

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 81753

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JOHN ILIESCU, JR.; AND SONNIA ILIESCU, TRUSTEES OF THE JOHN
ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST DATED
JANUARY 24, 1992,

Appellants.

v.

THE REGIONAL TRANSPORTATION COMMISSION OF WASHOE
COUNTY, A SPECIAL PURPOSE UNIT OF THE GOVERNMENT,

Respondent.

Appeal from judgment of the Second Judicial District Court of the State of Nevada
In and For the County of Washoe
District Court Case No.: CV19-00753
The Honorable Kathleen Drakulich, District Judge

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

Respondent The Regional Transportation Commission of Washoe County (“RTC”) is a political subdivision of the State of Nevada and a special purpose unit of the government.

RTC has been represented throughout this case by Woodburn and Wedge. No other law firms are expected to appear in this Court on behalf of RTC.

These representations are made so the justices of the Supreme Court or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Dated: July 2, 2021.

WOODBURN AND WEDGE

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INTRODUCTION

RTC exercised its power of eminent domain to acquire certain easements on two adjacent parcels of property owned by Iliescu¹ near the intersection of South Virginia Street and Mary Street in the Midtown area of Reno, at which RTC was constructing a roundabout as part of the Virginia Street Bus RAPID Transit Extension Project. JA009-016. RTC acquired a permanent easement and a temporary construction easement on APN 014-063-11 (hereafter “Parcel 11”) and a *temporary* construction easement on APN 014-063-07 (hereafter “Parcel 7”). JA037-JA047.

Significantly, however, RTC did not acquire any *permanent* property interest on Parcel 7. JA402-403. This is significant because Iliescu’s claim for additional just compensation is based almost entirely on the removal a driveway cut that provided access from South Virginia Street to Parcel 7. *Id.* However, that driveway cut was entirely within the existing public right-of-way, meaning Iliescu did not own that access and RTC did not need to exercise eminent domain to remove it. JA397. RTC agrees it is “undisputed that the only remaining issue in this case is the amount of just compensation due Iliescu as a

¹ Respondent shall use singular and plural references to Appellants interchangeably throughout this brief but at all times, Respondents are referring to all of the Appellants collectively.

result of the RTC's taking of the property." OB at 2. But there was there was no taking of the driveway cut upon which Iliescu bases almost the entirety of their just compensation claim. JA402-403.

Nevertheless, Iliescu failed to assert a claim for inverse condemnation to seek compensation for the removal of the driveway cut and then failed to oppose RTC's motion in limine to preclude any evidence of such a claim. JA404-406. Iliescu also failed to timely disclose an expert witness and failed to provide any disclosures pursuant to NRCP 16.1. JA454-455. All of these procedural failures led the District Court to grant RTC summary judgment. JA453-462.

Iliescu now asks this Court to relieve them of these procedural failures, offering a variety of excuses, including that RTC and its counsel misrepresented facts to the District Court, that Iliescu was unrepresented by counsel early in the case, and that it would have been futile to oppose critical motions. OB at 6, 10, 11 and 21. These excuses are not supported by the record and Iliescu has failed to demonstrate that the District Court improperly entered summary judgment. RTC asks that this Court affirm the judgment of the District Court.

The Nevada Rules of Civil Procedure exist for a reason. NRCP 1 provides that they shall be construed and administered by the court and the parties to secure the just, speedy, and inexpensive determination of every action.

NRCP 16.1(a)2 sets forth requirements for expert reports, including deadlines for serving them. Under Iliescu's argument, making a belated request for an extension of that deadline based on an "unspecified" event would contravene NRCP 1. OB at 6. Parties must request a specific deadline. Under Iliescu's theory, a party could extend a deadline and delay a case indefinitely by refusing to identify a specific date from which the requested extension would run and then just argue that the extension runs from some unspecified event. That is not a reasonable argument. In this case, the only reasonable argument is that the requested 45-day extension ran from the original deadline of February 7, 2020.

