IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA HELENE MONA and MICHAEL J. MONA, JR.,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE JOE HARDY, DISTRICT JUDGE

Respondents,

and

FAR WEST INDUSTRIES,

Real Party in Interest.

Case No.: 68434

District Court Case No.: A-12-670352-F

REAL PARTY IN INTEREST'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of the Court may evaluate possible disqualification or recusal.

1. Real Party in Interest Far West Industries ("Far West") is a nongovernmental entity.

2. Far West has no parent corporations and there is no publicly held company which owns 10% or more of Far West's stock.

3. The law firm of Lee, Hernandez, Landrum & Garofalo, formerly known as Lee, Hernandez, Landrum, Garofalo & Blake, previously represented Far West in proceedings before the Eighth Judicial District Court (the "District Court").

4. The law firm of Holley Driggs Walch Fine Wray Puzey & Thompson, formerly known as Holley Driggs Walch Puzey & Thompson, currently represents

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Far West in proceedings before the District Court and in the proceedings before this Court.

Dated this 30th day of September, 2015.

HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON

/s/ F. Thomas Edwards
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I.

ISSUES PRESENTED FOR REVIEW

1. Whether the District Court has the power to sanction an individual subject to a Court order for knowingly failing to abide by that same order.
2. Whether the District Court has personal jurisdiction over an individual duly served with an order for judgment debtor examination, who appears at a judgment debtor examination, a telephonic hearing and subsequent District Court proceedings without raising the issue of personal jurisdiction.
3. Whether this Court should disregard its decision in Randono v. Turk, 86 Nev. 123, 466 P.2d 218 (1970) and prevent judgment creditors from executing their judgments against community property.
4. Whether the District Court can order Petitioners not to dispose of assets pursuant to NRS 21.280 and 21.330.
5. Whether NRS 21.320 allows the District Court to order the community property of Mr. Mona, held in Mrs. Mona's account, to be used to satisfy a judgment.
6. Whether the District Court needs to conduct an evidentiary hearing before awarding sanctions when there are no disputed material facts.
7. Whether the District Court in awarding sanctions is required to specifically

reference Young v. Johnny Ribeiro Blvd. Inc., 106 Nev. 88, 787 P.2d 777 (1990) despite considering all relevant factors, including those identified in Young.

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II.

STATEMENT OF THE CASE

The Superior Court of the State of California, County of Riverside ("California Court"), found Michael J. Mona, Jr. ("Mr. Mona") guilty of fraud. The California Court also determined Mr. Mona was the alter ego of the Mona Family Trust Dated February 21, 2002 ("Mona Family Trust") and awarded Far West a judgment of approximately $18,000,000.00 against Mr. Mona and the Mona Family Trust. See Judgment and Findings of Fact and Conclusions of Law ("Judgment"), 1 Pet. App. 174-93.[1] However, Mr. Mona failed to limit his fraud and deceit to the underlying action, but persisted with this conduct during Far West's attempts to execute upon the Judgment. Mr. Mona's wife, Rhonda Helene Mona ("Mrs. Mona" and collectively with Mr. Mona, the "Petitioners") participated in Mr. Mona's fraudulent and deceitful conduct. Petitioners waged a campaign spanning two years to avoid satisfying the Judgment. Petitioners' efforts to avoid the Judgment included fraudulent transfers between spouses, fraudulent transfers to their children, fraudulent transfers to related entities and now a sham

[1] "Pet. App." refers to Petitioners' Appendix and is preceded by the volume number and is followed by the page number. "FW App." refers Far West's Supplemental Appendix and is preceded by the volume number and followed by the page number. "NRAP" refers to the Nevada Rules of Appellate Procedure. "NRCP" refers to the Nevada Rules of Civil Procedure, and "NRS" refers to the Nevada Revised Statutes.

divorce.

Petitioners' efforts to avoid the Judgment also included the violation of court orders and the concealment of records. Even more egregious, Mr. Mona lied under oath to conceal the transfer of community property totaling more than $3,400,000.00 to Mrs. Mona ("Transfer"). After discovering the Transfer, the lies and the violations of court orders to conceal the Transfer, Far West requested sanctions against Petitioners. In the Order Regarding Order to Show Cause Why Accounts of Rhonda Mona Should Not Be Subject to Execution and Why the Court Should Not Find Monas in Contempt ("Sanction Order"), 2 Pet. App. 348-58, the Eighth Judicial District Court ("District Court") properly found that Petitioners violated court orders, lied under oath and made gross omissions in their briefing. Given the severity of the Petitioners' misconduct and as explained further below, the Court should affirm the Sanction Order.

III.

STATEMENT OF THE FACTS

A. Entry of the Fraud Judgment

In April 2012, the California Court entered the Judgment in favor of Far West of more than $18,000,000.00 against Petitioner Michael J. Mona, Jr., and the Mona Family Trust, various claims, including fraud. 1 Pet. App. 174-93. With

interest, the Judgment currently exceeds $24,000,000.00.

B. Initial Judgment Debtor Examination Proceedings

On October 18, 2012, Far West domesticated the Judgment in Nevada. 1 FW App. 1-7. On January 30, 2013, the District Court entered its original order for the judgment debtor examination of Mr. Mona ("First JDE Order"). 1 FW App. 8-15. The First JDE Order required Mr. Mona to produce all of his financial records and any contracts to which he was a party. Id. After months of delays by Mr. Mona, the Court entered another order requiring that that Mr. Mona complete his production of the documents by September 25, 2013 ("Second JDE Order").[2] 1 Pet. App. 19-21. Rather than comply with the First and Second JDE Orders, in September of 2013, Mr. Mona inundated Far West with approximately 33,000 pages of documents, which can only be characterized as a document dump. 2 Pet. App. 351.

Unbeknownst to Far West at the time, Petitioners recently sold community property shares of Medical Marijuana, Inc. for approximately $6,800,000.00. 1 Pet. App. 145-56. The sale of these shares occurred from March 2013 through August 2013, just two months after the Court entered the First JDE Order and one month prior to the deadline for Mr. Mona to complete production of the required documents. Id. Sitting on $6,800,000.00 with Mr. Mona's judgment debtor

[2] Mr. Mona's delay tactics went so far as refusing to appear at a duly noticed hearing.

examination looming, the Petitioners devised a plan to turn themselves from millionaires to paupers in just a few weeks.

First, the Petitioners executed a Post-Marital Property Settlement Agreement on September 13, 2013, just 12 days prior to the September 25, 2013 deadline to complete the production of documents. 1 Pet. App. 19-21, 145-56. The Post-Marital Property Settlement Agreement purports to divide the $6,800,000.00 proceeds equally between the Petitioners as their separate property, with each receiving approximately $3,400,000.00. 1 Pet. App. 145-56. Second, Mr. Mona transferred his portion of the funds to his commercial entities in the form of loans and other contributions.[3]

In sum, Mr. Mona disposed of approximately $6,800,000.00 within two months of the scheduled judgment debtor examination. This sequence of events demonstrates that Mr. Mona intentionally delayed the judgment debtor examination for months in order to unlawfully dissipate his assets without interference or oversight.

At his November 25, 2013 judgment debtor examination, when asked what he did with the $6,800,000.00 in stock sale proceeds, Mr. Mona perjured himself, refusing to disclose the $3,400,000.00 transfer to his wife. 1 FW App. 105. Instead, Mr. Mona testified that he paid some "personal bills" and loaned the rest

[3] These transfers to Roen Ventures, LLC were the subject of a fraudulent transfer action, Case No. A-14-695786-B, which the parties recently settled.

to Roen Ventures, LLC, a company for which he was 50% owner. Id. Notably, Mr. Mona also failed to produce the Post-Marital Property Settlement Agreement, despite the First and Second JDE Orders requiring him to produce all of his financial records and contracts to which he was a party. 2 Pet. App. 350-51.

