Kerry S. Doyle, Esq.
Nevada Bar No. 10866
DOYLE LAW OFFICE, PLLC
4600 Kietzke Lane, Ste. I-207
Reno, NV 89502
(775) 525-0889
kerry@rdoylelaw.com

Attorneys for Appellant

IN THE SUPREME COURT FOR THE STATE OF NEVADA

IN THE MATTER OF THE JORDAN DANA FRASIER FAMILY TRUST
AMY FRASIER WILSON, Appellant, v. DINNY FRASIER; PREMIER TRUST, INC.; JANIE L. MULRAIN; NORI FRASIER; and BRADLEY L. FRASIER, M.D.; Respondents.

Case No. 77981

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

The central factual issue in this action, as recognized by all the parties to the appeal, is whether Dinny Frasier ("Dinny")[1] had capacity to enter into contracts and amend her trust. What respondents Dr. Bradley Frasier ("Brad"), the Estate of Dinny Frasier ("Dinny's Estate"), and Janie Mulrain ("Mulrain") fail to recognize is that this court cannot resolve that factual dispute. The factual dispute was presented to the district court repeatedly and the district court failed to make the necessary factual findings or even announce a standard for determining capacity. This court cannot now resolve this issue by making factual findings that the district court omitted. Therefore, the court should reverse and remand for the district court to make the necessary factual findings.

None of the respondents address the issues of legal error raised in Amy Frasier-Wilson's ("Amy") Opening Brief. Focusing instead on an unsupported conclusion in the district court's order, Brad, Dinny's Estate and Mulrain assert that the district court reached a conclusion regarding Dinny's capacity. However, the district court called Dinny's capacity an "ancillary issue" over which it had no jurisdiction. (10 Appellant's Appendix ("AA") at 2210-11). The legal errors of failing to recognize jurisdiction, failing to announce a legal standard for determining capacity,

[1] In this appeal, several of the parties are from the same family, to eliminate confusion, the family members are each referred to by their first names.

and failing to make a factual finding of capacity require reversal and remand for the district court to make the necessary legal rulings and factual determinations.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Brad makes several factual assertions in his brief that are unsupported, unsupportable by the evidence in the record, or otherwise untrue. While none of his factual allegations can change the pivotal fact that the district court was required to make a legal determination and factual finding that it failed to make, it is nonetheless necessary to respond.

Brad makes several unsupported statements regarding Amy's alleged behavior. (Brad Answer. Br. at 4, 6-8). Brad ignores the evidence of his misconduct that destroyed the relationship he had with his mother. (2 AA 245-46; 6 AA 1286). Brad left repeated threatening and abusive voicemails. (2 AA 245-46). In one he threatened to "beat the crap" out of Dinny when he saw her next. (2 AA 245). On a call that was an attempt to reconcile Brad and Dinny and resolve the ongoing dispute over the medical building, it took mere moments for Brad to call his mother a bitch. (9 AA 1916-18). Dinny obsessed over those messages, playing them repeatedly and sobbing hysterically. (9 AA 1970). Brad's abusive behavior was not limited to his mother; he sent Amy an e-mail calling her "evil" and telling her "[i]f there were a hell," she "would and should end up [there] for eternity." (4 AA 720). In other e-mails, Brad told Amy that she was a disappointment to her father in life and "even more of a disappointment to his memory" (6 AA 1296), and called her a "wicked witch." (*Id.* at

1298). He e-mailed counsel for Premier Trust calling him a "son of a bitch" and an "immoral criminal" after accusing him of stealing Dinny's money. (*Id.* at 722). The district court made a specific factual finding that Brad's abusive behavior caused a deep estrangement between him and Dinny. (10 AA 2203).

The court should disregard Brad's unsupported and irrelevant allegations regarding the family history. (*See, e.g.,* Brad Answer. Br. at 4-6). The court should instead note the concessions Brad makes in his Answering Brief regarding Dinny's lack of capacity.[2] Brad notes that his mother began showing signs of dementia three years before his father's death, in 2011-2012. (Brad Answer. Br. at 4, 13). He noted that Dinny reacted poorly to the suggestion by an attorney that she had diminished memory. (*Id.*) Brad states that in 2015, Dinny could not remember meeting with an attorney the day after the meeting occurred. (*Id.* at 6). Brad recites the push he made to have Dinny's capacity evaluated in 2015 and that Dinny became angry with him for suggesting that she was "demented." (*Id.* at 7). In summary, he asserts that he presented "abundant evidence" claiming that Dinny did not have capacity to amend Trust A in 2015. (*Id.* at 13).