The District Court properly enforced its deadline under the scheduling order it entered and to which Iliescu stipulated. Even with the District Court finding there was excusable neglect for Iliescu's counsel's failure to initially timely disclose Iliescu's expert report on February 7, 2021, the District Court also properly found that Iliescu's failure to timely disclose that report within 45 days after the original deadline was not excusable and exercised its discretion to preclude Iliescu from disclosing experts. JA140 at 5:9-20.

This case turns on expert testimony for valuation for the property taken, and Iliescu failed to timely disclose an expert report. Moreover, in order to recover compensation for the removal of the driveway cut they did not own,

Iliescu should have asserted an inverse condemnation claim, which they also failed to do. This was compounded by their failure to oppose RTC's motion to preclude Iliescu from introducing evidence of the unasserted inverse condemnation claim.

The rules governing discovery and motion practice must mean something and be reasonably enforced. Iliescu now complains that the consequences of their failure to comply operated as a severe sanction. OB at 13-14, 17. As discussed below, the District Court's orders in limine precluding experts and precluding evidence of the unasserted condemnation claim were well within its discretion and entirely reasonable and fair under the circumstances of this case.

STATEMENT OF ISSUES

Iliescu appeals from the District Court's August 3, 2020 Order Granting Motion For Summary Judgment. OB at vii. That order was based *in part* on two orders in limine Iliescu also challenges on appeal: (1) the May 14, 2020 Order Granting In Part And Denying In Part Motion In Limine To Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305, which precluded Iliescu from presenting any initial expert witnesses based on Iliescu's failure to timely disclose any experts presenting expert evidence (hereafter "Order Precluding Experts") JA136-142; and (2) its June 26, 2020 Order Granting Plaintiff's Motion In Limine To Preclude Evidence Or Argument Regarding Unasserted Claims, which precluded Iliescu from presenting evidence of an inverse condemnation claim they failed to assert (hereafter "Order Re Inverse Condemnation"). JA450-452.

In its Order Re Inverse Condemnation, the District Court noted Iliescu's failure to file an opposition to RTC's motion and, citing DCR 13(3), construed that failure as an "admission that the motion is meritorious and a consent to granting the same." JA450. Iliescu now argues it would have been "futile" to oppose RTC's argument but made no such argument to the District Court, nor

did Iliescu ever seek leave to amend its pleadings to add a counterclaim for inverse condemnation. OB at 11.

In its Order Precluding Experts, the District Court noted that Iliescu had failed to disclose an expert within the forty-five days it had “specifically requested.” JA140 at 5:16-17. The District Court also noted Iliescu had “not filed anything in this case since March 2, 2020,” including any objection to the RTC’s alleged “misrepresentation” regarding the duration of Iliescu’s request for an extension of time to disclose its expert witness. Id. at 5:17-18. Indeed, Iliescu *never* presented to the District Court the argument that RTC misrepresented the nature of Iliescu’s extension request.

The District Court’s Order Granting Summary Judgment was based in part on those two orders in limine. JA459-460. However, the District Court also relied on its June 4, 2020 Order Granting Motion In Limine To Preclude Defendants From Calling Witnesses And Presenting Documentary Evidence, which precluded Iliescu “from calling any witnesses in their case in chief and from presenting any other evidence at trial....” (hereafter “Order Precluding All Evidence”). JA460. As with other motions in limine, Iliescu failed to oppose RTC’s motion leading to this order as well and the District Court cited to DCR 13(3) in granting it. JA404.

These facts give rise to the following issues on appeal:

(1) Did the District Court properly exercise its discretion in entering the Order Re Inverse Condemnation where Iliescu failed to oppose RTC's motion and where Iliescu never sought leave to assert a counterclaim for inverse condemnation?

(2) Did the District Court properly exercise its discretion in entering the Order Precluding Experts where Iliescu failed to timely disclose an expert witness and where Iliescu failed to object to RTC's alleged misrepresentation regarding the extension of time Iliescu sought?

(3) Did the District Court properly enter summary judgment where Iliescu had no evidence to carry its burden of proof to establish just compensation?

