

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH FOLINO, AN INDIVIDUAL;
AND NICOLE FOLINO, AN
INDIVIDUAL,

Appellants,

vs.

TODD SWANSON, AN INDIVIDUAL;
TODD SWANSON, TRUSTEE OF THE
SHIRAZ TRUST; SHIRAZ TRUST, A
TRUST OF UNKNOWN ORIGIN; AND
LYONS DEVELOPMENT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Respondents.

JOSEPH FOLINO, AN INDIVIDUAL;
AND NICOLE FOLINO, AN
INDIVIDUAL,

Appellants,

vs.

TODD SWANSON, AN INDIVIDUAL;
TODD SWANSON, TRUSTEE OF THE
SHIRAZ TRUST; SHIRAZ TRUST, A
TRUST OF UNKNOWN ORIGIN; AND
LYONS DEVELOPMENT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Respondents.

No. 81252

FILED

APR 16 2021

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

No. 81831

ORDER

This is an appeal from a judgment dismissing appellants' complaint for various tort claims in a real estate dispute and from an order awarding attorney fees and costs. Respondents have filed a motion to strike pages 1 through 248 of volumes 1 and 2 of appellants' appendix and portions of the opening brief on the ground that the appendix contains documents never presented to the district court and argument not raised below. The

documents are from the appendix filed in the appeal to this court in the case of *Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (2007). Appellants argue in their brief that the factual circumstances of *Heer* were substantially different from the facts at issue in this case that therefore the district court misapplied the reasoning of *Heer*. Appellants argue that they made a similar argument to the district court below and ask this court to take judicial notice of the documents from the *Heer* appendix. Respondents have filed a reply. Having considered the arguments of the parties, this court grants the motion in part and denies it in part. This court generally "will not take judicial notice of records in another and different case." *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009). The clerk of this court shall strike pages 1 through 248 of volume 1 and 2 of the joint appendix. See *Carson Ready Mix, Inc. v. First Nat' Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (this court generally will not consider documents that are outside the record on appeal). To the extent appellants argue in the brief that the facts of *Heer* were different from those at issue in the instant appeal, such argument may stand. This court will disregard the references in the brief to the stricken portions of the appendix.

It is so ORDERED.

1. Sanderth, C.J.

cc: Black & Wadhams
Christopher M. Young, PC
The Galliher Law Firm