procedures a firm should utilize when hiring a nonlawyer employee who had access to adversarial client files, including its "absolute duty to screen the nonlawyer employee from the adversarial cases irrespective of the nonlawyer employee's actual knowledge of privileged or confidential information." *Id.* We then provided a nonexhaustive list of screening requirements, including (1) cautioning the nonlawyer employee "not to disclose any information relating to the representation of a client of the former employer"; (2) instructing the nonlawyer employee not to work on matters on which they worked in prior employment, or on which they have "information relating to the former employer's representation"; and (3) ensuring that the nonlawyer employee does not work on matters on which they worked during the prior employment absent client consent. *Id.* at 533, 78 P.3d at 521 (quoting *In re Bell Helicopter Textron, Inc.*, 87 S.W.3d 139, 145-46 (Tex. Ct. App. 2002)).

Yet, *Leibowitz* did not suggest that screening is always available to resolve imputed disqualification. Absent the affected client's consent, we observed that disqualification is necessary where either (1) "information relating to the representation of an adverse client has in fact been disclosed [to the new employer]" or (2) "screening would be ineffective or the nonlawyer [employee] necessarily would be required to work on the other side of a matter that is the same as or substantially related to a matter on which the nonlawyer [employee] has previously worked." *Id.* at 533, 78 P.3d at 521-22 (alterations in original). Indeed, we pointed out that disqualification is warranted where the nonlawyer employee has acquired the

[3]We note that Nevada's revision of the model rules of professional conduct in 2006 explicitly permits screening of an attorney, not just nonlawyers, to cure a conflict of interest in certain circumstances. *See* RPC 1.10(e); RPC 1.12(c).

former client's confidential information, "unless the district court determines that screening is sufficient to safeguard the former client from disclosure" of such information. *Id.* at 533, 78 P.3d at 522. In this assessment, we announced that district courts should balance "the individual right to be represented by counsel of one's choice" against "each party's right to be free from the risk of even inadvertent disclosure of confidential information," "the public's interest in the scrupulous administration of justice," and "the prejudices that will inure to the parties as a result of the [district court's] decision." *Id.* at 534, 78 P.3d at 522 (alteration in original) (quoting *Brown v. Eighth Judicial Dist. Court*, 116 Nev. 1200, 1205, 14 P.3d 1266, 1269-70 (2000)).

Here, the parties do not dispute Johnson's involvement in this case at Breeden & Associates. But mere involvement—even extensive involvement—does not warrant automatic disqualification. Such disqualification is warranted where: (1) information about the representation of the adverse client was disclosed to the new employer, or (2) screening would be ineffective or the nonlawyer would be required to work on the other side of the same matter. *See Leibowitz*, 119 Nev. at 534, 78 P.3d at 521-22. Nelson does not allege that either circumstance is present here. Nor does the record indicate that Johnson disclosed any confidential information to McBride Hall. Rather, Johnson's affidavit confirms that she did not disclose any such information and complied with McBride Hall's screening measures. These measures closely track those set out in *Leibowitz*. Indeed, McBride Hall prohibited Johnson from discussing the matter from the start of her employment, ensured that Johnson would not work on the case, and blocked her access to any of the files related to the case. These mechanisms were timely and satisfy *Leibowitz*'s "instructive minimum." *See id.* at 532, 78 P.3d at 521.

It is true that Johnson's substantial work on the same case at Breeden & Associates, the limited time elapsed after she left, and McBride Hall's representation of a client adverse to Nelson may weigh against the adequacy of screening measures. *See Leibowitz*, 119 Nev. at 534, 78 P.3d at 522 (directing courts to consider, among other factors, "the substantiality of the relationship between the former and current matters," "the time elapsed between the matters," how involved the nonlawyer employee was in the former matter, and "whether the old firm and the new firm represent adverse parties in the same proceeding" (internal quotations omitted)). Even so, the district court found that the screening measures were adequate, and we decline Nelson's invitation to adopt a rule of automatic disqualification absent specific claims of prejudice based on actual disclosure of confidential information or demonstrated ineffectiveness of screening measures, as outlined in *Leibowitz*. Nelson did not specifically allege—much less show—that Johnson disclosed

information to McBride Hall about Nelson's case, was working on the defense side of the case at McBride Hall, or had access to Nelson's file at McBride Hall.[4] Thus, Johnson's involvement in Nelson's case at Breeden & Associates alone does not entitle Nelson to immediate disqualification of McBride Hall. Accordingly, the district court did not abuse its discretion in denying the disqualification motion.

The district court did not abuse its discretion in ruling on the motion without holding an evidentiary hearing

Nelson argues that *Ryan's Express* requires an evidentiary hearing and findings of fact and conclusions of law on a disqualification motion. She asserts that the requirement applies to disqualification motions concerning both lawyers and nonlawyers. Sabir maintains that any requirement in *Ryan's Express* is limited to an attorney's imputed conflict of interest.

In *Ryan's Express*, we stated that "[w]hen presented with a dispute over whether a lawyer has been properly screened, Nevada courts *should* conduct an evidentiary hearing to determine the adequacy and timeliness of the screening measures on a case-by-case basis." 128 Nev. at 298, 279 P.3d at 172 (emphasis added). Nevertheless, *Ryan's Express* leaves the decision to disqualify in the district court's discretion. *See id.* at 299, 279 P.3d at 172 ("[T]he consideration of the adequacy of screening is within the sound discretion of the district court."). So, too, is the decision to hold an evidentiary hearing. *See id.* Generally, evidentiary hearings should be utilized where "factual questions are not readily ascertainable," or if "witnesses or questions of credibility predominate." *See United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 858 (9th Cir. 1992). Therefore, upon a motion to disqualify, an evidentiary hearing might be necessary to engage in the "delicate task" of balancing the parties' and the public's interests. *See Leibowitz*, 119 Nev. at 534, 78 P.3d at 522. Likewise, it might be necessary to assess the sufficiency of screening. *See id.* (providing a seven-factor test to determine whether screening of a nonlawyer was effective); *see also Ryan's Express*, 128 Nev. at 297, 279 P.3d at 171 (offering a five-factor test to determine whether screening of an attorney was effective). Thus, where fact and credibility determinations are necessary to the resolution of either question, the trial court should hold an evidentiary hearing. But determining whether such issues exist to warrant holding an evidentiary hearing is a matter in the district court's discretion.

[4]While Nelson argues that the district court improperly placed the burden on her by requiring her to demonstrate actual prejudice in order to prevail on her motion to disqualify, the district court's analysis is in accord with our instructions in *Leibowitz* to grant immediate disqualification only if this required showing of an actual disclosure of confidences or work on the case was made.

We decline to intrude on this discretion here. To the extent *Ryan's Express* imposes an evidentiary hearing requirement in cases concerning attorneys—if at all[5]—it does not apply here, where a nonlawyer's employment is at issue. Rather, our disqualification cases direct district courts to consider various factors in determining the sufficiency of screening of nonlawyers. *See Leibowitz*, 119 Nev. at 534, 78 P.3d at 522; *see also Ryan's Express*, 128 Nev. at 297-99, 279 P.3d at 171-72. A district court may find an evidentiary hearing necessary to aid in this determination. Here, it did not.