C. Recent Judgment Debtor Examination Proceedings

On May 13, 2015, the District Court entered orders scheduling the judgment debtor examinations of Mr. and Mrs. Mona ("Third JDE Order" and "Fourth JDE Order," respectively). 1 FW App. 161-78. Mrs. Mona was a trustee of the Mona Family Trust, one of the judgment debtors, and the District Court ordered her to appear in that capacity. 1 FW App. 170-78. The Third and Fourth JDE Orders set forth a list of documents that Mr. and Mrs. Mona were required to produce, including all bank records and documents evidencing any of their assets. 1 FW App. 161-78.

Among the documents produced by the Petitioners in conjunction with the Third and Fourth JDE Orders was the Post-Marital Property Settlement Agreement that Mr. Mona failed to produce almost two years earlier. 1 Pet. App. 145-56. Mr. Mona conceded at his June 30, 2015 judgment debtor examination that he "definitely" should have produced the Post-Marital Property Settlement Agreement back in 2013 and "definitely" should have testified about the transfer of $3,4000,000.00 to his wife at his 2013 judgment debtor examination. 3 FW App.

208-10. Moreover, the Petitioners still continued to withhold bank records in the name of Mrs. Mona, despite the fact that the accounts contained community property. 2 Pet. App. 353.

Mrs. Mona begrudgingly testified at her examination that she has three different bank accounts in her name, which hold approximately $190,000.00 in earnings from design projects performed by Mrs. Mona during the marriage, and approximately $300,000.00 – the only money remaining from the $6,800,000.00 purportedly split between Mr. and Mrs. Mona. 2 FW App.207-208, 218-219. To date, the Petitioners still failed to produce any records related to these accounts, despite the fact that they contain community property subject to execution to satisfy Far West's Judgment.

After the judgment debtor examination and upon Far West's application, the District Court entered an order to show cause why the accounts of Mrs. Mona should not be subject to execution and why the Petitioners should not be sanctioned. 1 Pet. App. 127-193 (the "Order to Show Cause"). The Order to Show Cause set a briefing schedule and a hearing date. 1 Pet. App. 194-96. After considering the parties' briefs and lengthy oral argument, the District Court sanctioned Petitioners based upon the their repeated failure to produce the required documents pursuant to District Court orders and the fact that Mr. Mona lied at his judgment debtor examination. 2 Pet. App. 348-58. Emphasizing the severity of

Petitioners' misconduct, the District Court found that said conduct resulted in the dissipation of millions of dollars in assets that otherwise should have gone towards satisfaction of the Judgment. 2 Pet. App. 356.

As part of the sanctions, after a thorough analysis of the undisputed facts before it, the District Court found the Post-Martial Property Settlement Agreement was a fraudulent transfer and the facts establishing the fraudulent transfer were deemed established, pursuant to NRCP 37(b)(2)(A).[4] 2 Pet. App. 357. The District Court also determined that the previously undisclosed bank accounts in Mrs. Mona's name contained community property, subject to execution by Far West pursuant to Randono, 86 Nev. at 131, 466 P.2d at 223.[5] 2 Pet. App. 356-57. Considering that Petitioners' misconduct resulted in the dissipation of millions of dollars that should have otherwise gone towards satisfying the Judgment, the District Court also prohibited Petitioners from claiming that the comparably small amount money remaining in the previously undisclosed bank accounts is exempt from execution, pursuant to NRCP 37(b)(2)(B). 2 Pet. App. 356-57. Finally, the District Court awarded Far West its fees and costs incurred as a result of the

[4] In order to reduce this finding to a judgment against Mrs. Mona, and to address other fraudulent transfers discovered during the recent judgment debtor examinations, Far West filed a new complaint against Petitioners and others. 4 FW App. 980-97.

[5] Notably, Petitioners do not dispute that the Bank of George checking account contains community property.

violations of the District Court's orders and, to preserve the status quo, ordered that Petitioners may not dispose of any non-exempt assets until the money in the undisclosed bank accounts is applied towards the Judgment. 2 Pet. App. 357.

While these sanctions are serious, they are justified by the serious misconduct by Petitioners, which resulted in the dissipation of millions of dollars that should have otherwise gone towards satisfying the Judgment. When Petitioners decided to lie under oath and violate the District Court's orders, they put themselves at risk of these sanctions. Therefore, the Court should affirm the Sanction Order.

IV.

STATEMENT OF THE STANDARD OF REVIEW

This Court, "in reviewing sanctions, [does] not consider whether [it], as an original matter, would have imposed the sanctions . . . [T]he standard of review is whether the District Court abused its discretion in doing so." Bahena v. Goodyear Tire & Rubber Co., 126 Nev. Adv. Op. 26, 235 P.3d 592, 596 (2010). Additionally, this Court does not impose a "heightened standard of review," where the sanction does not result in dismissal of a case or the striking of a pleading. See id. In the underlying Bahena case, this Court determined that were the District Court to strike all of the parties' affirmative defenses, or even were the District

Court to strike the parties' answer on the issue of liability, those would not be case concluding sanctions and do not require a heightened standard of review. Id. In this case, the sanctions are monetary. No pleadings have been stricken. As a result, an abuse of discretion remains the standard of review.

Additionally, "in the appellate context, [the Supreme] Court will not disturb a district court's findings of fact unless they are clearly erroneous and not based on substantial evidence." Int'l Fid. Ins. Co. ex. rel. Blackjack Bonding v. State, 122 Nev. 39, 42, 126 P.3d 1133, 1134-35 (2006). Therefore, the Court should apply its abuse of discretion standard to analyzing the District Court's decision regarding the sanctions against Appellants, and should further not disturb the District Court's findings of fact.

V.

SUMMARY OF THE ARGUMENT

The District Court had jurisdiction to sanction Mrs. Mona where she had been served with the Order requiring her to appear for a judgment debtor examination. While this in and of itself is sufficient to confer jurisdiction to sanction Mrs. Mona for failure to comply with that same Order with which she was served, the Court further had jurisdiction to sanction Mrs. Mona after she appeared at the judgment debtor exam without raising any objection as to her personal

jurisdiction. Jurisdiction to sanction Mrs. Mona was further conferred when she and her counsel participated in a hearing before the District Court and again failed to raise the issue of personal jurisdiction.

Petitioners' accusation that Far West added Mrs. Mona as a party to the Judgment is simply inaccurate. The Judgment has always been against Mr. Mona and the Mona Family Trust. The issue before the District Court was not whether to add Mrs. Mona as a party to the Judgment so that Far West could collect against her separate property, but instead the issue was whether Far West could collect its Judgment against the community property of Mr. Mona, held in bank accounts in Mrs. Mona's name.

This Court should disregard the Petitioners' efforts to make the Court overrule its long standing decision in the Randono case, that expressly holds, consistent with several states, that all community property was subject to a judgment against a tortfeasor's spouse, regardless of whether the other spouse was a party to the underlying litigation. 86 Nev. at, 131, 466 P.2d at 223. As a result, no additional proceeding against Mrs. Mona is required.