Brad's position on Dinny's capacity appears motivated to reach a specific result: to support his allegations against his sister. (*See id.* at 14-15). Because Brad concedes in

[2] Amy disputes Brad's recitation of facts regarding Dinny's capacity in 2015, but the record on this issue was not fully developed as the district court limited the presentation of evidence regarding capacity. (*See* 8 AA 1736, 1899).

his Answering Brief that Dinny's capacity was in question as early as 2011 and his testimony at the evidentiary hearing likewise questioned Dinny's capacity, the court should reject his unsupported and contrary argument that Dinny was capacitated in 2017 and 2018. (*See id.* at 4-15; 8 AA 1800, 1817, 1826-27, 1831, 1899).

III. ARGUMENT

A. Standard of Review

Dinny's Estate's statement of the standard of review ignores the questions of law raised by this appeal and the failure of the district court to make any factual finding that could be reviewed for substantial evidence. (*See* Dinny's Estate Answer. Br. at 15-16). Unlike the jury verdict in *In re Peterson's Estate*, the district court in this case failed to make factual findings regarding capacity or undue influence. *See* 77 Nev. 87, 88, 360 P.2d 259, 261 (1961). Instead of resolving the issue of Dinny's capacity before confirming the trust amendments and the contract with Mulrain, the district court determined that it lacked jurisdiction over such "ancillary" issues. (10 AA at 2210-11). The district court's determination of jurisdiction must be reviewed de novo. *Nayeli M.G. v. Graviel G. (In re Guardianship of N.M.)*, 131 Nev. 751, 754, 358 P.3d 216, 218 (2015); *Westpark Owners' Ass'n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 357, 167 P.3d 421, 426 (2007); *see also Thomas v. MEI-GSR Holdings, Ltd. Liab. Co.*, 2018 WL 1129664 at *2 (Nev. 2018) ("Subject matter jurisdiction and statutory interpretation are questions of law subject to de novo review."). Because there was no factual

finding regarding capacity, there is no factual finding that this court can review for substantial evidence and that standard is inapplicable.

B. The District Court Failed to Make Factual Findings Regarding Dinny's Capacity.

Dinny's Estate and Brad urge the court to affirm the district court, claiming that substantial evidence supports a determination that Dinny had capacity. (Dinny's Estate Answer. Br. at 19; Brad Answer. Br. at 9-11). Although the district recognized that contractual and testamentary capacity "are very complex legal determinations," the district court never announced the legal standard it was applying or made factual findings to support any conclusions reached based on the evidence presented. (*See* 7 AA 1589, 10 AA 2210-11). Both Dinny's Estate and Brad list evidence that the district court could have considered, but without actual findings by the district court, this court cannot review the determination. *See Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009) (reversing and remanding order imposing attorneys' fees as sanctions where district court made no factual findings regarding whether party's motions were frivolous); *Rocker v. KPMG LLP*, 122 Nev. 1185, 1196, 148 P.3d 703, 710 (2006) (vacating ruling related to personal jurisdiction where the lack of factual findings prevented appellate review of that decision); *Dickinson v. Am. Med. Response*, 124 Nev. 460, 469, 186 P.3d 878, 884 (2008) (Making express factual findings "is particularly important in a case like this, where the record contains several medical reports, not

addressed by the appeals officer, that appear to conflict with the appeals officer's conclusion.").

The district court was presented primarily with evidence that Dinny lacked contractual capacity. (*See* 9 AA 2118-19). The district court had heard from counsel for Premier Trust that Dinny had to ask who he was several times in a single conversation despite having his business card in front of her. (4 AA 823). The district court's failure to address the conflicting evidence, announce the standard under which it was making a capacity determination, or in any way resolve the dispute regarding capacity renders appellate review for substantial evidence impossible. *See Rivero*, 125 Nev. at 441, 216 P.3d at 234; *Rocker*, 122 Nev. at 1196, 148 P.3d at 710; *Dickinson*, 124 Nev. at 469, 186 P.3d at 884. The district court's error requires reversal and remand for the district court to make a capacity determination in the first instance.

C. The Evidence Upon Which Respondents Rely Was Inadmissible and the District Court Could Not Have Properly Relied Upon It.