We do not consider this decision to be an abuse of discretion. While it was undisputed that Johnson had knowledge of the case from her work at Breeden & Associates, Nelson did not assert that McBride Hall's representations that Johnson did not disclose information or work on the case there were false. And Nelson does not dispute that McBride Hall implemented extensive screening mechanisms that square with those outlined in *Leibowitz*, such that the district court could adequately consider the effectiveness of such screening. Given the lack of specific factual or credibility disputes, the district court did not abuse its discretion in deciding the matter without an evidentiary hearing. *See Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 257, 235 P.3d 592, 601 (2010) (holding that the district court did not abuse its discretion in declining to hold a full evidentiary hearing "since the record was sufficient for the court to make its findings").

CONCLUSION

Though we entertain this writ petition, we decline to provide the relief Nelson seeks. Nevada permits screening of nonlawyers as a means to cure the nonlawyer's imputed conflict of interest. Because McBride Hall instituted sufficient screening mechanisms and there is no evidence that Johnson divulged information relating to the representation of Nelson, automatic disqualification was not necessary. Thus, the district court did not abuse its discretion in denying the motion to disqualify. Additionally, under these circumstances, the district court did not abuse its discretion by ruling on the disqualification motion without holding an evidentiary hearing. Accordingly, we deny the writ petition.

Pickering, J., and Gibbons, Sr. J., concur.

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[5]We note that use of the word "should" ordinarily does not impose a mandatory requirement. *See, e.g.*, *Brown v. State*, 138 Nev. 464, 474 & n.12, 512 P.3d 269, 278-79 & n.12 (2022) (explaining that although the district court "should" make certain findings on the record, it does not necessarily err in failing to do so).

JUAN MILLAN ARCE, AN INDIVIDUAL, APPELLANT, *v.*
PATRICIA SANCHEZ, AN INDIVIDUAL, RESPONDENT.

No. 81862

December 22, 2022 521 P.3d 1186

Appeal from a district court order setting aside a judgment confirming a court annexed arbitration award under NRCP 60(b). Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Reversed and remanded with instructions.

Desert Ridge Legal Group and *Ryan M. Venci* and *Martina L. Jaccarino*, Las Vegas, for Appellant.

Deaver & Crafton and *Brice J. Crafton*, Las Vegas, for Respondent.

Before the Supreme Court, HARDESTY, STIGLICH, and HERNDON, JJ.

OPINION

By the Court, STIGLICH, J.:

In this opinion, we address an issue of first impression—whether a district court may set aside a judgment confirming a court annexed arbitration award under Nevada Rule of Civil Procedure (NRCP) 60(b) in the face of Nevada Arbitration Rule (NAR) 19(C), which limits post-judgment relief to correcting clerical mistakes and errors. We conclude that NAR 19(C) bars a district court from setting aside a judgment confirming an arbitration award under NRCP 60(b). Because the district court set aside a judgment confirming an arbitration award under NRCP 60(b) in violation of NAR 19(C), we reverse the district court's order and remand with instructions to reinstate the judgment confirming the arbitration award.

FACTS AND PROCEDURAL HISTORY

Respondent Patricia Sanchez and appellant Juan Millan Arce were in a car accident. Sanchez hired lawyers to sue Arce for damages. Arce's insurance company, Key Insurance Company, assigned its in-house counsel, Erich Storm, to represent Arce.

The district court sent the case to the court annexed arbitration program. After hearing the case, the arbitrator awarded Sanchez nothing. Thereafter, one of Sanchez's lawyers called Key Insurance Company's claims adjuster to negotiate a settlement. Sanchez's lawyer and the adjuster settled the case. Key Insurance Company agreed to pay Sanchez $10,000 in exchange for Sanchez forgoing her right to request a trial de novo.

One day after the adjuster and Sanchez's lawyer reached the settlement agreement and more than two weeks before the deadline for requesting a trial de novo, Storm expressed his concern, in emails, that the settlement agreement was made "behind . . . [his] back," and he told Sanchez's lawyer to "calendar the de novo date while we [Key Insurance Company] decide . . . what the best course of action is."

After the deadline to request a trial de novo passed, Storm indicated that Key Insurance Company would not pay the $10,000 settlement because he believed that Sanchez's lawyer negotiated the settlement agreement in violation of the Rules of Professional Conduct (RPC). Believing that the alleged RPC violation voided the settlement agreement, Storm obtained a judgment confirming the arbitration award (in which the arbitrator awarded Sanchez nothing).

In response, Sanchez moved for relief from the judgment under NRCP 60(b) and to enforce the settlement agreement. The district court found that Sanchez's lawyer did not violate the RPC, that the settlement agreement was enforceable, and that Sanchez failed to timely request a trial de novo in reliance on the settlement agreement. The district court set aside the judgment confirming the arbitration award under NRCP 60(b) and enforced the settlement agreement. Arce appealed.

DISCUSSION

Arce argues that NAR 19(C) bars a district court from applying NRCP 60(b) to set aside a judgment confirming an arbitration award. Sanchez counters that NAR 19(C) does not bar NRCP 60(b) relief because NAR 19(C) assumes the district court properly entered the judgment confirming the arbitration award.[1] But here, Sanchez argues, the district court mistakenly entered a judgment confirming the arbitration award because there was a preexisting, enforceable settlement agreement. Because Storm obtained a judgment confirming the arbitration award knowing that the settlement agreement existed, Sanchez argues we should deem the judgment void ab initio.

Standard of review

Although we typically review a district court's order setting aside a judgment under NRCP 60(b) for an abuse of discretion, *Cook v.*

[1]We do not reach the parties' remaining arguments—whether a settlement agreement allegedly negotiated in violation of RPC 4.2 is enforceable and whether the district court erred in enforcing the settlement agreement under EDCR 7.50—because we hold that NAR 19(C) bars post-judgment relief under NRCP 60(b), which renders those arguments moot. *See NCAA v. Univ. of Nev., Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981) ("A moot case is one which seeks to determine an abstract question which does not rest upon existing facts or rights.").

Cook, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996), this case presents questions of law—the interpretation of NAR 19(C) and its interplay with NRCP 60—which we review de novo. *See Moon v. McDonald, Carano & Wilson, LLP*, 126 Nev. 510, 512, 515-16, 245 P.3d 1138, 1139, 1141 (2010) (reviewing the interpretation of NAR 5(A) de novo); *Moseley v. Eighth Judicial Dist. Court*, 124 Nev. 654, 662, 188 P.3d 1136, 1142 (2008) ("The interplay and interpretation of NRCP 25 and NRCP 6 are issues of law that we review de novo.").

NAR 19(C) bars post-judgment relief under NRCP 60(b)

We apply the rules of statutory construction to interpret NAR 19. *See Scott v. Zhou*, 120 Nev. 571, 573, 98 P.3d 313, 314 (2004) (applying the rules of statutory construction to interpret NAR 20). In interpreting NAR 19(C), "words 'should be given their plain meaning unless this violates the spirit of the . . . [rule].'" *Id.* (quoting *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)).