Public policy is served by allowing Far West to collect its Judgment against Mrs. Mona without instituting an additional action. To require a creditor to name a debtor's spouse whenever it seeks to collect against community property would simply encourage the same type of fraudulent conduct which occurred in this case

where one spouse can transfer assets to another spouse in an effort to force the creditor to undertake further legal action. Requiring a separate action to be instituted whenever community property is implicated would greatly increase the costs to all parties in litigation as well as infiltrate the courts' dockets with duplicative and unnecessary litigation.

Petitioners' due process rights were satisfied in that they had notice and an opportunity to be heard. Not only were Petitioners served with an Order to Show Cause which set forth the briefing schedule and a hearing, but Far West specifically offered to continue the briefing schedule and hearing date to afford Petitioners additional time and the Petitioners declined. At the hearing on the Order to Show Cause, both Petitioners appeared and were represented by counsel. The District Court further offered to continue the hearing to give Petitioners additional time but again, the Petitioners refused. The hearing included lengthy oral argument from all parties. Petitioners were clearly given notice and substantial opportunity to be heard and as a result their due process rights were satisfied.

The District Court properly applied Nevada law for the proceeding supplement to the execution of the Judgment. This Sanction Order was made pursuant to NRCP 37 and the inherent powers of the Court. NRS 21.280 and 21.330 are only implicated to prevent the Petitioners from disposing of their assets.

Despite the Petitioners contentions to the contrary, there were no meet and confer requirements since NRCP 37(a)(2)(A) was inapplicable to the sanctions at issue in this case. The Motion for Sanctions was made pursuant to NRCP 37(b) and did not implicate the meet and confer requirement or NRCP 37(a)(2)(A) in that it was not addressing the failure to disclose required under NRCP 16.1(a) or 16.2(a) and likewise since it was not a discovery motion, EDCR 2.34 did not apply.

The District Court was not required to hold an evidentiary hearing where there was no material factual question, and the sanctions do not involve dismissal with prejudice. The District Court likewise considered and made explicit findings of the relevant factors in issuing its Order regarding the sanctions. While the Order did not expressly cite to the Young case, the factors in the underlying decision were addressed within the Order. A review of these undisputed facts demonstrate that the District Court did not abuse its discretion in determining that the Post-Martial Settlement Agreement was a fraudulent transfer.

For these reasons, it is respectfully submitted that this Court should affirm the District Court's Sanction Order.

VI.

ARGUMENT

A. The District Court Had Jurisdiction Over Mrs. Mona

Petitioners take the bizarre position that the District Court had the power to order Mrs. Mona to produce records and appear at a judgment debtor examination, but that the District Court was powerless to sanction Mrs. Mona for violating that same order. This argument defies logic. If the District Court can order Mrs. Mona to appear for a judgment debtor examination, which she did without objection, the District Court must also have the authority to sanction Mrs. Mona for violating that order.

The District Court acquired jurisdiction over Mrs. Mona when Far West duly served the order requiring her to appear for the judgment debtor examination. 1 Pet. App. 75-77. It is undisputed that the Mona Family Trust is a judgment debtor and that Mrs. Mona was a trustee of the Mona Family Trust. 1 Pet. App. 173-93; 2 FW App. 237 (59:2-6). The order requiring Mrs. Mona to appear for the judgment debtor examination identified Mrs. Mona as the trustee of the Mona Family Trust. 1 FW App. 170-78.

Consistent with the Petitioners' conduct throughout this action, Mrs. Mona attempted to avoid service of the Fourth JDE Order. Pursuant to NRS

14.090(1)(b), which provides alternative methods of service for "any legal process," Far West requested to serve Mrs. Mona by certified or registered mail because Petitioners' residence was gated and entry through the locked gate was not reasonably available. 1 Pet. App. 62-69. On May 26, 2015, the District Court entered an order permitting service upon Mrs. Mona by certified or registered mail. 1 Pet. App. 70-74. That same day, Far West served the Fourth JDE Order upon Mrs. Mona via certified and registered mail. 1 Pet. App. 75-77.[6]

Without citing to any authority to support their position, it appears Petitioners are asking this Court to invalidate NRS 14.090 and declare that service by mail pursuant to NRS 14.090 is a violation of due process. Although this Court has not addressed in a written opinion whether service by mail comports with due process requirements, both the U.S. Supreme Court and the Ninth Circuit have found that service by mail does comply with due process requirements. Int'l Shoe Co. v. State of Wash., 326 U.S. 310, 320, 66 S. Ct. 154, 160 (1945) (holding that mailing of the notice of suit by registered mail was reasonably calculated to apprise

[6] To the extent Mrs. Mona argues that she avoided service of the Fourth JDO Order by not picking up her mail, that argument is frivolous and her attempt to avoid service is ineffective. See Broad. Music, Inc. v. Blueberry Hill Family Rests., Inc., 899 F. Supp. 474, 476 (D. Nev. 1995) (in case where defendant refused certified mailing, "This court will not accept Blueberry Hill's implicit, but unsupported, argument that nine letters went undelivered. The argument approaches the frivolous given that Blueberry Hill recognized and refused to accept mail from BMI that required a return receipt. Simply stated, Blueberry Hill cannot claim innocence after actively, though ineffectively, attempting to ignore BMI.").

the party of the suit); Travelers Health Ass'n v. Com. of Va. ex rel. State Corp. Comm'n, 339 U.S. 643, 650-51, 70 S. Ct. 927, 931 (1950) (confirming that service by mail complies with due process requirements because it provides adequate and reasonable notice as held in Int'l Shoe); Rio Properties, Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1016-17 (9th Cir. 2002) (holding that service by mail and email complied with due process requirements, stating: "Without hesitation, we conclude that each alternative method of service of process ordered by the district court was constitutionally acceptable."). Therefore, service by registered and certified mail, in compliance with NRS 14.090(1)(b) and pursuant to order of the District Court, complies with due process requirements and confers jurisdiction over Mrs. Mona.[7]

When Mrs. Mona was served via certified and registered mail with the Fourth JDE Order on May 26, 2015, Mrs. Mona was a trustee of judgment debtor Mona Family Trust, which was necessarily a party to the collection proceeding before the District Court. Therefore, Petitioners' attempt to equate the judgment debtor examination order to a third-party subpoena is not supported by the facts or any case law, and this Court should completely disregard it. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n. 38 (2006) ("Edwards neglected his responsibility to cogently argue, and present

[7] Notably, NRS 21.270, which authorizes judgment debtor examinations, simply requires that the order be "regularly served" and does not provide for a specific type of service, nor does it suggest that service methods pursuant to NRS 14.090 would be invalid.

relevant authority, in support of his appellate concerns. Thus, we need not consider these claims.") (citations omitted).

At her judgment debtor examination, Mrs. Mona testified that she ceased to be a trustee of the Mona Family Trust the week of June 15, 2015, but refused to testify why she resigned. 2 FW App. 237-238.[8] Mrs. Mona's later resignation as trustee is irrelevant to the question of personal jurisdiction, as the District Court obtained personal jurisdiction over Mrs. Mona upon service of the Fourth JDE Order on May 26, 2015. 1 Pet. App. 75-77.