Dinny's Estate's and Brad's suggestion that the record is sufficient to support the district court's conclusion is further problematic for several reasons. First, the district court recognized that the evidence before it of Dinny's capacity was predominantly inadmissible hearsay. (*See* 7 AA 1579). Although the district court asked a few witnesses questions about Dinny's capacity, it did not permit Amy to cross-examine those witnesses or present any independent evidence regarding Dinny's capacity. (*See* 8 AA 1736, 1899). Moreover, the closest thing to a factual finding in the

record of the district court hearing is a statement that based upon the evidence, the district court remained uncertain as to Dinny's capacity. (*See* 9 AA 1989). The substantial evidence upon which Dinny's Estate and Brad argue the district court based its implied determination of capacity was inadmissible and failed to convince even the district court.

Brad argues, without support or citation to the record,[3] that the district court relied upon a determination of Dinny's capacity by the settlement judge[4] and the evaluations by Drs. Spar and Klein. (Brad Answer. Br. at 9-10). Dinny's Estate argues that the evaluations support a finding of capacity and also references the Statements of Compliance with Rule of Professional Conduct 1.14. (Dinny's Estate Answer. Br.

[3] This court specifically held that it need not consider any of Brad's arguments that are not supported by relevant legal authority. (Order, Nov. 21, 2019). As Brad cites not a single case, statute, or common law principle to support his arguments, the court need not consider any of the arguments raised in his brief. (*See* Brad Answer. Br. at 1-19); *Edwards v. Emperor's Garden Rest.,* 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

[4] Brad's brief, perhaps unsurprisingly, focuses on the settlement agreement by which he most stands to benefit if Dinny had capacity, arguing without factual or legal support that the settlement judge determined that Dinny had capacity and that absolved the district court from making any such finding. (Brad Answer. Br. at 9, 10). Even if another judge's determination in a mediation could stand in for the findings the district court was required to make, no such finding was made in this case. If, as Brad asserts, settlement judge Jeffrey King finally determined that Dinny had capacity to enter the settlement agreement, why would the express language of the informal agreement have conditioned it upon a determination by an independent examiner? *See* 1 AA 159 ("Contingent on Court approval of this Agreement, and subject to a capacity assessment by a qualified gerontologist, Dinny shall distribute . . . .").

at 17). Mulrain also directs the court to consider the evaluations, claiming that those were the only evidence addressing Dinny's capacity. (Mulrain Joinder[5] at 3). The district court expressly recognized that these statements were hearsay and inadmissible to establish capacity unless the witnesses appeared and were subject to cross-examination. (*See* 7 AA 1579). As this court is well aware, hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *See* NRS 51.035; *Deutscher v. State*, 95 Nev. 669, 683-84, 601 P.2d 407, 416-17 (1979). Each of the statements offered by Brad, Dinny's Estate, and Mulrain to support the district court's implied finding of capacity was made by individual not called as a witness, were not subject to cross-examination, and (in the case of the evaluative reports) were not even sworn. (*See* 4 AA 873-882; 6 AA 1173-1263). The district court could not have relied on inadmissible hearsay evidence to support a conclusion that Dinny was capacitated. *See* NRS 51.065.

During the hearing, the only evidence the district court heard regarding capacity was in response to questions it asked of Mulrain and Brad. Mulrain described

[5] Mulrain's joinder is admittedly untimely and it offers no legal authority for any position asserted. (*See* Mulrain Joinder at 3-5 & n.1; Order, Aug. 7, 2019 (allowing Mulrain to file an Answering Brief before August 21, 2019); Order, Sept. 4, 2019 ("[T]his appeal will be resolved without an answering brief from respondents Janie Mulrain and Nori Frasier.")). Therefore, the court should strike the brief or disregard its content. *See* NRAP 31(d)(2); *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Insofar as Mulrain may be allowed to join the arguments made by Dinny's Estate, Mulrain cannot be permitted to raise new arguments in a joinder when she disregarded the court's multiple orders regarding the filing of an answering brief. *See* NRAP 28(i).

Dinny's ability to make decisions, saying "Dinny requires somebody to go over things with her, take the time to explain it, not just, here you go." (8 AA 1736). However, Mulrain herself failed to follow that advice; in the summer of 2018, Mulrain was observed telling Dinny that Mulrain could simply sign even if Dinny did not understand what Mulrain was trying to explain. (7 AA 1544-45).