NAR 19(C) provides that "[a]lthough clerical mistakes in judgments and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party, *no other amendment of or relief from a judgment entered pursuant to this rule shall be allowed*." NAR 19(C) (emphasis added). Thus, NAR 19(C) prevents a district court from granting post-judgment relief except to correct "clerical mistakes in judgments and errors therein arising from oversight or omission." We turn to NRCP 60 to examine how it interacts with this limitation.

NRCP 60 offers two routes for post-judgment relief. Under NRCP 60(a), "[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment . . . . The court may do so on motion or on its own . . . ." NRCP 60(b), on the other hand, provides grounds—one ground being that the challenged judgment is void—to set aside a judgment. NRCP 60(b)(4).

Arce argues that NAR 19(C) bars NRCP 60(b) relief. We agree. NAR 19(C) bars NRCP 60(b) relief because NRCP 60(b) provides nonclerical-mistake grounds for post-judgment relief, and NAR 19(C) provides that "no other amendment of or relief from a judgment entered pursuant to this rule shall be allowed." Even assuming the judgment confirming the arbitration award is void, as Sanchez contends, voidness is an NRCP 60(b) ground for relief, which NAR 19(C) bars.

Further, NAR 19(C) provides that a district court may "correct" a clerical mistake, not that a district court may set aside an entire judgment. The term "corrected" in NAR 19(C) and "correct" in NRCP 60(a) mean the same thing because "when the same word

is used in different statutes that are similar with respect to purpose and content, the word will be used in the same sense, unless the statutes' context indicates otherwise . . . ." *Savage v. Pierson*, 123 Nev. 86, 94, 157 P.3d 697, 702 (2007). NAR 19(C) and NRCP 60(a) both address post-judgment relief and use the following phrases: "correct[ ]," "clerical mistake[ ]," and "arising from oversight or omission."

"Correct" in NRCP 60(a) refers to reforming an error or mistake in a judgment. *See Kirkpatrick v. Temme*, 98 Nev. 523, 527-28, 654 P.2d 1011, 1014 (1982) (finding an NRCP 60(a) clerical error and remanding to fix the error, not vacating the judgment due to the error). "Correct" does not refer to setting aside an entire judgment. *See id.* Accordingly, we conclude that NAR 19(C)'s "corrected" language means that a court may fix a mistake or error in a judgment but not set aside a judgment entirely.

Arce argues that NAR 19(C) and its application to these facts align with the purpose of the rule. We agree. The purpose of the court annexed arbitration program is "to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." NAR 2(A). Allowing Sanchez to set aside the judgment confirming the arbitration award under NRCP 60(b) in violation of NAR 19(C) undermines the "prompt" and "simplified" purpose of the program.[2]

CONCLUSION

NAR 19(C) bars post-judgment relief under NRCP 60(b). Under NAR 19(C), a district court may grant post-judgment relief only to correct "clerical mistakes in judgments and errors therein arising from oversight or omission." Clerical mistake is not an NRCP 60(b) ground for setting aside a judgment. Instead, clerical mistake is an NRCP 60(a) ground for correcting a judgment. Accordingly, we reverse and remand with instructions to reinstate the judgment confirming the arbitration award.

Hardesty and Herndon, JJ., concur.

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[2]Although Sanchez does not address this argument head-on, she suggests this outcome is inequitable. We disagree. Sanchez had reason to believe, while she still had over two weeks to request a trial de novo, that Storm would not honor the settlement agreement. Storm specifically asked Sanchez's lawyer to calendar a date for a trial de novo. Sanchez chose not to act. Again, in the weeks leading up to the deadline, Storm did not provide the requested settlement documents. Again, Sanchez chose not to act. We conclude these were tactical decisions made by Sanchez's lawyers, not an inequitable application of the law.

IN THE MATTER OF THE TRUST AGREEMENT, 23 PARTNERS TRUST I, AN IRREVOCABLE TRUST.

MICHAEL T. NEDDER; AND DOUGLAS DELUCA, APPELLANTS/CROSS-RESPONDENTS, *v.* JULIA ANN DELUCA, PRIMARY BENEFICIARY OF 23 PARTNERS TRUST I; AND JOANNE S. BRIGGS, AS PARENT AND GUARDIAN OF ALEXANDER IAN DELUCA, PRIMARY BENEFICIARY OF 23 PARTNERS TRUST I, RESPONDENTS/CROSS-APPELLANTS.

No. 82991

December 22, 2022 521 P.3d 1190

Appeal and cross-appeal from a district court order concerning the administration of a trust. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Affirmed in part, reversed in part, and remanded.

[Rehearing denied January 30, 2023]

[En banc reconsideration denied February 27, 2023]

Hutchison & Steffen, PLLC, and *Alexander R. Velto*, Reno, and *Russel J. Geist* and *Todd W. Prall*, Las Vegas, for Appellants/Cross-Respondents.

Solomon Dwiggins Freer & Steadman, Ltd., and *Alex G. LeVeque* and *Roberto M. Campos*, Las Vegas, for Respondents/Cross-Appellants.

Before the Supreme Court, HARDESTY, STIGLICH, and HERNDON, JJ.

OPINION

By the Court, STIGLICH, J.:

This case involves the administration of a discretionary trust and requires us to determine what disclosures must be made by the trustees to the beneficiaries. In making that determination, we consider both what Nevada's trust statutes compel and what the trust document itself permits. The trust at issue provides the beneficiaries with discretionary distribution interests, granting the trustees sole discretion over the issuance of those distributions. While the trustees have regularly made distributions, the beneficiaries seek information concerning the trust's financial administration and a copy of the trust instrument itself.

We conclude that Nevada's trust statutes—in particular NRS 165.1207—do not require the trustees to provide the beneficiaries with an accounting because the beneficiaries' sole distribution

interests are discretionary. However, because the beneficiaries constitute "present" and "vested" beneficiaries, as those terms are used in the trust, they may request and receive copies of certain trust instruments, may inspect the books of account and records of financial transactions, and on request, may receive an annual tax return, inventory, and accounting under the terms of the trust. In the underlying matter, the district court ordered the trustees to provide most of this information and access but concluded that the beneficiaries were not entitled to an accounting. We affirm the district court as to the materials that it ordered the trustees to deliver, but we reverse its determination that the beneficiaries were not entitled to an accounting.

The district court also ordered the trustees to provide the beneficiaries with copies of all sections of the trust document concerning the beneficiaries' rights. We agree with the district court that neither Nevada statutes nor the trust instrument require the trustees to provide the beneficiaries with a copy of the entire trust instrument but conclude that the trustees have not shown that the district court abused its discretion in ordering them to produce sections of the trust concerning the beneficiaries' rights. We agree with the trustees, however, that the district court abused its discretion in failing to specify which sections must be provided. We therefore remand and instruct the district court to identify which sections of the trust the trustees must provide to the beneficiaries.

