

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUCIA CASTILLO, AN INDIVIDUAL;
AND EDWIN PRATTS, AN
INDIVIDUAL,
Appellants,
vs.
UNITED FEDERAL CREDIT UNION, A
FEDERAL CREDIT UNION,
Respondent.

No. 70151

FILED

JUN 12 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION TO DEPUBLISH

This appeal was resolved by panel opinion filed February 1, 2018. *See Castillo v. United Fed. Credit Union*, 134 Nev., Adv. Op. 3, 409 P.3d 54 (2018). After the time to petition for rehearing expired but before the remittitur issued, Progressive Leadership Alliance of Nevada (“PLAN”) moved for permission to appear as amicus curiae and to depublish the opinion or “for possible alternative relief.” PLAN does not disagree with the case outcome—the opinion reverses the district court’s jurisdictional dismissal of the plaintiff’s class-action complaint—but PLAN expresses concern with the section of the opinion discussing aggregation of damage claims in consumer class actions. *See id.* at 57-58.

This court granted PLAN amicus status and ordered the parties to respond to its motion to depublish. Appellant Lucia Castillo, who prevailed on appeal, does not oppose depublication, so long as it does not delay the remittitur. Respondent opposes the motion as untimely and not provided for by the NRAP, which authorize a non-party to file a motion to

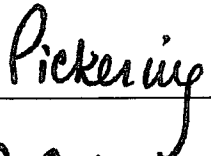
reissue an order as an opinion but do not address depublication. *See* NRAP 36(f) (authorizing motions to reissue unpublished orders as opinions); *but cf. Quisano v. State*, Docket No. 66816 (June 24, 2016, Order Denying Petition for Review) (denying a petition for review and ordering a court of appeals opinion depublished). Additional amicus curiae, the Nevada Justice Association, filed a joinder to PLAN's motion.


As noted, PLAN does not challenge the disposition, only the aggregation discussion that precedes the dispositive sections of the opinion, where we reverse the district court's jurisdictional dismissal. *See Castillo*, 134 Nev., Adv. Op. 3, 409 P.3d at 58-59 (holding that the district court erred in not exercising subject matter jurisdiction based on appellant's injunctive relief request and combined statutory and deficiency claims). Because the aggregation discussion is not necessary to the disposition, it arguably constitutes dictum, not mandatory precedent. *See Argentina Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 536, 216 P.3d 779, 785 (2009) (stating that "[d]icta is not controlling" and noting that a "statement in a case is dictum when it is unnecessary to a determination of the questions involved" (internal quotation marks omitted)), *superseded by statute as recognized in Fredianelli v. Fine Carman Price*, 133 Nev., Adv. Op. 74, 402 P.3d 1254, 1256 (2017). As such, PLAN's concern with the precedent established by the opinion appears overstated. We also note that, even depublished, the disposition would remain citable as non-mandatory precedent, making it doubtful that granting PLAN's motion would materially advance its cause. *See* NRAP 36(c)(2) & (3) (permitting citation of unpublished dispositions but specifying they do not establish mandatory authority).

We therefore deny the motion to depublish and for other alternative relief.

It is so ORDERED.


_____, C.J.
Douglas


_____, J.
Pickering


_____, J.
Gibbons

cc: Hon. Elliott A. Sattler, District Judge
Michael C. Lehnars
Law Office of Nathan R. Zeltzer
Robert W. Murphy
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Kemp, Jones & Coulthard, LLP
Washoe District Court Clerk