STATEMENT OF FACTS/PROCEDURAL HISTORY²

RTC filed its complaint on April 3, 2019. JA001. Iliescu, acting in pro per, filed their answer on May 2, 2019, but did not assert a counterclaim for inverse condemnation. JA044-49.

On June 25, 2019, RTC's counsel received an email from Michael Morrison, Esq., advising that Mr. Morrison would be representing Iliescu in this matter. JA111. Mr. Morrison formally appeared on July 1, 2019, less than two months after Iliescu filed their answer. SA001-002.³ Thereafter, Mr. Morrison filed on behalf of Iliescu a demand for a jury trial, participated in the trial setting, and negotiated and signed the Joint Case Conference Report, the latter of which provided the deadlines incorporated into the District Court's Scheduling Order. JA060-062; JA063-064; JA068-082; JA083-088.

The Scheduling Order imposed a deadline of February 7, 2020 for both making initial expert disclosures and for filing motions to amend pleadings.

JA084. On February 7, 2020 RTC served its initial expert disclosure on

² The facts giving rise to this appeal overlap with the procedural history of this case.

³ RTC concurrently files a Supplemental Appendix cited to herein as "SA" followed by the Bates Number to provide two documents omitted from the Joint Appendix: (1) the Notice of Appearance filed by Michael Morrison, Esq. and (2) Plaintiff's Motion in Limine to Exclude Evidence Pursuant to NRS 50.275,

Iliescu's counsel. JA 122-123. RTC's expert opined that just compensation due Iliescu for RTC's acquisition and/or use of the easements was \$15,995. JA127.

Having received no initial expert disclosure from Iliescu, RTC filed a Motion In Limine To Exclude Evidence Pursuant To NRS 50.275, 50.285 and 50.305, which sought an order precluding Iliescu from presenting an expert witness at trial. SA003-0007.

On February 25, 2020, Iliescu engaged Maupin, Cox & Legoy to represent them in this matter along with Mr. Morrison. JA149. Iliescu filed an opposition on February 25, 2020, citing a scheduling error, stating that they had retained an expert who was "very familiar with the subject property" as well as "taking" cases in general. JA095, JA097. Iliescu specifically requested that the District Court "grant the Iliescu a 21-day extension of time in which to disclose their expert witness and submit his report in this case." JA097. Six days later, on March 2, 2020, Iliescu filed another opposition brief in which the only change was a request that the District Court "grant the Iliescu a **45-day** extension of time in which to disclose their expert witness and submit his report in this case." JA103 (emphasis added). That same day, Iliescu's counsel sent RTC's counsel an email advising that, after consulting with his client, he

50.285 and 50.305 listed in the Table of Contents for the Joint Appendix (as

decided to file an “errata” addressing the “time needed for the expert to present his report.” JA382. One wonders why this additional time was requested if the true intent was something other than the original deadline.

Forty-five days from the existing deadline of February 7, 2020 was March 23, 2020. The appraisals prepared by Iliescu’s experts are dated March 23, 2020, but Iliescu failed to make its expert disclosures on that date. JA169-171, JA277-279. Therefore, on March 27, 2020, RTC filed a supplemental reply brief to advise the Court that Iliescu had failed to make an initial expert witness disclosure within the 45-day extension they had specifically requested. JA112-113. Iliescu never argued to the District Court that RTC’s supplemental reply was a “rogue filing” that the District Court should not consider. OB at 13. Further, while Iliescu now argues on appeal that this was allegedly a “misrepresentation” by RTC, Iliescu never objected to RTC’s interpretation and therefore neither RTC nor the District Court had an opportunity to address this issue. One would think that if Iliescu felt RTC had misrepresented something in the March 27 supplemental reply that they would have immediately objected and explained what they really wanted.

JA0089-JA0093) but mistakenly omitted in the uploaded appendix.

On March 31, 2020, RTC filed a Motion for Summary Judgment on the basis that Iliescu had the burden of proof to establish just compensation and had failed to timely disclose an expert witness. JA115-117. Despite the basis of RTC's motion, Iliescu did not notify the District Court that RTC had "misrepresented" Iliescu's request for an extension of the expert deadline.