BACKGROUND

Jon DeLuca and Joanne Briggs married, had two children together (Julia DeLuca and Alexander DeLuca), and later divorced. Thereafter, Jon created the 23 Partners Trust I, an irrevocable trust, for the benefit of his children. Michael Nedder is the Independent Trustee, and Jon's brother, Douglas DeLuca, is the Family Trustee (collectively, Trustees). Jon provided Joanne with information about the trust, including Jon's estate plan flowchart, a list of assets, and an audio recording of a meeting between Jon and Michael Nedder regarding Jon's estate plan and the trust. After Jon passed away, Trustees made distributions from the trust for the care and well-being of Julia and Alexander. Two years later, Julia and Alexander (collectively, Beneficiaries), through Joanne because they were minors, requested detailed information about the trust, including an accounting and a copy of the trust document, which Trustees denied.

Beneficiaries petitioned the district court to assume jurisdiction of the trust, obtain an accounting, and obtain a copy of the trust document.[1] Trustees objected, arguing that the trust provided for

[1]Julia reached the age of majority during the pendency of the litigation and has joined the action as an adult. Accordingly, the clerk of this court shall amend the caption on this court's docket so that it is consistent with the caption appearing on this opinion.

completely discretionary distributions to Beneficiaries and that Beneficiaries were not entitled to receive an accounting or a copy of the trust document. The court concluded that Beneficiaries were not entitled to an accounting but ordered Trustees to provide certain financial information annually, including federal tax returns, an inventory of assets, and a summary of financial transactions. The district court also determined that Beneficiaries were not entitled to receive a copy of the entire trust document but that they were entitled to receive a copy of the specific provisions affecting their rights.[2] Trustees appealed, and Beneficiaries cross-appealed.

DISCUSSION

Trustees argue that neither Nevada law nor the trust instrument entitles Beneficiaries to receive an accounting or a copy of the trust document. Trustees argue that the district court thus erred in ordering them to provide certain financial information and portions of the trust document. Beneficiaries counter that they are entitled to receive not only the financial information and trust provisions the court ordered released, but also an accounting under NRS 165.180, NRS 165.1207, and the trust itself. Beneficiaries further argue that they are entitled to receive a copy of the entire trust document, rather than only select portions. In resolving the issues presented by this appeal, we look first to Nevada's statutes regarding trust accounting before examining the specific terms of the trust at issue today and the court's discretionary authority to order the trustees to provide copies of the trust document.

Nevada statutes do not entitle Beneficiaries to receive an accounting, but the terms of the trust provide for annual accountings

Nevada statutes do not require accounting to discretionary-interest beneficiaries

Beneficiaries argue that NRS 165.180 empowers the district court to order an accounting of the trust and that they are entitled to an accounting under NRS 165.1207. We disagree.

We review de novo questions of law, including statutory interpretation. *In re Orpheus Tr.*, 124 Nev. 170, 174, 179 P.3d 562, 565 (2008). "When the language of a statute is unambiguous, courts are not permitted to look beyond the statute itself when determining its meaning." *Id.* "Whenever possible, this court will interpret a rule or statute in harmony with other rules and statutes" and will "construe statutes such that no part of the statute is rendered nugatory or turned to mere surplusage." *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006).

[2]The court entered its order after having reviewed a copy of the trust document in camera.

NRS 165.180 provides that NRS Chapter 165 "does not abridge the power of any court of competent jurisdiction to require testamentary or nontestamentary trustees to file an inventory, to account, to exhibit the trust property, or to give beneficiaries information or the privilege of inspection of trust records and papers, at times other than those prescribed" by statute. It further provides that NRS Chapter 165 does not bar a trustee from accounting voluntarily where not compelled to do so by statute or court order. *Id.* NRS 165.1207 addresses a trustee's duty to account and excludes discretionary-interest beneficiaries from those entitled to receive an accounting, providing that "[a] trustee is not required to provide an account to a beneficiary of an irrevocable trust while that beneficiary's only interest in the trust estate is a discretionary interest, as described in NRS 163.4185." NRS 165.1207(1)(b)(5). Under NRS 163.4185(1)(c), a distribution interest is "[a] discretionary interest if the trustee has discretion to determine whether a distribution should be made, when a distribution should be made and the amount of the distribution."

We first consider NRS 165.180. By its plain language, this statute acknowledges that NRS Chapter 165 does not exhaustively delineate how a court exercises its powers and fulfills its duties in administering trusts. But recognizing that the chapter "does not abridge" a court's powers regarding these actions at other times does not constitute a grant of authority. Nor does it constitute an independent basis on which Beneficiaries may rely for any affirmative relief. We conclude that Beneficiaries have not shown that relief is warranted on this basis.

We next consider NRS 165.1207. All parties agree that the distributions at issue are made at Trustees' discretion, and our review of the trust confirms this view. Accordingly, we conclude that Beneficiaries' interest is a discretionary interest. Beneficiaries argue that this is not their *only* interest in the trust, relying on the definition of "[i]nterest" in NRS 132.180 to assert that they also have, for example, an interest in a power of appointment. Beneficiaries offer no support for their contention that NRS 132.180, a wills and estates statute, applies here, and their position is unpersuasive. NRS 165.1207(1)(b)(5) specifically refers to the different types of interests described in NRS 163.4185. The more reasonable interpretation of NRS 165.1207(1)(b)(5)'s language, and that which harmonizes its meaning with that of NRS 163.4185, is that "interest in the trust estate" refers to the distribution interest, defined as either a "mandatory, support or discretionary interest." *See* NRS 163.4155 (defining distribution interest); NRS 163.4185(1) (providing that distribution interests may be classified as mandatory, support, or discretionary). This construction also gives meaning to the use of "only" in reference to the beneficiary's interest in the trust estate

in NRS 165.1207(1)(b)(5), since NRS 163.4185 recognizes that a trust may contain a combination of types of interests and directs how those types should be separated in administering the trust. *See* NRS 163.4185(2)-(3). Accordingly, Beneficiaries were not entitled to receive an accounting under NRS 165.1207 and have not shown that relief is appropriate in this regard.

The trust provides that Beneficiaries are entitled to review certain trust materials and to annual accountings

Having concluded that Beneficiaries are not entitled to an accounting pursuant to Nevada statute, we consider the terms of the trust itself. Beneficiaries argue that they are vested beneficiaries and thus entitled to review trust materials and to an accounting. Trustees counter that only vested beneficiaries may receive and review financial information regarding the trust under the trust's terms and that Beneficiaries are not vested because their interest is discretionary.

Where the underlying facts are not disputed, as the parties agree is the case here, we review de novo a district court's interpretation of a trust. *In re W.N. Connell & Marjorie T. Connell Living Tr.*, 134 Nev. 613, 616, 426 P.3d 599, 602 (2018). We will construe a trust so as to give effect to the grantor's apparent intent. *Id.* To ascertain the grantor's intent, we apply contract principles, considering the trust as a whole and seeking "the most fair and reasonable interpretation of the trust's language." *Id.* (internal quotation marks omitted).

The trust names Julia and Alexander as beneficiaries and directs that its primary purpose is for the use and benefit of the grantor's descendants while reducing or eliminating tax liability.[3] The trust declares itself to be irrevocable. On the grantor's death, the trust estate shall be divided into equal shares for each of the grantor's then-living children, and each share shall constitute a separate "exempt family trust."[4] The child in whose name the trust stands constitutes its "primary beneficiary," and the separate trusts shall be named "23 Partners Trust I" followed by the name of the primary beneficiary. The Independent Trustee has sole and unreviewable discretion in making distributions to a primary beneficiary as the Independent Trustee deems appropriate for the beneficiary's purposes. The trust provides that Trustees are to act as fiduciaries and have absolute discretion in acting with respect to trust property and interests. A primary beneficiary who has attained 33 years of age may remove a trustee, so long as a replacement Independent Trustee is a bank or trust company.