To the extent there was any question about the Court's jurisdiction over Mrs. Mona, Mrs. Mona appeared pursuant to the Fourth JDE Order on June 26, 2015, without raising any objection as to personal jurisdiction. 2 FW App. 179-365. Moreover, Mrs. Mona and her counsel participated in a telephonic hearing with the District Court to address the scope of Mrs. Mona's examination. 2 FW App. 183-198. At no time prior to or during the telephonic hearing or judgment debtor examination did Mrs. Mona object on the basis of personal jurisdiction. 2 FW App. 19-365. Therefore, any objection on the basis of personal jurisdiction (were it even to have a basis) has been waived. Hansen v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 116 Nev. 650, 656, 6 P.3d 982, 986 (2000) (objection to personal jurisdiction is waived if not timely raised in motion or responsive

[8] Mrs. Mona did not take any action to quash the subpoena or inform Far West or the Court she was no longer the trustee prior to the exam.

pleading). Counsel for Petitioners subsequently argued at a July 9, 2015 hearing that Mrs. Mona was not a party. 2 Pet. App. 345. Even if that subsequent argument could liberally be construed as a personal jurisdiction objection, Mrs. Mona had already waived any personal jurisdiction objection by appearing at the judgment debtor examination and participating in a telephonic hearing on June 26, 2015 without raising any personal jurisdiction objection. Hansen, 116 Nev. at 656, 6 P.3d at 986.

Petitioners argue that although the District Court had jurisdiction over Mrs. Mona in her representative capacity as trustee of the Mona Family Trust, it did not have jurisdiction over Mrs. Mona individually. To support this argument, Petitioners cite to the single case of Salman v Newell, 110 Nev. 1333, 1335, 885 P.2d 607, 608 (1994). However Salman had nothing to do with personal jurisdiction. Id. Rather, in Salman, the Court simply confirmed that a non-attorney cannot represent a corporation or trust, even if the non-attorney claimed to be a trustee. Id. Therefore, Salman does not support Petitioners' argument and this Court should completely disregard it. See Edwards, 122 Nev. at 330 n. 38, 130 P.3d at 1288 n. 38.

In any event, NRCP 37(b)(2) expressly permits sanctions against a "managing agent of a party," which would necessarily include Mrs. Mona as trustee of the Mona Family Trust. Moreover, the District Court has the broad and

inherent power to sanction anybody that appears before it. See Emerson v. Eighth Judicial Dist. Court of the State, ex. rel. Cnty, of Clark, 127 Nev. Adv. Op. 61, 263 P.3d 224, 229 (2011). As Mrs. Mona appeared before the District Court, the District Court had authority to issue sanctions against her.

The District Court ordered Mrs. Mona to appear for a judgment debtor examination and produce related documents. Far West properly served Mrs. Mona with that order via registered and certified mail in compliance with NRS 14.090(1)(b). Recognizing the District Court's jurisdiction over her, she appeared at the judgment debtor examination and participated in a telephonic hearing without raising any personal jurisdiction argument. The District Court subsequently determined that Mrs. Mona failed to comply with the District Court's order, warranting sanctions under NRCP 37 and the District Court's broad and inherent powers. For these reasons, the District Court had personal jurisdiction over Mrs. Mona and the authority to sanction her, such that the Court should affirm the Sanction Order.

B. The District Court Did Not "Add New Parties" to the Judgment and No Separate Action is Necessary to Issue Sanctions

Petitioners falsely accuse Far West of adding Mrs. Mona as a party to the Judgment. The Judgment has always been against Mr. Mona and the Mona Family Trust and Far West has never asked to add Mrs. Mona to the Judgment nor has it attempted in the District Court proceeding to collect against Mrs. Mona's separate

property. Petitioners are improperly attempting to conflate the addition of parties to a judgment, which is not allowed under Nevada law, with the ability of a judgment creditor to execute upon community property, which is allowed under Nevada law.

It is well-established Nevada law that a judgment creditor can execute against community property in its entirety regardless of whether the judgment is only against one spouse for tortious conduct. In Randono, the Nevada Supreme Court held that all community property was subject to a judgment against a tortfeasor husband, regardless of whether the non-tortfeasor wife was not party to the underlying litigation. 86 Nev. at 131, 466 P.2d at 223. In Randono, a case with facts analogous to the current matter, the judgment creditors obtained a judgment against the husband based on the husband's fraudulent inducement and fraudulent misrepresentations and the lower court made the husband's community property and wife liable for the judgment against the husband.[9] Id. at 129-30. This Court stated, "If community property can be given away by the husband and is subject to his debts upon his death (NRS 123.260), we see no reason why it is

[9] The Nevada Supreme Court has since clarified that a spouse cannot be held personally liable for the wrongdoing of a spouse simply by virtue of being married. Jewett v. Patt, 95 Nev. 246, 247-48, 591 P.2d 1151, 1152 (1979). However, in that decision, the Court cited to Randono and indicated whether community property is subject to the judgment against the wrongdoing spouse is a separate consideration. Id. In this case Far West is not suggesting Mrs. Mona is personally liable, only that Far West should be able to execute its judgment against community property.

not subject to his debts, whether arising out of tort or contract, during his lifetime." Id. at 132 (internal citations omitted).[10]

The Nevada Supreme Court and other courts have repeatedly recognized the principle that a judgment against one spouse can be enforced against all community property, including the non-judgment debtor spouse's portion. See Cirac v. Lander Cnty., 95 Nev. 723, 731, 602 P.2d 1012, 1017 (1979) ("this court has recognized the fact that community property of spouses may be subject to liability of judgments whether or not the wife was a party to the suit."); Nelson v. United States, 53 F.3d 339, 339, 1995 WL 257884, *1 (9th Cir. 1995) (unpublished) ("It does not matter which spouse incurred the debt. It is a community debt and can be collected from the whole of the community, not just the actor's one-half."); F.T.C. v. Neiswonger, 580 F.3d 769, 776 (8th Cir. 2009) (affirming court order for turnover of Nevada real property despite contemnor's wife claim that she had marital interest in the property) (citing Jones v. Swanson,

[10] Consistent with the Court's holding in Randono, NRS 123.050 provides that the spouse's share of the community property is not liable for the debts of the other spouse contracted *before* the marriage, which necessarily implies that community property is liable for debts incurred *during* the marriage. Likewise, NRS 123.225(1) provides that "the respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests," such that there is no reason to exempt community property from the execution upon a judgment entered during the marriage. Petitioners' argument that Randondo is somehow not supported by Nevada statutes is not adequately explained or supported, such that this Court should completely disregard it. See Edwards, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

341 F.3d 723, 738 n. 6 (8th Cir. 2003), Randono, 86 Nev. at 123, 466 P.2d at 224, and Cirac, 95 Nev. at 723, 602 P.2d at 1017 (1979)).

In its analysis of Nevada's community property law with respect to judgment collection, the federal district court for the District of Nevada explained:

> [A] spouse is not personally liable for his or her spouse's intentional torts committed during marriage merely by virtue of being married. Jewett v. Patt, 591 P.2d 1151, 1152 (Nev. 1979). Consequently, the non-tortfeasor spouse's separate property is not subject to a judgment against the tortfeasor spouse. See id. **However, a tort committed during the marriage by one spouse is considered a community debt, and the entirety of the community property is subject to a judgment against the tortfeasor spouse, even if the other spouse was not a named party to the suit.** Randono v. Turk, 466 P.2d 218, 223–24 (Nev. 1970); see also F.T.C. v. Neiswonger, 580 F.3d 769, 776 (8th Cir. 2009) (analyzing Nevada law).
>
> Here, Kirk Henry was injured in September 2001, Plaintiffs filed suit against Rick Rizzolo in October 2001, and the Rizzolos divorced in June 2005. **Because the conduct giving rise to Plaintiffs' claim against Rick Rizzolo occurred during the marriage, Plaintiffs' claim against Rick Rizzolo is a community debt. Lisa Rizzolo's separate property is not subject to the judgment, but the entire community is subject to a judgment, even though Lisa Rizzolo was not a named party to the lawsuit Plaintiffs filed against Rick Rizzolo. Accordingly, Lisa Rizzolo's share of the community property is "subject to process by a creditor holding a claim against only one tenant" as set forth in NUFTA § 112.150(2)(c), and therefore falls within the definition of an "asset" that can be fraudulently transferred.**