Iliescu's expert report was delivered via email on April 8, 2020, however, it is clear from that report that what Iliescu was seeking was compensation for property they did not own. Specifically, Mr. Wren advises Iliescu's counsel regarding Parcel 7: "Though there is **no permanent take** indicated, I have been informed that the currant [sic] access to this site from S. Virginia Street will be eliminated in the after condition." JA402 (emphasis added). On the next page, Mr. Wren again states with respect to Parcel 7: "**No take**, accept [sic] for access from S. Virginia Street." JA403 (emphasis added). It is undisputed that Iliescu did not own that access, which is why they admit they should have brought an inverse condemnation claim.

On May 14, 2020, the District Court entered its Order Precluding Experts. JA136-141. The District Court found that, while the initial scheduling error was excusable neglect, Iliescu's "continued failure" to disclose an expert within the 45-day extension Iliescu "specifically requested" was not excusable. JA140.

The order did, however, allow Iliescu to disclose a rebuttal expert for the purpose of rebutting RTC's expert testimony. *Id.*

On May 15, 2020, RTC filed its Motion In Limine To Preclude Defendants From Calling Witnesses And Presenting Documentary Evidence, requesting an order that Iliescu "be precluded from calling any witnesses in their case in chief and from presenting any other evidence at trial." JA146. RTC noted that, at that point in the case, the only witness Iliescu could be permitted to call was a rebuttal expert following RTC's presentation of its case. JA145. This motion was based on Iliescu's failure to make any disclosures pursuant to NRCP 16.1(a)(1) and their failure to timely disclose an expert witness. JA146. Iliescu did not oppose this motion and the District Court granted it based on DCR 13(3). JA404-405.

On May 22, 2020, Iliescu filed their opposition to RTC's motion for summary judgment. JA148-154. Iliescu took the position that the appraisals it disclosed on April 8, 2020 were "rebuttal" reports that created an issue of fact as to just compensation, ignoring the fact that Iliescu had the burden of proof to establish just compensation in their case in chief. JA154. Nowhere in Iliescu's opposition to summary judgment do they suggest that RTC misrepresented Iliescu's request for an extension of the initial expert deadline. JA148-374.

This is significant because one would think that, if Iliescu felt RTC had misrepresented the requested length of Iliescu's extension to disclose experts, it would have been made immediately, in response to a motion for summary judgment, or at some point in Iliescu's subsequent filings. It was not.

On June 1, 2020, RTC filed a Motion In Limine To Preclude Defendants From Presenting A Rebuttal Expert Witness, arguing that Iliescu was improperly attempting to rebrand Mr. Wren's report as a rebuttal report when in fact it was a belatedly disclosed original report. JA389-392. On June 18, 2020, Iliescu filed its opposition, maintaining its position that Mr. Wren would testify as a rebuttal expert. JA413. Nowhere in Iliescu's response do they suggest that RTC misrepresented their request to extend the initial expert disclosure deadline.

On June 4, 2020, RTC filed a Motion In Limine To Preclude Evidence Or Argument Regarding Unasserted Claims. JA394-398. RTC argued that Mr. Wren's report improperly recommended just compensation based on the elimination of driveway access on Parcel 7 because that access was within the existing government right-of-way and because Iliescu had failed to assert a claim for inverse condemnation. JA395. RTC pointed out that the deadline to amend pleadings was February 7, 2020. JA396. Iliescu failed to oppose this motion and the District Court granted it based on DCR 13(3). JA450-451.

Iliescu also never sought leave of Court to amend its pleadings and never argued to the District Court that its failure to assert a claim for inverse condemnation was due to the fact that Iliescu was acting in pro per when it filed its response to RTC's complaint.