[3]We recount details regarding trust provisions to provide useful context and set forth the provisions necessary to resolve these appeals.

[4]The distinction between exempt and nonexempt trusts is not material for our purposes here.

Section 5.1(C) of the trust provides that, on request by a "present beneficiary," Trustees must promptly deliver "[c]opies of all trust related instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc., as well as of a Trustee's resignation, removal, appointment and/or acceptance, the original of which shall be attached hereto." And under § 5.2(A), a trustee shall make the books of account and records of all financial transactions available at reasonable times for inspection by each "presently vested income, principal[,] and remainder beneficiary." Further, on request by such a beneficiary, that trustee shall provide an annual federal tax return, starting and ending inventory for the year, and an accounting showing all financial transactions that occurred in that period. Trustees shall not, however, provide notice of the existence of the trust to any beneficiary, to the extent concealment is permitted by law.

By its terms, as relevant here, the trust provides rights to particular information to a "present beneficiary" and to a "presently vested income, principal[,] and remainder beneficiary." "[B]eneficiary" is statutorily defined as each individual designated as such for a particular trust, and each person entitled to receive distributions for a particular trust is the "primary beneficiary," except where context indicates a different meaning. The trust does not describe when a beneficiary is vested, though we can construe the grantor's intent in this regard by considering how beneficiaries are discussed throughout the trust. *See* NRS 163.004(1) (providing that, generally, a trust's terms may settle "the rights and interests of beneficiaries in any manner that is not illegal or against public policy"); *Connell Living Tr.*, 134 Nev. at 617-18, 426 P.3d at 603 (considering the trust as a whole to ascertain the grantor's intent in the absence of specific language to the contrary). The trust sets apart different classes of beneficiaries, indicating that a beneficiary may be present or contingent, primary or contingent, and present or future. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 116 (2012) ("Under the conjunctive/disjunctive canon, *and* combines items while *or* creates alternatives."). These distinctions parallel those in the statutory definition of "[b]eneficiary" as "a person that has a present or future beneficial interest in a trust, *vested or contingent*." NRS 163.4147 (emphasis added); *cf. Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 405, 215 P.3d 27, 32 (2009) (harmonizing a controlling statutory definition with a contractual term able to fit within the statutory definition). As Julia and Alexander were Jon's living children at the time of his death, each is the primary beneficiary of a separate trust based on their respective shares of 23 Partners Trust I. Each may currently receive discretionary trust distributions. Each currently has the interest that he or she has in that separate trust and thus is a

present beneficiary, rather than a future one. As Julia and Alexander are present and primary beneficiaries, they are therefore not contingent beneficiaries. The trust is irrevocable, further weighing against deeming Beneficiaries contingent. *See Linthicum v. Rudi*, 122 Nev. 1452, 1457, 148 P.3d 746, 750 (2006) (observing that an interest in a revocable trust is contingent and does not vest until the settlor's death). And, consistent with the statutory definition, as they are not contingent beneficiaries, they are vested beneficiaries within the meaning and usage of the trust.[5]

Trustees argue, however, that Beneficiaries cannot be vested beneficiaries because their interests are discretionary. While this argument may be colorable as other courts have interpreted trust law, *see, e.g.*, *Brownell v. Leutz*, 149 F. Supp. 98, 102 (D.N.D. 1957) ("[I]n such a [discretionary] trust, where the beneficiaries are a class of persons, they do not have interests in the trust property, but merely have inalienable expectancies with no certainty of ultimate enjoyment."); *Steuer v. Franchise Tax Bd.*, 265 Cal. Rptr. 3d 216, 225 (Ct. App. 2020) ("Where a trustee has absolute discretion to allocate net trust income to the beneficiary, the beneficiary has a contingent interest in the distribution."); *In re Canfield's Estate*, 181 P.2d 732, 737 (Cal. Dist. Ct. App. 1947) ("In a discretionary trust where the trustee has absolute discretion, as here, in the allocation of the trust net income between the two beneficiaries (aside from a negligible portion thereof), each beneficiary has at most a mere expectancy."), this view stands contrary to the term's use in the trust, and Trustees have not identified support in Nevada law compelling a contrary reading. Further, this interpretation would render the rights conveyed in § 5.2(A) meaningless, as Trustees' absolute discretion in making distributions would preclude a distribution beneficiary from ever being vested. *See Phillips v. Mercer*, 94 Nev. 279, 282, 579 P.2d 174, 176 (1978) ("A court should not interpret a contract so as to make meaningless its provisions."). We therefore conclude that Trustees' suggested interpretation in this regard is unpersuasive.

Accordingly, as a "present beneficiary" for the trust of which each is primary beneficiary, Julia and Alexander are each entitled to request and receive "[c]opies of all trust related instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc., as well as of a Trustee's resignation, removal, appointment and/or acceptance, the original of which shall be attached hereto." The district court correctly determined that Beneficiaries may receive these records, and we affirm to that extent.

[5]Our conclusion regarding the statuses of contingent and vested beneficiaries pertains to their treatment in this trust, and we do not opine on the common law applicable to trusts in this regard. *Cf.* NRS 163.004(1).

As a "presently vested" beneficiary for the trust of which each is primary beneficiary, Julia and Alexander are each entitled to inspect the books of account and records of all financial transactions at reasonable times and, on request, to receive an annual tax return, inventory, and accounting. Here, the district court erred in determining that Beneficiaries were not vested beneficiaries. Nevertheless, despite incorrectly concluding that Beneficiaries were not vested, the court correctly ordered Trustees to produce many of the materials to which vested beneficiaries are entitled. Thus, the district court did not err in ordering that Trustees were required to provide an annual tax return, inventory, and summary of financial transactions. The district court, however, was mistaken in concluding that Beneficiaries were not entitled to an accounting. The district court also ordered that Beneficiaries are permitted to inspect the books and records if an item on the tax return indicates that inspection is appropriate. This directive should not have been conditioned on the tax returns, and we conclude that the trust permits Beneficiaries to inspect the books and records at reasonable times.

Notwithstanding the district court's erroneous conclusion that Beneficiaries were not vested, it reached the correct outcome in part. We affirm its order to the extent of the materials that it ordered Trustees to deliver. *See Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (affirming a district court order where the court reached the correct result, albeit for the wrong reason). We reverse to the extent that it concluded that Beneficiaries were not entitled to an accounting and that it did not permit Beneficiaries to inspect the books and records at reasonable times. The district court must direct Trustees to provide an annual accounting and inspections of the books and records at reasonable times.