Henry v. Rizzolo, 2012 WL 1376967, *2-3 (D. Nev. April 19, 2012) (unpublished) (emphasis added). Therefore, it is clear under Nevada law that a judgment arising from conduct that occurred during the marriage is a community debt and that the

judgment creditor is entitled to collect against the entirety of the community property. As the Judgment arose from conduct during the Petitioners' thirty two-year marriage, it is a community debt and Far West may collect against the entirety of the community property. 1 Pet. App. 173-93; 2 FW App. 212. In a case factually similar to this one, the United States District Court of the Northern District of California, specifically addressed whether the tax debts of one's spouse could be collected against community property. Seidel v. United States, No. C07-3141 JF, 2007 WL 2070328, at *2 (N.D. Cal. July 16, 2007) (unpublished). In the Seidel case, the government attempted to collect a tax debt against one spouse against the wages of the other spouse without instituting an additional action. Id. at *1. The non-debtor spouse filed a complaint seeking to enjoin the government from levying against her assets to satisfy the tax debt owed by her husband. Id. The Court in reviewing non-debtor spouse's request for a temporary restraining order found that:

> Her arguments appeared to be based upon a misunderstanding of the community property principles that apply to marriages between residents of California and of the federal policy that directs the IRS to look to state property regimes in making levies.
>
> While Plaintiff may view the levies as being directed against her personally, **as a legal matter, the government is levying against assets that clearly are treated as community property under California law**. Because the community is liable for either spouses' separate tax liabilities during marriage, a spouses' wages may be levied in their entirety to satisfy the liability of the community property caused by the other spouse.

Id. (Emphasis added). The Court in Seidel further determined that an evidentiary hearing was unnecessary in making its determination. Id. at *1 n.3.

Petitions rely exclusively upon Callie v Bowling, 123 Nev. 181, 160 P.3d 878 (2007), to argue that the District Court was not allowed to add Mrs. Mona to the Judgment. In Callie, the Court held that a judgment creditor may not file a motion to amend a judgment based upon an alter ego claim. 123 Nev. at 185, 160 P.3d at 880. However, Callie is not applicable to this case because: (1) Far West never sought to amend the Judgment; (2) Far West never asserted an alter ego claim against Mrs. Mona; (3) the District Court never added Mrs. Mona to the Judgment; (4) Callie does not address collection of a judgment against community property; and (5) Callie does not address the issue of sanctions.

As soon as Petitioners decided to violate District Court orders and lie under oath, they put themselves at risk of being sanctioned. There is no requirement under Nevada law to file a separate action to obtain sanctions. The District Court had ample authority to sanction Petitioners without the filing of a separate action.

C. Public Policy is Served by Allowing Far West to Collect Its Judgment Against Mrs. Mona Without Instituting an Additional Action

There is a strong public policy in favor of allowing creditors to collect against community property. As stated by the Arizona Court of Appeals in the case of State ex. rel. Indus. Comm'n of Arizona v. Wright, 202 Ariz. 255, 256, 43

P.3d 203, 204 Ct. App. 2002), there is "no public policy favoring the use of community property laws to circumvent the legitimate collection of the debt by a creditor." The United States Bankruptcy Court has likewise found public policy is not served by allowing a debtor to "hide," behind their spouse. See In re LeSueur, 53 B.R. 414, 416 (Bankr. D. Ariz. 1985).

No public policy in this case is served by requiring the creditor to institute an additional action to collect on a judgment he has already received against the community property of the debtor subject to the judgment. In fact, requiring a debtor to institute a separate action whenever it seeks to collect on community property encourages the exact type of surreptitious conduct that has gone on in this case where one spouse transfers assets to another spouse in an attempt to frustrate the creditors' efforts. Furthermore, a rule such as that which the Appellants are proposing in this instance would require a creditor to virtually always institute an additional action against the debtor's spouse in any collection action against a married individual because all income and property acquired during the course of the marriage are presumed to be community property. Northwest Fin. v. Lawver, 109 Nev. 242, 245, 849 P.2d 324, 326 (1993). For example, wages generated during the course of the marriage is considered community property. Id. Consequently, to garnish a debtor's wages, under Appellants' suggested application of the law, would require that the creditor bring the spouse into the

garnishment proceeding, or any other effort to collect against the debtor in which community property may be implicated. Such result would lead to significant additional costs to all parties, numerous additional legal actions which would tie up the courts' dockets, and be duplicative. Public policy requires the Court to allow collection of a judgment against the debtor's community property without instituting a duplicative and unnecessary subsequent action against the debtor's spouse.

D. Petitioners Had Notice and an Opportunity to be Heard

Petitioners argue that the Sanction Order violated Petitioners' procedural due process rights as articulated in Callie. Callie "recognized that procedural due process 'requires notice and an opportunity to be heard.'" 123 Nev. at, 183, 160 P.3d at 879 (quoting Maiola v. State, 120 Nev. 671, 675, 99 P.2d 227, 229 (2004)). Petitioners cannot credibly deny that they had notice and an opportunity to be heard prior to the issuance of the Sanction Order.

Far West served counsel for Petitioners with the Order to Show Cause, along with the underlying application, on June 30, 2015 via hand delivery.[11] 2 Pet. App. 197-99. The Order to Show Cause set a briefing schedule and a hearing for July 8, 2015. 2 Pet. App. 194-96. Prior to the hearing, counsel for Far West offered to

[11] Terry Coffing, Esq., appeared as counsel for Mrs. Mona during the June 26, 2015 telephonic hearing and judgment debtor examination. 2 FW App. 183. Accordingly, subsequent service upon Mrs. Mona through Attorney Coffing's office complies with NRCP 5(b)(1).

continue the briefing schedule and hearing date, but Petitioners refused. 2 Pet. App. 317. Counsel for Petitioners filed a response to the Order to Show Cause on July 7, 2015 and a supplement to the response on July 8, 2015.[12] 2 Pet. App. 206-52, 292-97.

Attorney Coffing appeared at the July 9, 2015 hearing on behalf of both Petitioners. 2 Pet. App. 303 ("Mr. Coffing: Terry Coffing on behalf of Mike Mona, and for the purposes of this motion, on behalf of Rhonda Mona"). Even divorce counsel for Mrs. Mona appeared at the hearing. Id. ("Andrew Kynaston and Ed Kainen. We're not appearing officially in this case, but we represent Rhonda Mona in the divorce case that's been filed in Family Court. And she asked us to be present today for this hearing."). The hearing lasted for over an hour. 2 Pet. App. 302-346. The District Court even offered to continue the hearing to give the Petitioners additional time, but Petitioners refused. 2 Pet. App. 316-17.

The Petitioners had notice of the July 9, 2015 hearing, as evidenced by the Receipt of Copy of the Order to Show Cause (2 Pet. App. 197-99), and the fact that Petitioners were represented by counsel at the hearing. 2 Pet. App. 303. The Petitioners also had an opportunity to be heard during the lengthy oral argument allowed by the District Court. 2 Pet. App. 302-346. Only after providing

[12] Despite the fact that Attorney Coffing's office previously appeared on behalf of Mrs. Mona, the response and supplement to the response purported to only have been filed on behalf of Mr. Mona, despite raising arguments on behalf of both Petitioners.