SUMMARY OF ARGUMENT

The District Court properly exercised its discretion in entering the Order Precluding Experts and the Order Re Inverse Condemnation, both of which support the District Court's order granting summary judgment. There is no dispute Iliescu failed to timely disclose an initial expert witness and that they also failed to do so within the "specifically requested" 45-day period after expiration of the deadline on February 7, 2020. This is the only reasonable interpretation of Iliescu's request for an extension. Iliescu *never* argued to the District Court that its request for an extension was to run from some other date, that RTC was misrepresenting the facts or that the Order Precluding Experts was unduly harsh.

Further, there is no dispute that Iliescu failed to assert an inverse condemnation claim, never sought leave to amend its pleadings and failed to oppose RTC's motion in limine resulting in the Order Precluding Experts. The District Court entered that order based on DCR 13(3), finding that Iliescu

admitted the motion was meritorious and consented to the granting of the same. In any event, in the absence of an inverse condemnation claim, any alleged error regarding experts was harmless.

Despite their numerous substantive and procedural failures, Iliescu now argues summary judgment should be reversed because the District Court abused its discretion in entering the Order Precluding Experts and the Order Re Inverse Condemnation. OB at 15-16.

With respect to the Order Precluding Experts, Iliescu argues the District Court abused its discretion in considering the RTC's March 27, 2020, Supplemental Reply Brief, which Iliescu argues for the first time on appeal was a rogue filing the District Court should have disregarded. OB at 13. Iliescu argues, also for the first time on appeal, that RTC's Supplemental Reply Brief "misrepresented" to the Court the duration of the extension Iliescu was seeking. OB at 6, 9, 10, 13, 15. Iliescu argues this led to an unduly harsh sanction, ambush and unfair surprise, and a violation of Nevada's policy of resolving cases on their merits. OB at 17.

With respect to the Order Re Inverse Condemnation, Iliescu argues—again for the first time on appeal—that they should now be allowed to assert an inverse condemnation claim because they were acting in *pro per* at the time they

filed their answer and because “arguably” the excusable neglect of their counsel in failing to timely disclose an initial expert also occurred with respect to amending Iliescu’s pleadings. OB at 21. Iliescu acknowledges they failed to oppose RTC’s motion in limine resulting in the Order Re Inverse Condemnation but argue for the first time on appeal that the reason for this is it would have been futile to do so. *Id.*

Iliescu has waived or failed to preserve the arguments it now raises on appeal. Even if considered on appeal, Iliescu has failed to demonstrate that the District Court abused its discretion in entering either the Order Re Inverse Condemnation or the Order Precluding Experts, either of which alone justifies summary judgment against Iliescu.

Therefore, the District Court’s order granting RTC summary judgment should be affirmed.

ARGUMENT

I. STANDARD OF REVIEW

Parties generally may not raise new issues on appeal, factual and legal, that were not presented to the district court and that neither the opposing party nor the district court had the opportunity to address. *Einhorn v. BAC Home Loans Servicing, L.P.*, 128 Nev. 689, 697 n.3, 290 P.3d 249, 252 n.3 (2012).

Issues not argued in the trial court are deemed to have been waived and will not be considered on appeal. *Dolores v. State Emp. Sec. Div.*, 134 Nev. 258, 262, 416 P.3d 259, 261 (2018). Unless it goes to the jurisdiction of the trial court, a point not urged in that court is deemed to have been waived and will not be considered on appeal. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

Iliescu's arguments for reversal lack merit. The standards of review and other legal principles applicable to those arguments are discussed below.

II. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN RULING THAT ILIESCU WAS BARRED FROM PRESENTING EVIDENCE OR ARGUMENT OF CLAIMS THEY DID NOT ASSERT.

A district court's ruling on a motion in limine is reviewed for an abuse of discretion. *Whisler v. State*, 121 Nev. 401, 406, 116 P.3d 59, 62 (2002). "A district court would necessarily abuse its discretion if it based its rulings on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Bayerische Motoren Werke Atiengesellschaft v. Roth*, 127 Nev. 122, 133, 252 P.3d 649, 657, 2011(citing *Cooter v. Hartmarx. Corp.*, 496 U.S. 384, 405, 110, S. Ct. 2447, 2461, 110 L. Ed. 2d 359 (1990)).