The district court did not abuse its discretion in ordering Trustees to provide portions of the trust instrument but should have identified the specific sections to be provided

Lastly, Trustees argue that neither Nevada statutes nor the trust provide that Beneficiaries are entitled to receive copies of any part of the trust document and that the district court thus erred in ordering their delivery. Trustees further argue that the district court erred in ordering them to provide the sections of the trust affecting Beneficiaries' rights without specific analysis or guidance. Beneficiaries, meanwhile, argue that the district court's mandate that Trustees provide sections of the trust was not error, and they argue that they are entitled to receive a copy of the entire trust document. Beneficiaries argue that the absence of a provision expressly providing a right to receive the entire document does not frustrate

their request because the provisions giving them certain rights and entitling them to receive notice of amendments imply a right to receive the entire underlying instrument.

NRS 164.010(1) provides that a district court may assume jurisdiction over a trust, and NRS 164.010(5)(d) provides that such a court may enter orders regarding a trust. An interested person may then petition a court regarding the administration of a nontestamentary trust. NRS 164.015(1); *cf.* NRS 163.0016 (defining "[n]ontestamentary trust" as "a trust, including, without limitation, an electronic trust, that is created and takes effect during the lifetime of the settlor"). Such a petition may seek relief "regarding any aspect of the affairs of the trust." *See* NRS 153.031(1); NRS 164.015(1). We review a district court order regarding the administration of a trust for an abuse of discretion. *Hannam v. Brown*, 114 Nev. 350, 362, 956 P.2d 794, 802 (1998). A district court's findings of fact will be upheld if they are supported by substantial evidence and not clearly erroneous. *Id.* at 357, 956 P.2d at 799.

Preliminarily, NRS 165.147 ties the right to receive a copy of the trust document to the right to an accounting, providing that, generally, only those beneficiaries entitled to an accounting pursuant to NRS 165.1201-.148 may compel the trustees to provide a copy of the trust document. And because an accounting pursuant to NRS 165.1207 is not warranted, as explained above, we need not reach Beneficiaries' contention that they are entitled to a copy of the trust under NRS 165.147.

Nevertheless, in petitioning for a copy of the trust, Beneficiaries alleged that they received distributions from the trust that paid for many of their regular expenses but had never been given a copy of the trust and thus did not know its terms, their rights under it, whether the trust was being administered appropriately, or whether their rights under the trust were being violated. The district court held a hearing, assumed jurisdiction over the trust, concluded that it could not resolve the petition without reviewing the trust itself, and ordered production of the trust instrument for attorneys' eyes only review in chambers. After examining the trust, the district court found that Beneficiaries had an interest in discretionary distributions from the trust and concluded that they were entitled to know information regarding their rights under the trust. It determined that they were entitled to receive annual disclosures of certain financial information and concluded that, while no provision in the trust required Trustees to produce a copy of the instrument, Beneficiaries should receive the sections of the trust affecting their rights.

We recognize that, while the trust declares that Trustees have absolute, unfettered discretion, this is not so. Although Beneficiaries' interests are discretionary, a court may nevertheless review Trustees' exercise of discretion for conduct that is dishonest, is in bad faith, or constitutes willful misconduct. NRS 163.419(1).

The district court's finding that Beneficiaries have discretionary interests is supported by substantial evidence and not clearly wrong. The district court appropriately concluded that Beneficiaries should have access to trust materials in order to safeguard their statutory rights and rights under the trust. Further, the record shows that the district court entertained thorough briefing on the issues and provided the parties with sufficient opportunity to argue their cases. The district court had authority to enter an order concerning the administration of the trust here, and the order evinces a reasoned consideration of the issues and claims presented. Accordingly, we conclude that Trustees have not shown that the district court abused its discretion in ordering them to deliver copies of sections of the trust instrument.[6] *See Skender v. Brunsonbuilt Constr. & Dev. Co., LLC*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) ("An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." (internal quotation marks omitted)).

Nevertheless, we agree with Trustees that the district court abused its discretion in not specifying which sections Trustees must deliver to Beneficiaries, and we remand for the district court to set forth which specific sections Beneficiaries are entitled to receive. *See Las Vegas Review-Journal v. City of Henderson*, 137 Nev. 766, 772, 500 P.3d 1271, 1278 (2021) (remanding for limited purpose of applying the appropriate test and entering specific findings where the district court order did not do so). We clarify that where a district court acts pursuant to its authority under NRS 164.010 and directs a trustee to take a course of action, it should provide sufficient clarity in its mandate as to ensure that there is no confusion as to what steps must be taken. *Cf. Fed. Nat'l Mortg. Ass'n v. Westland Liberty Vill., LLC*, 138 Nev. 614, 623, 515 P.3d 329, 337 (2022) (cautioning district courts, in the context of a preliminary injunction, to exercise care to ensure that a mandate provides sufficient guidance as to what specifically must be performed).

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[6]We observe that the trust provides that "the Trustee shall not provide notice of the existence of the trust to any beneficiary hereunder," "[n]otwithstanding anything herein to the contrary and to the extent permitted by applicable law." The trust does not offer guidance as to what precisely the grantor intended with this provision, particularly as it appears to conflict with the general rule that trustees must inform beneficiaries regarding the trust. *See* Restatement (Third) of Trusts § 82(1)(a) (2007) (providing that a trustee has a general duty "to inform fairly representative beneficiaries of the existence of the trust, of their status as beneficiaries and their right to obtain further information, and of basic information concerning the trusteeship"). Considering that it is evident that Beneficiaries here already have notice of the existence of the trust, we decline to infer broader consequences from this provision and conclude that a fair and reasonable interpretation under these circumstances reads it to have no force as to a beneficiary who already knows that the trust exists. *See Connell Living Tr.*, 134 Nev. at 616, 426 P.3d at 602 (favoring the most fair and reasonable construction in ascertaining the grantor's intent).

Insofar as Beneficiaries rely on *Matter of Estate of Ella E. Horst Revocable Trust, U/A/D 05/21/1991*, 136 Nev. 755, 761, 478 P.3d 861, 867 (2020), to argue that Trustees were obligated to disclose the entire trust rather than sections, their reliance is misplaced, as that decision contemplated whether strict compliance was necessary when a trustee elected to notify beneficiaries pursuant to NRS 164.021 that a revocable trust became irrevocable. That optional disclosure does not bear on whether Trustees must disclose here.

CONCLUSION

These appeals present an opportunity to clarify several statutes and issues regarding the administration of trusts. We conclude that NRS 165.1207(1)(b)(5) does not provide a beneficiary whose only distribution interest in a trust is discretionary with a right to an accounting and that NRS 165.180 does not provide a district court with an independent basis on which to order an accounting. Whether a beneficiary has a right to an accounting under the terms of a trust, however, turns principally on the language of the trust instrument itself, so as to give force to the grantor's intent. Where a trust provides certain entitlements to "present" or "vested" beneficiaries, the construction of those terms should look to their definitions in the trust instrument first and foremost; in the absence of a specific definition, the construction should consider their usage in the instrument. And we clarify that a district court should provide sufficient specificity in its orders where it directs a trustee to take particular action with respect to the administration of a trust.

In the present circumstances, we conclude that Beneficiaries are entitled to the rights of both "present" and "vested" beneficiaries. We affirm the district court order insofar as it ordered Trustees to deliver annual financial documents and make available for inspection books of account and records of financial transactions, but we reverse the order insofar as it denied an accounting. We also affirm the district court order directing Trustees to deliver copies of sections of the trust instrument affecting Beneficiaries' rights but conclude that the failure to specify which sections this entailed constituted an abuse of discretion. Accordingly, on remand, we direct the district court to indicate which sections must be delivered.