Brad testified that Dinny "was very susceptible to that because she has had mild to moderate cognitive impairment, and she has had that since about 2010. She had trouble with her short-term memory. She has kept her wit and her happiness, but she can't remember what she had for breakfast. She can remember what she did in 1945, but can't remember what she had for breakfast." (8 AA 1800). He testified that she had been excluded from legal decisions (8 AA 1817) and that her "condition ha[d] deteriorated over the past three years . . . ." (8 AA 1826-27). Brad expressly testified, "Dinny is reliant on Premier and Janie Mulrain and Mr. Resnick for basically everything. Dinny doesn't make any decisions on her own right now." (8 AA 1831). "My mother is helpless," he said, "[she] relies on her attorney and her trust company . . . ." (8 AA 1899). The district court did not allow cross-examination on the topic of capacity, did not ask Amy her description of her mother's mental state, and ultimately refused to allow the presentation of any other evidence regarding capacity. (8 AA 1719).

The testimony the district court heard did not convince it that Dinny was capacitated. The district court stated:

> "I struggle when I hear independent decision-making ascribed to Ms. [Dinny] Frasier partly because I haven't seen her and I just have all these – I'm not sure how I feel about the fact that Ms. Frasier is an independent capacitated decision maker who isn't operating with some guidance."

(8 AA 1790). At the end of the evidentiary hearing, the district court remained unconvinced regarding Dinny's capacity:

> "[W]hen I think about Ms. [Dinny] Frasier, I can't conclude that she's incapacitated. There's too much evidence that she's engaged in some ways. But I also can't conclude that she's fully capacitated because there's evidence that tells me she's travelled . . . . But this idea of capacity is fluid, and it is often influenced by spatial and temporal things: The time of day, the persons in their presence, an unwieldy focus, an inappropriate focus on some trigger. There is a susceptibility that doesn't always imply nefarious conduct. There's just a susceptibility to trust whoever is there. And then there are perceptions that wouldn't be held while fully capacitated."

(9 AA 1989). The district court, having heard limited testimony regarding Dinny's capacity, expressed that it could not reach a conclusion. (*Id.*). Brad, Dinny's Estate, and Mulrain cannot rely on this absence of a conclusion as an actual determination of capacity.

The district court's uncertainty is further illustrated by how the hearing ended. In an effort to avoid ongoing litigation, Dinny's counsel and counsel for Premier Trust joined the judge in chambers and discussed the possibility of Dinny amending

the survivor's trust again. (9 AA 1999-2004). The district court again noted that Dinny's ability to amend the trust was directly related to her capacity, even mentioning the possibility of a stipulation by all of Dinny's children as to her capacity. (9 AA 2000). However, the district court instead ordered Dinny's counsel to obtain yet another capacity assessment and have any trust amendment executed contemporaneously with the assessment. (9 AA 2001-2002). If the district court had been able to make a determination regarding Dinny's capacity, it could have done so rather than order yet another evaluation to establish capacity. (*See* 9 AA 2001-2002). This end to the October 2018 hearing demonstrates the lack of a capacity finding and highlights the flaw in relying on an implied factual finding when the district court specifically stated otherwise. (*See id.).*

D. Amy Presented Sufficient Evidence to Place Dinny's Capacity in Question.

Mulrain argues, without citation to authority, that Amy bore the burden of proving that Dinny lacked capacity. (Mulrain Joinder at 3). As with Brad's arguments, this court should disregard any argument made without citation to authority. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. The district court likewise placed the burden on Amy to prove Dinny lacked capacity, without citation to authority (10 AA 2210-11) and contrary to its prior instructions that required Dinny to prove capacity to make an effective amendment to the trust (2 AA 455), mandated Dinny appear in person so the district court could evaluate capacity (*Id.* at 454), and directed the

parties to select an investigator to examine Dinny's capacity and allegations of undue influence.[6] (4 AA 854). Furthermore, the district court did not allow Amy to call any witnesses, testify regarding capacity herself, or cross-examine the witnesses who testified regarding capacity. (*See* 8 AA 1736, 1899; 9 AA 1974-76). Despite these barriers, the district court had before it significant evidence calling Dinny's capacity into question. (*See* 9 AA 2094-2105).

Over the course of almost three years of litigation, the district court heard repeated evidence that Dinny lacked capacity. Examples from throughout the litigation include:

- "Premier is concerned that Dinny's current mental state indicates that she does not understand her circumstances and is extremely vulnerable to influence and manipulation." (2 AA 385).