Iliescu admittedly did not assert a claim for inverse condemnation, which is the heart of their claim for just compensation. OB at 21. While they suggest

that “arguably” the same excusable neglect occurred with counsel for Iliescu having significant medical issues, that argument was not raised below and has been waived. Indeed, Iliescu did not even oppose the motion. OB at 15. DCR 13(3) provides that the failure of an opposing party to serve and file a written opposition “may be construed as an admission that the motion is meritorious and a consent to granting the same.” JA404. The District Court was well within its discretion under DCR 13(3) to grant RTC’s motion to exclude evidence or argument of an inverse condemnation claim.

Further, the District Court did not rely on “erroneous information” provided by RTC. It was Iliescu’s motion to extend the time to disclose an initial expert, and its failure to be specific about the request is not RTC’s doing. Nor did they object below to RTC’s March 27, 2020 supplemental reply to exclude experts, which explained RTC’s understanding of the requested extension and Iliescu’s failure to serve an expert report within that time frame. Obviously, the District Court agreed with RTC’s understanding, Plaintiffs’ failure to argue this below bars review on appeal. *Dolores v. State Emp. Sec. Div.*, 134 Nev. 258, 262, 416 P.3d 259, 261 (2018).

Iliescu’s argument that they should be excused from these failures because they were appearing in *pro per* at the time the answer was filed and

because it would have been “futile” to oppose the motion seeking to exclude evidence of the inverse condemnation claim are without merit. OB at 21.

Iliescu’s counsel, Michael Morrison, appeared in the action approximately two months after the answer was filed and could have immediately sought an amendment to the pleadings to add a counterclaim for inverse condemnation but did not. SA001-002. Nor did Iliescu’s other counsel, Maupin Cox and Legoy, seek leave to add such a claim at any time after they appeared on February 25, 2020. JA149. Indeed, at no time did Iliescu ever seek to add such a claim for inverse condemnation nor did they oppose RTC’s motion resulting in the Order Re Inverse Condemnation.

This District Court properly exercised its discretion in entering its Order Re Inverse Condemnation barring Iliescu from asserting an inverse condemnation claim. DCR 13(3) provides the District Court with discretion to treat the lack of opposition as an admission that the motion is meritorious and a consent to granting the same. That order in and of itself makes summary judgment proper because, as discussed above, because the inverse condemnation claim is the heart of Iliescu’s claim for just compensation. Absent that claim, there is no genuine issue of material fact. For this reason alone summary judgment should be affirmed.

III. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN ENTERING THE ORDER PRECLUDING EXPERTS BECAUSE ILIESCU FAILED TO TIMELY DISCLOSE AN EXPERT WITNESS AND BECAUSE THEY FAILED TO OBJECT TO RTC'S ALLEGED "MISREPRESENTATION" REGARDING THE EXTENSION OF TIME ILIESCU SOUGHT.

Here, as discussed above, the Order Precluding Experts was not based on erroneous information provided by RTC (to which Iliescu never objected until on appeal). Iliescu's request for a 45-day extension is only reasonably construed to be based on the original deadline of February 7, 2020, not some other "unspecified event" they failed to specify. OB at 5. This argument is without merit, as is Iliescu's contention that RTC "misrepresented" Iliescu's request to the District Court. OB at 6.

It is simply not correct that Iliescu requested any extension other than the 45 days from the original deadline. OB at 8. It was Iliescu's burden to be specific on their request, not RTC's or the District Court's. One would think that, when Iliescu saw RTC's supplemental reply indicating the 45-day deadline had expired without service of an expert report, they would have corrected that alleged misrepresentation promptly. They did not, not did they ever raise this argument at the District Court level and therefore have waived it. Even if they had raised it, the argument that an extension should run from some unspecified date lacks merit as discussed above.

That Iliescu served an appraisal on April 8, 2020 that included a valuation based on an unasserted inverse condemnation claim does not mean the District Court was under a “mistaken belief” that the Rules require discovery disclosures to be filed. OB at 8. More likely, the District Court was probably referring to the fact that Iliescu had not filed a response or objection to RTC’s Supplemental Reply filed on March 27, 2020 pointing out that Iliescu had not timely disclosed an expert report within the 45-day requested extension.