Hardesty and Herndon, JJ., concur.

LYNITA SUE NELSON, Individually and as Trustee of the LSN NEVADA TRUST DATED MAY 30, 2001, Appellant, *v.* JEFFREY L. BURR, ESQ.; and JEFFREY BURR, LTD., Respondents.

No. 81456

December 29, 2022 521 P.3d 1207

Appeal from a district court order granting a motion to dismiss a legal malpractice action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Affirmed.

Pecos Law Group and *Curtis R. Rawlings*, Henderson, for Appellant.

Lipson Neilson P.C. and *Joseph P. Garin* and *Amber M. Williams*, Las Vegas; *Lewis Roca Rothgerber Christie LLP* and *Daniel F. Polsenberg, Joel D. Henriod*, and *Abraham G. Smith*, Las Vegas, for Respondents.

Julia S. Gold and *Dara J. Goldsmith*, Reno, for Amicus Curiae Probate and Trust Law Section of the State Bar of Nevada.

Before the Supreme Court, En Banc.[1]

OPINION

By the Court, Hardesty, C.J.:

In this opinion, we clarify that legal malpractice claims that arise from legal advice given in the course of drafting an estate plan are transactional legal malpractice claims. While the statute of limitations set forth in NRS 11.207(1) applies to both transactional and litigation-based legal malpractice claims, this court's litigation-malpractice tolling rule applies only to litigation-based legal malpractice claims, meaning claims that arise from legal representation during litigation. For transactional legal malpractice claims, this court interprets NRS 11.207(1) consistently with its jurisprudence in *Gonzales v. Stewart Title of Northern Nevada*, 111 Nev. 1350, 905 P.2d 176 (1995), *overruled on other grounds by Kopicko v. Young*, 114 Nev. 1333, 971 P.2d 789 (1998), which held that such

[1]The Honorable Ron D. Parraguirre, Justice, did not participate in the decision in this matter. The Honorable Mark Gibbons, Senior Justice, was appointed by the court to sit in place of the retired Honorable Abbi Silver, Justice. Nev. Const. art. 6, § 19; SCR 10.

an action accrues when the plaintiff suffers damages and discovers (or should have discovered) the material facts of the case.

While appellant Lynita Nelson asks this court to determine that her legal malpractice claim is neither strictly litigation-based nor transactional, we determine that her claim is plainly transactional, and we therefore do not apply the litigation-malpractice tolling rule to it. Rather, we determine that under NRS 11.207(1) and *Gonzales*, the statute of limitations on Lynita's malpractice claim began to run when she retained independent counsel to review the legal documents that were the subject of her claim and thus sustained the expense of hiring such counsel to litigate the documents' meaning. As she retained counsel more than two years before filing her malpractice claim, the claim is barred by the statute of limitations, and we affirm the district court's order dismissing Lynita's complaint.

BACKGROUND

Lynita and Eric Nelson married in 1983 and divorced in 2013. During their marriage, Eric sought respondent Jeffery L. Burr's counsel in the creation of an estate plan that would insulate his and Lynita's estate from creditors. To this end, Lynita and Eric entered into a separate property agreement drafted by Burr and thereafter moved their assets into separate revocable trusts. During this time, Lynita retained independent counsel recommended by Burr. Lynita alleges that she was never given time to research and retain independent counsel of her own choosing and rather reasonably relied on Burr's explanation of the legal effects of the separate property agreement and the separate trusts.

In 2001, Burr advised Eric to utilize individual self-settled spendthrift trusts to further protect his and Lynita's community assets. Eric and Lynita agreed and converted their separate property trusts into self-settled spendthrift trusts—the Eric L. Nelson (ELN) Trust and the Lynita S. Nelson (LSN) Trust. They funded these trusts with the separate property previously held in their respective revocable trusts. Lynita alleges that Burr advised her that the spendthrift trusts would have no legal effect on the distribution of Eric and Lynita's assets in the event of a divorce and that she relied on this advice despite being independently represented. Eric subsequently transferred millions of dollars from the LSN Trust to the ELN Trust during their marriage, allegedly based on Burr's advice to level off or equalize the holdings of the trusts to protect the assets from third-party creditors.

In 2009, Eric filed for divorce. During the divorce proceedings, Eric and Lynita disagreed on how the assets held in their individual spendthrift trusts should be distributed. Burr testified in 2010 regarding the intended effects of the separate property agreement and the spendthrift trusts and his representations to Lynita

regarding what the documents would accomplish. Specifically, he testified that the purpose of the trusts was to protect the family from creditors, that he had never intended the trusts to alter Eric's and Lynita's property rights in the event of a divorce, and that he had advised both Eric and Lynita of this. With respect to the separate property agreement, Burr testified that it did not direct how any community property acquired after its execution would be divided and that the parties could therefore still have community property issues arise after the agreement's execution.

A decree of divorce was issued in 2013. It equalized the property in the ELN and LSN Trusts between Eric and Lynita and provided that Lynita's support arrears, lump sum alimony, and attorney fees were to be paid from the ELN Trust. Eric appealed, and in May 2017, this court partly reversed the divorce decree, determining that the assets in the spendthrift trusts could not be equalized or levied against through court order for any purpose, that the separate property agreement was valid, and that the parties' property was validly separated into their respective separate property trusts at the time of its execution. *See Klabacka v. Nelson*, 133 Nev. 164, 165, 394 P.3d 940, 943 (2017).

Within two years of the decision, Lynita filed a legal malpractice complaint against Burr. Lynita alleged that this court's reversal of the divorce decree meant that she was no longer entitled to over $5,000,000, and that these damages were caused by Burr's failure to properly advise her on the legal ramifications of executing the separate property agreement and creating the spendthrift trusts. Burr responded with a motion to dismiss under NRCP 12(b)(5), arguing that Lynita's malpractice claim is time-barred by the statute of limitations set forth in NRS 11.207(1).

The district court granted the motion to dismiss. It reasoned that Lynita's legal malpractice claim is transactional and that the statute of limitations for transactional legal malpractice claims, unlike for litigation-based legal malpractice claims, begins to run prior to the completion of the litigation arising from the alleged malpractice. The court found that Burr's testimony in 2010 during the divorce trial triggered the two-year statute of limitations under NRS 11.207(1) and that Lynita's 2019 malpractice claim is thus time-barred. After Lynita appealed, the Court of Appeals reversed and remanded. We granted Burr's subsequent petition for review under NRAP 40B, and we now issue this opinion addressing the parties' arguments.

DISCUSSION

Lynita argues on appeal that the district court erred in finding that her malpractice claim began to accrue during the divorce trial. She further contends that she could not have known of the facts constituting her legal malpractice claim or suffered damages until

this court reversed the divorce decree in 2017. Burr responds that Lynita's claim is clearly transactional, arguing that Lynita sustained damages and discovered or should have discovered the material facts constituting her cause of action when she assumed the expense of litigating the meaning of the separate property agreement and trust documents during the divorce proceedings.