Petitioners both notice and an opportunity to be heard (and even offering additional time), the District Court entered the Sanction Order. Therefore, the Sanction Order did not violate the Petitioners' procedural due process rights and the Court should affirm the Sanction Order.

E. The District Court Properly Applied Nevada Law for Proceedings Supplementary to Execution

Petitioners misrepresent the Sanction Order when they say that the District Court relied upon NRS 21.330 to sanction Petitioners. The District Court sanctioned Petitioners under NRCP 37 and the District Court's broad and inherent powers. The only citation to NRS 21.330 in the Sanction Order relates to the District Court ordering that Petitioners not dispose of or transfer their assets, which was not a sanction, but rather an act expressly permitted by statute.

> This Court has authority pursuant to NRS 21.280 and, to the extent Mrs. Mona is considered a third party, pursuant to NRS 21.330, to order Mr. and Mrs. Mona to not dispose and/or transfer their assets as the Court has done in the past and does again in this Order.

2 Pet. App. 357.

NRS 21.330 expressly provides that "the court or judge may, by order, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment." Therefore, the District Court's citation to NRS 21.330 as the basis for ordering Petitioners not to dispose of their assets is entirely appropriate. Moreover, there is nothing in NRS 21.330 that requires a

separate action before the District Court can freeze the assets. Instead, NRS 21.330 provides for the freeze of assets *before* any action is filed.

As for the District Court's additional order that "[t]he funds in Mrs. Mona's three (3) bank accounts shall be applied towards satisfaction of the Judgment pursuant to NRS 21.320," that order is provided for by statute. 2 Pet. App. 356. NRS 21.320 provides that "[t]he judge or master may order any property of the judgment debtor not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment."[13] Petitioners fail to explain how the Sanction Order, which mirrors the authority granted by NRS 21.320 to order that certain assets be applied to the Judgment, is somehow inappropriate. Therefore, the District Court properly applied Nevada law for proceedings supplementary to execution and the Court should affirm the Sanction Order.

F. There Was No "Meet and Confer" Requirement

In an apparent attempt to minimize their misconduct, Petitioners suggest that the sanctions were the result of a motion to compel discovery. That is untrue. At the 2015 judgment debtor examinations, Far West discovered Petitioners' lies and concealment of critical records in violation of the orders for the judgment debtor

[13] NRCP 37(b)(2) allows the District Court to enter an "order refusing to allow the disobedient party to support or oppose designated claims or defenses." Therefore, the District Court had the authority to prohibit the Petitioners from claiming the money in the accounts was exempt from execution.

examinations. Those lies and concealment of records prohibited Far West from timely executing upon the $3,400,000.00 transferred to Mrs. Mona in 2012 and cost Far West millions of dollars as only $490,000.00 of the $4,300,000.00 remains available for execution. Accordingly, Far West asked the District Court to enter an order to show cause why Petitioners should not be sanctioned and why Far West should not be allowed to execute upon the community property hidden in Mrs. Mona's bank accounts. This cannot be reasonably characterized as a discovery motion. The District Court entered the Order to Show Cause, set a briefing schedule and set a hearing date giving Petitioners notice and an opportunity to respond. 2 Pet. App. 194-96.[14]

The meet and confer requirement of NRCP 37(a)(2)(A), upon which Petitioners' rely, only applies "[i]f a party fails to make a disclosure required by Rule 16.1(a) or 16.2(a)." In this judgment enforcement action, neither NRCP 16.1(a) or 16.2(a) is applicable, such that the meet and confer requirement is likewise not applicable. Petitioners' failed to produce documents in violation of court orders, not in violation of NRCP 16.1(a) or 16.2(a). Likewise, EDCR 2.34

[14] Petitioners also take issue with the issuance of the Order to Show Cause ex parte, despite the fact that the District Court did not issue any sanctions until Petitioners had notice and an opportunity to be heard at the scheduled hearing. Advance notice of the request to temporarily freeze Petitioners' non-exempt assets pursuant to NRS 21.280 and 21.330 pending the hearing just nine (9) days later would have allowed Petitioners to transfer away their few remaining assets, rendering the request and the collection proceedings moot.

only applies to discovery motions, not for requests for sanctions. NRCP 37(b), which provides for sanctions for the violation of court orders, does not include any meet and confer requirement. Therefore, there was no meet and confer obligation under NRCP 37(a)(2)(A) or EDCR 2.34 prior to Far West requesting sanctions and the Court should affirm the Sanction Order.

G. The District Court Did Not Need to Hold an Evidentiary Hearing

The Petitioners incorrectly argue that Nevada Power Co. v. Fluor Illinois, 108 Nev. 638, 837 P.2d 1354 (1992), requires an evidentiary hearing before any sanctions under NRCP 37 may be issued. That is not the law in Nevada. In Fluor, the Court held that when imposing the sanction of dismissal with prejudice, if there were factual questions, those questions should be resolved by an evidentiary hearing. Id. at 644-45. In the present case, an evidentiary hearing was not required because: (1) the sanctions did not involve dismissal with prejudice; and (2) there were no questions of fact since the Monas testified under oath to all of the facts necessary to establish that the sanctions were appropriate.[15]

In the Writ Petition, in an attempt to create an issue of fact, Petitioners argue that the District Court should have held "an evidentiary hearing and trace the source of the assets" in the subject bank accounts. See Writ Petition, p. 26. This

[15] Petitioners incorrectly claim that Foster v. Dingwal, 126 Nev. Adv. Op. 6, 227 P.3d 1042, 1047 (Nev. 2010), requires an evidentiary hearing before making a liability determination as a discovery sanction. That holding is nowhere to be found in the Foster case such that the Court should disregard Petitioners' argument.

tracing of the source of the money is the *only* issue of fact raised by Petitioners in the Writ Petition. However, Petitioners never raised the issue of tracing with the District Court, such that the issue is now waived on appeal. The "failure to raise an argument in the district court proceedings precludes a party from presenting the argument on appeal." Mason v. Cuisenaire, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006). The failure to raise issues in the lower court is deemed to be a waiver of these issues on appeal. Cervantes v. Health Plan of Nevada, Inc., 127 Nev. Adv. Op. 70, 263 P.3d 261, 263 (2011).

Moreover, Mrs. Mona testified under oath as to the source of the funds, such that there is no question of fact. During her judgment debtor examination, Mrs. Mona reluctantly testified that she has a checking account at Bank of George in which she holds approximately $190,000.00 that she earned from design work performed during the marriage.

> **Q Do you have any other accounts that are solely in your name?**
>
> A Yes.
>
> **Q Where are those accounts?**
>
> A Bank of George. . . .
>
> **Q I see. Okay. Then what is the amount in the Bank of George checking account?**
>
> A That's just my mine. It's been mine for forever. Nothing to do with my husband at all, never has anything to do with him.

Q Okay. And so what balance is in that account? . . .

THE WITNESS: About 190,000.

BY MR. EDWARDS: In the Bank of George checking account?

A Uh-huh.

Q Okay. So that's money you owned – you earned from working?

A Uh-huh.

Q What do you do for work?

A Designer.

Q And when did you do this designer work to earn that 190,000 -- I guess it was probably multiple jobs?

A No, I actually got one lump sum for 200,000.

Q Okay. When did you get that lump sum?

A Approximately eight years ago, maybe. Seven, six, I don't know.

2 FW App. 207-10 (29:11-15; 30:24-32:14).[16]

Mrs. Mona testified that money market account at Bank of George holds the money remaining from her share of the Post-Martial Property Settlement Agreement.