[6] Mulrain also argues that Amy failed to prove Dinny's incapacity because she did not submit any expert testimony regarding Dinny's capacity. (Mulrain Joinder at 3). Again, Mulrain fails to support her argument that expert testimony was necessary to establish incapacity and the court should disregard the argument. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. However, it is important to note that Amy was justified in relying on the district court's instruction that an independent investigator would be appointed to investigate Dinny's capacity and the allegations of undue influence, especially since Mulrain and Dinny's counsel Barnet Resnick had effectively cut off any ability Amy or Dinny's other children had to take Dinny to an expert for evaluation. (*See* 2 AA 393 (e-mail from Mulrain prohibiting Amy from contacting or seeing Dinny effective December 2016); 4 AA 854 (ordering proposals for appointment of an investigator)).

- During an hour and a half conversation, counsel for Premier Trust stated that Dinny asked him five times who he was despite having his business card in front of her. (4 AA 823).
- Nori stated that she spoke with Dinny about where Nori's daughter was attending school and within three minutes Dinny asked the same question. (2 AA 274). Nori was clear that this was a common occurrence witnessed by her husband and children. (*Id.*)
- Allyn Anderson, a visitation monitor, expressed that Dinny was unable to understand a simple contract for his services. (9 AA 2103).
- Dinny could not remember Amy's birthday without prompting. (9 AA 2104).
- In November 2016, Premier Trust concluded, "[Dinny] is no longer competent to handle her finances. She did not even understand that there are two different trusts . . . ." (10 AA 2196).[7]

Without addressing this evidence at all, the district court could not have concluded that Dinny had capacity to enter into contracts or execute amendments to trusts of

[7] Dinny's Estate argues that Premier Trust "had not witnessed any signs of undue influence or lack of capacity" (Dinny's Estate Answer. Br. at 17); however, Dinny's Estate fails to recognize the timeframe referred to by Premier Trust is May 2016, at least six months before Dinny allegedly entered a contract with Mulrain or executed the Third Amendment. (2 AA 241 (Premier Trust meeting May 2016); 4 AA 894; 6 AA 1215 (Mulrain hired in December 2016); 9 AA 2064-65 (Third Amendment executed April 2017)).

which she no longer understood the nature. (*See* 10 AA 2196). The district court could not have disregarded this evidence, especially given the concerns raised regarding undue influence.

The district court specifically recognized facts that suggested undue influence, including that Dinny's counsel forced counsel for Premier Trust to sign a non-disclosure agreement before being allowed to speak with Dinny, the co-trustee at the time. (4 AA 822). The district court noted that Dinny's Estate's counsel "infuse[d] so much sophistication in her understanding and involvement." (4 AA 823). Counsel invited the district court to speak with Dinny, but vehemently opposed having Dinny appear at a hearing so that conversation could take place. (2 AA 360 ("[S]he doesn't want to talk to you."); 4 AA 809, 823). The district court expressed its concerns, the same as Amy's, that "[Dinny's] decisions were being directed by [counsel] who might not have wanted the scrutiny and oversight Premier asserted." (4 AA 800). Indeed, Premier Trust presented evidence that Dinny did not believe she had even hired the current counsel for Dinny's Estate. (2 AA 384, 405). Given that the expert evaluations each concluded that Dinny only retained capacity insofar as she had trusted advisers (another legal issue the district court failed to resolve), the questions of undue influence should not have been ignored. (*See* 1 AA 211-12; 2 AA 427-28, 7 AA 1563).

The requirement for trusted advisors to assist Dinny in making decisions presents a legal issue that the district court failed to resolve: whether and under what circumstances a person can attain capacity with the assistance of third parties. *See* Cal.

Prob. Code §§ 810-812. Moreover, factually, the district court was presented with evidence that neither Dinny nor her supposedly trusted advisors was capable of reviewing the complicated amendments, which resulted in several errors of arithmetic. (*See* 10 AA 2212-13).

The evaluations by Dr. Spar, upon which Mulrain, Dinny's Estate, and Brad all place much reliance, are themselves so flawed that cross-examination (which the district court recognized should be required (*see, e.g.*, 2 AA 361, 455)) would have revealed that they could not be relied upon. In Dr. Spar's first report, for instance, he claimed that Dinny did not demonstrate "a delusional basis for her proposed estate plan changes," but she had incorrectly claimed to have fallen down a flight of 13 stairs (there were only three steps). (2 AA 342). Dinny's delusional recollection changed again when in November 2018, she reported to Dr. Klein that she had fallen down 30 wooden steps. (7 AA 1560). Dinny did not understand the purpose of the Dr. Spar's first evaluation (2 AA 338-39), and she was not oriented as to the time and place. (2 AA 294-95), but Dr. Spar concluded that she nonetheless had testamentary and contractual capacity "as long as [Dinny] is not required to rely on her unaided recall alone." (9 AA 2115).