The District Court certainly knew that such disclosures are simply served on parties in a case and are not required to be filed this and the Court’s mention that it had reviewed the docket and had not seen any filings by Iliescu since March 2, 2020 was likely to point out Iliescu did not dispute the contents of RTC’s Supplemental Reply on filed on March 27, 2020.

Iliescu’s argument that the District Court’s issuance of the Order Precluding Experts operated as an unduly harsh sanction is not accurate. OB at 13-14, 17. While the District Court acknowledged Iliescu’s argument that the Court had the power to, but not the obligation to, sanction parties for violations of the operative scheduling order in the case (see JA139 at 4:3-5), the District Court’s ruling was based upon a clear violation of the applicable procedural rules and scheduling order and was not, as the Iliescu’s try to argue, a harsh

sanction. Here, Iliescu failed to take any action until well after the RTC filed its March 27 supplemental reply. While Nevada has a policy of hearing cases on their merits, it does not mean litigants can simply disregard the rules with impunity. See, e.g., *Lentz v. Boles*, 84 Nev. 197, 201, 438 P.2d 254, 256-257 (1968) (stating that the policy of Nevada Courts to have each case decided upon its merits does not permit litigants to “disregard process of procedural rules with impunity.”).

IV. THE DISTRICT COURT PROPERLY ENTERED SUMMARY JUDGMENT IN FAVOR OF RTC BECAUSE ILIESCU PRESENTED NO EVIDENCE TO CARRY ITS BURDEN OF PROOF TO ESTABLISH THE JUST COMPENSATION IT SOUGHT

A district court’s order granting summary judgment is reviewed de novo.

Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* “Evidence introduced in...opposition to a motion for summary judgment must be admissible evidence.” *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983), citing NRC 56(e).

Initially, there was no evidence attached to Iliescu's opposition to summary judgment. They attached their belated Designation of Expert Witness, but no affidavit or declaration from Mr. Wren to make the documents admissible. JA162-374. Thus, there is no evidence to review in a light most favorable to the party against whom judgment was rendered. OB at 19. Absent any evidence, there are no genuine issues of material fact.

Nevertheless, Iliescu argues the Court erred in granting summary judgment because "an expert witness had been disclosed and would be used to contest Plaintiffs' valuation of the damage award." OB at 10. Iliescu also argues that the district court abused its discretion in precluding Iliescu from disclosing an expert after finding that the late disclosure was due to excusable neglect. *Id.*

However, the District Court did *not* find that the failure to disclose an expert report on or before expiration of the requested 45-day extension was due to excusable neglect. JA136-142. Iliescu again argues that the Order Precluding Experts was based on RTC's alleged misrepresentation regarding the length of the requested extension. OB at 6. That was Iliescu's burden to make clear, not RTC's.

The District Court's assessment was not clearly erroneous and summary judgment should be affirmed.

CONCLUSION

The District Court's decision to grant summary judgment in favor of RTC should be affirmed.

Dated: July 2, 2021.

WOODBURN AND WEDGE

By: /s/ Dane W. Anderson
DANE W. ANDERSON

CERTIFICATE OF COMPLIANCE

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 the brief has been prepared in a proportionally spaced typeface using Microsoft Word, 14- point font, Times New Roman style. I further certify that this brief complies with the type-volume limitation in NRAP 32(a)(7) because, using the computation guidelines in NRAP 32(a)(7)(C), it contains **5,624** words.

Pursuant to NRAP 28.2, I hereby certify that I have read this 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.

Affirmation pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: July 2, 2021.

WOODBURN AND WEDGE

By: /s/ Dane W. Anderson
DANE W. ANDERSON, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Road, Suite 500, Reno, Nevada 89511, and that I caused to be served the foregoing **RESPONDENT'S REPLY BRIEF** to be electronically filed with the Nevada Supreme Court on **July 2, 2021**. Electronic Service of the foregoing document shall be made as follows:

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