Q So do I have it right, that the money in the Bank of George money market account is the remaining money from the money he gave you --

A Correct.

[16] Petitioners were married for more than 30 years. 2 FW App. 212.

Q -- associated with the post-marital agreement?

A Correct.

2 FW App. 218-19 (40:23-41:4).

Finally, Mrs. Mona testified that her third account, at Bank of Nevada, is funded from the Bank of George money market account.

Q And when you need to pay your monthly bills, do I understand you take the money from the Bank of George money market account and put it into the Bank of Nevada account?

A Correct.

Q Okay. Are there other sources of money for the Bank of George money market account?

A No.

2 FW App. 213.

With this undisputed testimony, there is no issue of fact with regard to tracing the source of the funds. Moreover, Petitioners failed to raise the issue of tracing with the District Court, such that the issue is waived on appeal. For these reasons, there was no need for the District Court to hold an evidentiary hearing.

Likewise, Petitioners argue that the Court should have considered declarations that contradicted their testimony at the judgment debtor examinations. However, "a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." Kennedy v. Allied Mut. Ins. Co., 952 F.2d 262, 266 (9th Cir. 1991). The Court does not need to hold a hearing on a fabricated factual

dispute. Aldabe v. Adams, 81 Nev. 280, 285, 402 P.2d 34, 37 (1965) (overruled on other grounds). This Court in Aldabe recognized:

> The word "genuine" has moral overtones. We do not take it to mean a fabricated issue. Though aware that the summary judgment procedure is not available to test and resolve the credibility of opposing witnesses to a fact issue we hold that it may appropriately be invoked to defeat a lie from the mouth of a party against whom the judgment is sought, when that lie is claimed to be the source of a 'genuine' issue of fact for trial.

Id.

Moreover, Mrs. Mona never submitted any declaration, and thus never even attempted to contradict her judgment debtor examination testimony. Mr. Mona's declaration merely denied lying and said that he thought he previously produced the Post-Marital Settlement Agreement, but that he did not bother to review his records to verify one way or another. 2 Pet. App. 252. In any event, the District Court properly determined that Mr. Mona's denials were a sham:

> Mr. Mona's deceit and omission cannot be excused by a lack of memory because the purported transfer through the Post-Marital Settlement Agreement occurred only shortly before his examination. Likewise, Mr. Mona's deceit and omission cannot be blamed on his attorney, as Mr. Mona was in control of his testimony at the judgment debtor examination in 2013. At his more recent judgment debtor examination, Mr. Mona admitted that he should have produced the Post-Marital Settlement Agreement in 2013 and that he should have disclosed it during the November 25, 2013 examination and, on this point, the Court agrees with Mr. Mona.

2 Pet. App. 351-52. Therefore, Mr. Mona's declaration did not create any issues of fact, such that no evidentiary hearing was required and the Court should affirm the

Sanction Order.[17]

H. The District Court Considered the Relevant Factors in Rendering the Sanctions

The Petitioners argue that the District Court was required to and failed to consider the factors under Young. 106 Nev. at 92-93, 787 P.2d at 779-80. However, the Young factors only apply when the sanction is dismissal with prejudice, which is not applicable here. Moreover, the Young case merely identified certain factors that the District Court "may properly consider." Id. (emphasis added). The District Court is not limited to the factors identified in Young. Id.

In this case, the District Court entered a detailed, express, and carefully written explanation of its analysis. 2 Pet. App. 348-58. Although the Sanction Order did not need to address the Young factors as it did not dismiss a case with prejudice, the factors were addressed in the detailed Sanction Order including: (1) that the sanctions were just and relate to the claims which were at issue in the order which is violated, (2) the degree of willfulness of the offending party, (3) the extent to which the non-offending party would be prejudiced by a lesser sanction,

[17] Petitions cite to a non-Nevada case (Illinois) to argue that they should have a hearing or trial on the fraudulent transfer issues. Workforce Solutions v. Urban Servs. Of Am., Inc., 977 N.E.2d 267, 275 (Ill. App. 2012). However, the case cited by Petitioners does not address the issue of sanctions, which was the basis for the Sanction Order, such that the case cited by Petitioners is irrelevant. Id. Moreover, without any genuinely disputed facts, there is no need for an evidentiary hearing.

(4) the severity of the sanction of dismissal relative to the severity of the discovery abuse, (5) whether any evidence has been irreparably lost, (6) the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, (7) the policy favoring adjudication on the merits, (8) whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and (9) the need to deter both the parties and future litigants from similar abuses. Young, 106 Nev. at 92-93, 787 P.2d at 779-80.

1) The District Court determined the Sanction Order is just and related to the claims which were at issue in the order which is violated as required under Young.

The orders for the judgment debtor examinations expressly required Petitioners to produce all financial information and relevant contracts to prevent the judgment debtors from concealing assets. 1 FW App. 8-15, 161-78. However, in violation of the orders, Petitioners concealed and lied about their assets, and specifically hid the Post-Marital Property Settlement Agreement and the bank accounts in Mrs. Mona's name. Those lies and concealment of records prohibited Far West from timely executing upon the $3,400,000.00 transferred to Mrs. Mona in 2012 and cost Far West millions of dollars as only $490,000.00 of the $4,300,000.00 remains available for execution. The sanctions are therefore just and related directly to the Post-Marital Property Settlement Agreement and the

bank accounts in Mrs. Mona's name.

2) The District Court also considered the remaining factors articulated in Young.

In the following excerpts, the Sanction Order addressed: (a) the degree of willfulness of the offending party, (b) whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney; and (c) the severity of the discovery abuse:

> Mr. Mona's deceit and omission cannot be excused by a lack of memory because the purported transfer through the Post-Marital Settlement Agreement occurred only shortly before his examination. Likewise, Mr. Mona's deceit and omission cannot be blamed on his attorney, as Mr. Mona was in control of his testimony at the judgment debtor examination in 2013. At his more recent judgment debtor examination, Mr. Mona admitted that he should have produced the Post-Marital Settlement Agreement in 2013 and that he should have disclosed it during the November 25, 2013 examination and, on this point, the Court agrees with Mr. Mona.

2 Pet. App. 351-52.

> In their response to the May 2015 Orders, the Monas did not produce certain bank records purportedly because the bank accounts are in the name of Mrs. Mona only, despite the fact that the accounts hold community property, in violation of the May 2015 Orders. Mrs. Mona made no efforts to produce any documents in response to the May 2015 Orders. Mr. Mona's failure to produce these bank records in response to the January 2013 Order and the October 2013 Order was also a violation of said orders.

2 Pet. App. 353.

In the following excerpt, the Sanction Order addressed: (a) the extent to which the non-offending party would be prejudiced by a lesser sanction; (b) the

severity of the sanction relative to the severity of the discovery abuse; (c) the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party; (d) the policy favoring adjudication on the merits:

> The Court concludes that Mr. Mona's failure to produce the Post-Marital Settlement Agreement as ordered and Mr. Mona and Mrs. Mona's failure to disclose Mrs. Mona's bank records for the three (3) accounts in Mrs. Mona's name were not substantially justified and **constitute serious violations** subject to sanctions under NRCP 37. **Considering all available sanctions under NRCP 37** for such violations, the Court finds grounds to designate the Post-Marital Settlement Agreement a fraudulent transfer under NRS 112.180 **on the merits** based on the following badges of fraud associated with that transfer.