Spar's May 2017 report again claimed Dinny was capacitated although she was completely disoriented (not being able to recognize time, place, or season); she thought Brad was continuing to fight over the medical building despite supposedly knowingly entering a settlement of that claim; and thought Amy had chosen not to

speak with her when in truth, Amy had been prevented from doing so. (2 AA 385-386, 393, 427-28). In Spar's September 2017 report, he noted that Dinny thought her grandson was 15, although his earlier report noted that she had already paid for each of her grandchildren to go to college. (*Compare* 9 AA 2117 *with* 9 AA 2124). The district court specifically ordered Dinny to pay for Dr. Spar to attend the evidentiary hearing to be cross-examined. (2 AA 455). The district court could not rely on Dr. Spar's inconsistent and unreliable reports and Amy cannot be faulted for believing the district court would enforce its order to make Dr. Spar available for cross-examination.

The district court failed to announce a legal standard for capacity, initially imposed the burden to prove capacity on Dinny but then held that Amy failed to meet her burden to prove incapacity without citation to legal authority or resolving the factual disputes outlined above. In addition, the district court actively prevented Amy from meeting any burden it was imposing upon her by not allowing cross-examination of witnesses regarding capacity, Amy to call witnesses, or Amy to testify regarding capacity. (*See* 8 AA 1736, 1899; 9 AA 1974-76). The district court further interfered with Amy's efforts by failing to enforce its orders that Dinny appear in person (or even by video), Dr. Spar appear, and that an independent investigator be sent to examine Dinny. (2 AA 454-55; 4 AA 854). Whether Dinny was capacitated is not properly before this court, but the court can recognize that significant evidence was admitted to call Dinny's capacity into question. Because legitimate questions of

capacity were raised, the district court should have made specific factual findings to resolve those disputes and allow a review for substantial evidence.

IV. CONCLUSION

The district court failed to announce the legal standard it was applying or make any factual findings regarding Dinny's capacity. The evidence upon which Dinny's Estate, Brad, and Mulrain now rely to support an implied finding, the district recognized as inadmissible. Most importantly, the evidence presented at the evidentiary hearing did not convince the district court of Dinny's capacity at the time it was presented. Because the district court erred as a matter of law when it determined that it lacked jurisdiction to make a determination of Dinny's capacity, neglected to announce the legal standard by which it was going to determine capacity, and failed make any factual findings regarding capacity, it failed to create a record sufficient to allow appellate review and this court should reverse and remand for the district court to make a factual determination in the first instance.

ATTORNEY CERTIFICATE

Pursuant to NRAP 28.2, undersigned counsel certifies that:

1. This Reply 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 it has been prepared in a proportionally spaced typeface using Microsoft Word in Garamond in size 14 point font.

2. I further certify that this Reply 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 less than 4,944 words (less than the 7,000 word count available for a reply brief).

3. Finally, I certify that I have read this Reply 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 Reply Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion regarding matters in the record to be supported by a

reference to the page of the record on appeal where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the accompanying Reply Brief is not in compliance.

DATED this 2nd day of January, 2020.

DOYLE LAW OFFICE, PLLC

By: /s/ Kerry S. Doyle
Kerry S. Doyle, Esq.
Nevada Bar No. 10866
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Doyle Law Office, PLLC and that on the 2nd day of January, 2020, a true and correct copy of the above **APPELLANT'S REPLY BRIEF** was e-filed and e-served on all registered parties to the Nevada Supreme Court's electronic filing system as listed below:

Patrick Millsap
Wallace & Millsap LLC
510 W. Plumb Lane, Ste. A
Reno, NV 89509

G. David Robertson, Esq.
Robertson, Johnson, Miller, & Williamson
50 West Liberty Street, Suite 600
Reno, NV 89501

Michael A. Rosenauer
Michael A. Rosenauer, Ltd.
510 West Plumb Lane, Suite A
Reno NV 89509

And by depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; to all participants not registered for electronic filing:

Nori Frasier
4372 Pacifica Way, Unit 3
Oceanside, CA 92056

Bradley L. Frasier, M.D.
3609 Vista Way
Oceanside, CA 92056

DATED this 2nd day of January, 2020.

/s Kerry S. Doyle
Kerry S. Doyle