Standard of review

A district court's order granting a motion to dismiss under NRCP 12(b)(5) is reviewed de novo. *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). A complaint should be dismissed for failure to state a claim "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id*. This standard is rigorous, with every inference drawn in favor of the nonmoving party. *Id*. at 227-28, 181 P.3d at 672. And when, as here, the facts are uncontroverted, "the application of the statute of limitations is a question of law that this court reviews de novo."[2] *Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture, LLC*, 129 Nev. 181, 186-87, 300 P.3d 124, 128 (2013). The statute of limitations is an appropriate ground on which to bring a motion to dismiss under NRCP 12(b)(5). *See id*. at 186, 300 P.3d at 128.

This court has consistently held that the litigation-malpractice tolling rule applies only to claims that arise from litigation representation

NRS 11.207(1) sets forth the statute of limitations for legal malpractice claims as follows:

> An action against an attorney . . . to recover damages for malpractice, whether based on a breach of duty or contract, must be commenced within 4 years after the plaintiff sustains damage or within 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the material facts which constitute the cause of action, whichever occurs earlier.

This court has explained that "[a]s a general rule, a legal malpractice action does not accrue until the plaintiff knows, or should know, all the facts relevant to the [malpractice] elements and damage has been sustained." *Hewitt v. Allen*, 118 Nev. 216, 221, 43 P.3d 345, 347-48 (2002).

When the alleged legal malpractice occurs during the course of litigation, the malpractice claim does not accrue until the underlying

[2]Lynita seemingly argues that the facts are not uncontroverted because the parties disagree about whether Burr's 2010 testimony put her on notice of a legal malpractice claim. We reject this argument because Lynita does not dispute the content of Burr's testimony, but rather the legal effect of that testimony.

litigation and any appeal of an adverse ruling from the underlying litigation are resolved. *Id.* at 221, 43 P.3d at 348. This rule, known as the litigation-malpractice tolling rule, delays the commencement of the statute of limitations until the litigation in which the malpractice occurred ends and damages are certain. *Brady, Vorwerck, Ryder & Caspino v. New Albertson's, Inc.*, 130 Nev. 632, 642, 333 P.3d 229, 235 (2014). The rationale for the litigation-malpractice tolling rule is that a client cannot discover the material facts for a litigation malpractice claim until the litigation concludes because any damages arising from an attorney's error during litigation may be altered or eliminated altogether on appeal. *See id.* ("When the litigation in which the malpractice occurred continues to progress, the material facts that pertain to the damages still evolve as the acts of the offending attorney may increase, decrease, or eliminate the damages that the malpractice caused."); *see also K.J.B., Inc. v. Drakulich*, 107 Nev. 367, 370, 811 P.2d 1305, 1306 (1991) (explaining that when legal malpractice is alleged to have occurred during litigation, damages "are premature and speculative until the conclusion of the underlying lawsuit").

The same is not true for legal malpractice claims arising out of transactional work. *See Kim v. Dickinson Wright, PLLC*, 135 Nev. 161, 166, 442 P.3d 1070, 1074 (2019) ("[T]he tolling rule does not apply to non-adversarial or transactional representation."). For those claims, the material facts constituting transactional malpractice can be discovered prior to the completion of any litigation arising out of that malpractice. *See Kopicko v. Young*, 114 Nev. 1333, 1337 n.3, 971 P.2d 789, 791 n.3 (1998) (distinguishing transactional malpractice claims from litigation-based malpractice claims). In *Gonzales v. Stewart Title of Northern Nevada*, we explained that a malpractice "action accrues when the litigant discovers, or should have discovered, the *existence* of damages, not the exact numerical extent of those damages." 111 Nev. 1350, 1353, 905 P.2d 176, 178 (1995). A litigant who files or has to defend against a lawsuit occasioned by transactional malpractice "sustains damage by assuming the expense, inconvenience and risk of having to maintain such litigation" and thus is aware of the existence of damages at that time, even though the amount of the damages is uncertain. *Id.* at 1353-54, 905 P.2d at 178 (internal quotation marks omitted).[3] Thus, there is no need to toll commencement of the limitations period for transactional malpractice claims, and the period begins to run when the material facts of the claim, including the existence of damages, becomes known or discoverable.

[3]Further, we take this opportunity to clarify that the rules set forth in *Gonzales* regarding when the statute of limitations generally begins to run for transactional legal malpractice claims survived the 1997 legislative amendment to NRS 11.207(1) and are still applicable.

Lynita's legal malpractice claim is transactional, and the litigation-malpractice tolling rule therefore does not apply

Lynita argues that the district court erred in finding her malpractice claim to be transactional because Lynita's complaint alleged that Burr failed to properly advise her on the legal effects of the property agreement and trust documents that he drafted. Because Burr's alleged malpractice occurred in giving legal advice related to the drafting of estate planning documents, we conclude that the malpractice claim was clearly transactional.[4] *See Viner v. Sweet*, 70 P.3d 1046, 1048 (Cal. 2003) (defining transactional work in the context of a malpractice claim as "giving advice or preparing documents for a business transaction").

Lynita next argues that she could not have discovered the facts forming the basis of her malpractice claim simply by reviewing the separate property agreement and spendthrift trusts because they were not facially defective. She contends that she did not learn of Burr's allegedly negligent advice and did not suffer any damages from the negligence until this court reversed the divorce decree on appeal in 2017. Contrary to Lynita's assertions, a legal document need not be obviously defective for a client to be put on notice of the facts forming the basis of her transactional malpractice claim. Indeed, in *Gonzales*, this court held that the plaintiffs had notice of the facts constituting malpractice when the legal effect of the document drafted by their attorney was called into question and the plaintiffs incurred expenses in hiring an attorney and litigating the issue. 111 Nev. at 1351-52, 905 P.2d at 177.

Here, the legal effect of the separate property agreement and spendthrift trusts on the distribution of assets was called into question and extensively litigated during the divorce trial, with Burr being called as a witness in 2010 to testify about those documents. Though Lynita had already retained counsel to represent her in the divorce, she necessarily incurred the additional expense of litigating the meaning of those documents during the trial. Consistent with *Gonzales*, then, the two-year statute of limitations for Lynita's claim began to run during the divorce trial when she retained

[4]Further, we reject Lynita's argument that her claim is neither transactional nor litigation-based but is instead seemingly a hybrid category. Lynita offers no legal basis to support the existence of a hybrid category, let alone to support her argument that her plainly transactional claim should be considered a hybrid, and we decline to create that category now. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority); NRAP 28(a)(10)(A) (requiring the argument section of appellant's briefing to contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies").

counsel to review the allegedly faulty documents prepared by Burr. *See Gonzales*, 111 Nev. at 1354, 905 P.2d at 178-79. Even drawing every inference in the light most favorable to Lynita as the nonmoving party, the two-year statute of limitations under NRS 11.207(1) expired by the time Lynita filed her malpractice complaint in 2019. We therefore conclude that the district court did not err in finding Lynita's claim time-barred under NRS 11.207(1), and we affirm.

Stiglich, Cadish, Pickering, and Herndon, JJ., and Gibbons, Sr. J., concur.