2 Pet. App. 355 (emphasis added).

In the following excerpt, the Sanction Order addressed: (a) the degree of willfulness of the offending party; (b) the severity of the sanction relative to the severity of the discovery abuse; (c) whether assets have been irreparably lost; and (d) the need to deter both the parties and future litigants from similar abuses:

> The Court finds the sanctions imposed herein to be appropriate in light of the **very serious misconduct** at issue, specifically the failure to disclose documents as ordered, **which resulted in the dissipation of millions of dollars in assets**, of which only a relatively small amount remains ($300,000 in Mrs. Mona's Bank of George money market account) and concealment of significant community property ($190,000.00 in Mrs. Mona's Bank of George checking account) which could have gone to satisfy Plaintiff's Judgment. The Court has previously found that Mr. Mona is not taking this proceeding seriously. See Order entered 06/17/2015. **The sanctions are meant to deter the Monas and future litigants from similar abuses.**

2 Pet. App. 356. (emphasis added).

In the following excerpts, the Sanction Order addressed: (a) the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party:

> **IT IS HEREBY FURTHER ORDERED** that the Monas' purported transfer pursuant to the Post-Marital Property Settlement Agreement is a fraudulent transfer, and the facts proving the fraudulent transfer, including the badges of fraud outlined above, **are deemed established**;
>
> **IT IS HEREBY FURTHER ORDERED** that the facts entitling Plaintiff to execute upon the bank accounts in the name of Mrs. Mona **are deemed established**;

2 Pet. App. 357. (emphasis added).

Therefore, although the District Court did not need to address the Young factors as it did not dismiss a case with prejudice, or even specifically reference the Young factors, the factors were addressed in the District Court's detailed and well-reasoned Sanction Order. Accordingly, the Court should affirm the Sanction Order.

I. The District Court Properly Found that the Post Marital Settlement Agreement Was a Fraudulent Transfer

The District Court properly recognized that married couples cannot avoid community debts by making fraudulent transfers. Henry v. Rizzolo, 2012 WL 1376967, *3 (D. Nev. April 19, 2012) (unpublished). Yet, that is exactly what

Petitioners attempted with the Post Marital Property Settlement Agreement. After analyzing in detail the badges of fraud and the severity of the misconduct by Petitioners, the Court properly concluded that the Post-Marital Property Settlement Agreement was a fraudulent transfer. In addition to its authority to make factual findings pursuant to NRCP 37(b)(2)(A) and the District Court's broad and inherent authority, the District Court, in analyzing the undisputed facts, made the following determinations:

> The Court concludes that Mr. Mona's failure to produce the Post-Marital Settlement Agreement as ordered and Mr. Mona and Mrs. Mona's failure to disclose Mrs. Mona's bank records for the three (3) accounts in Mrs. Mona's name were not substantially justified and constitute serious violations subject to sanctions under NRCP 37. Considering all available sanctions under NRCP 37 for such violations, the Court finds grounds to designate the Post-Marital Settlement Agreement a fraudulent transfer under NRS 112.180 on the merits based on the following badges of fraud associated with that transfer.
>
> First, the transfer in the Post-Marital Settlement Agreement was to an insider, Mrs. Mona, as she is the wife of Mr. Mona, a judgment debtor, and was at all relevant times the Trustee of the Mona Family Trust, a judgment debtor.
>
> Second, Mr. Mona appears to have retained possession and control over some portion of the funds that were purportedly transferred pursuant to the Post-Marital Settlement Agreement.
>
> Third, Mr. Mona concealed the transaction by not producing the Post-Marital Settlement Agreement as required by the January 2013 Order and October 2013 Order and by not disclosing the transfer during his judgment debtor examination on November 25, 2013. Mr. Mona was not truthful when he was asked during the November 25, 2013 examination about what he did with the approximately $6.8 million dollars.

Fourth, prior to effectuating the transfer through the Post-Marital Settlement Agreement, Far West sued and obtained the Judgment against Mr. Mona and the Mona Family Trust.

Fifth, the Post-Marital Settlement Agreement, and the related transfers of the proceeds from the sale of the stock, transferred substantially all of Mr. Mona's assets as he was insolvent at the time or the transfers, or rendered Mr. Mona insolvent shortly after they was made.

Sixth, Mr. Mona concealed assets by failing to disclose the Post-Marital Settlement Agreement in 2013, by not disclosing the transfer during his judgment debtor examination on November 25, 2013, and by not producing the bank account records for the accounts in Mrs. Mona's name.

Seventh, at the time of the transfer through the Post-Marital Settlement Agreement, Mr. Mona was insolvent, or the transfer rendered Mr. Mona insolvent shortly after it was made.

These considerations are several of many factors in NRS 112.180(2), which provides a non-exhaustive list of considerations that support a determination that there was an actual intent to hinder, delay, or defraud a creditor. To find a fraudulent transfer, not every factor must be shown and the lack of one or more badges of fraud among many is not dispostive. The badges of fraud described above provide overwhelming evidence that the Post-Marital Settlement Agreement was a fraudulent transfer.

2 Pet. App. 355-56.

Petitioners failed to raise any issue of fact with regard to these conclusions, such that they cannot do so now on appeal. Mason, 122 Nev. at 48, 123 P.3d at 449 ; Cervantes, 263 P.3d at 263. Therefore, the Court should affirm the Sanction Order.

VII.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that this Court affirm the District Court's Sanction Order. The District Court clearly had jurisdiction to sanction Mrs. Mona who had: (1) been served with an order requiring her to appear for the judgment debtor examination; (2) had appeared at the judgment debtor examination where she failed to raise any objection to personal jurisdiction; and (3) where she had voluntarily appeared at a hearing before the District Court with counsel, and again did not raise personal jurisdiction as an issue.

Petitioners' suggestion that Far West added Mrs. Mona as the party to the Judgment and consequently needed to institute a separate action again her to collect on the Judgment has no basis in law or in fact. The Judgment was against Mr. Mona and consequently Far West, consistent with the laws of this state could collect its Judgment against the community property of Mr. Mona without instituting a separate action. In addition to legal precedent clearly establishing that a separate action against a spouse does not need to be instituted to collect a debt against community property, public policy further demands that this Court not adopt such requirement.

The District Court's Sanction Order satisfied Petitioners' due process rights and that they were given notice as well as an opportunity to be heard. In fact, Petitioners repeatedly declined the opportunity for additional time for briefing and the hearing.

The District Court properly applied Nevada law for the proceeding supplement to the execution of judgment. The meet and confer requirements of NRCP 37(a)(2)(A) do not apply to the sanctions at issue in this case, since the Motion for Sanctions was made pursuant to NRCP 37(b).

The District Court was not obligated to conduct an evidentiary hearing where there was no material factual questions on the sanctions did not involve dismissal without prejudice. The Sanction Order provided a detailed, expressed and carefully written explanation of its analysis in its order sufficient to satisfy Nevada requirements for an order issuing sanctions. For these reasons and the

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others set forth in the Answering Brief, it is respectfully requested that this Court affirm the District Court's Sanction Order.

Dated this 30th day of September, 2015.

HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON

/s/ F. Thomas Edwards
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point font Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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[ ] Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not

in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 30th day of September, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of Holley Driggs Walch Fine Wray Puzey & Thompson, and that on this 30th day of September, 2015, I served the above and foregoing **Real Party in Interest's Answering Brief and Supplemental Appendix** in accordance with NRAP 25 by placing a true and correct copy of same, in a sealed envelope, with postage fully prepaid thereon, and sending in the U.S. Mail, addressed as follows:

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