IN THE SUPREME COURT OF THE STATE OF NEVADA

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HOLGA FLORES-REYES and ANTHONY VERDON, Appellants, *vs.* EDEL RAMIREZ-NAVARRETE, Respondent.	**Case No**.: 82455	Electronically Filed Nov 05 2021 09:36 a.m. Elizabeth A. Brown Clerk of Supreme Court

APPEAL FROM JUDGMENT
EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, COUNTY OF CLARK
HONORABLE NANCY L. ALLF, DISTRICT JUDGE

APPELLANTS' REPLY BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

*** * * * ***

HOLGA FLORES-REYES and ANTHONY VERDON, Appellants, *vs.* EDEL RAMIREZ-NAVARRETE, Respondent.	**Case No**.: 82455

NRAP 26.1 DISCLOSURE

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 so in order that the justices may evaluate the possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: *None*.

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear I this court: *Pyatt Silvestri*.

3. If litigant is using a pseudonym, the litigant's true name: *N/A.*

DATED: November 5, 2021.

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I.
Statement of the Facts

The following facts stated by Respondent are not supported by any reference to the record and in violation of NRAP 28(e)(1): Appellant's attempt at fleeing the scene, Appellant refusing to share driver's license information with the Respondent, loss of use for the Respondent's vehicle, any alleged unpaid property damage, and the claim that Appellant did not accept liability for the Accident.

To address further unsupported facts, Flores and Verdon admitted fault in their arbitration brief, Respondent claims that because property damage was allegedly unpaid that liability was not admitted, but this is unsupported by any case law. 1 A. App 85-86. Respondent also misrepresents the arbitration award in this case because a breakdown of the damages awarded was never specified by the arbitrator, it was simply an award of $13,500.00 for total damages. 1 A. App. 25.

Respondent's brief also alleges that no reason was given for not responding to written discovery. However, Appellant's counsel, Patrice Johnson, explained that they attempted to contact Flores and Verdon throughout the course of litigation, after the filing of the Answer but were simply unable to reach them.1 A. App,137. In addition, Appellants' counsel's office had several employees that were infected with Covid-19 and as a result were operating with a skeletal staff and were short-handed. 1 A. App 23, 134. In fact, Appellants' counsel's office was closed

twice during the time they were served with written discovery which delayed the party's discovery attempts. 1 A. App 23, 134.

Flores and Verdon served their arbitration brief on September 10, 2020. 1 A. App 85. Ramirez cites no support in the record that the arbitration hearing started later than it was intended, or that the timing of Flores and Verdon's arbitration brief affected the outcome of the arbitration in anyway.

The only issue to be decided at arbitration was pain and suffering for Ramirez since liability was accepted by Flores and Verdon. Ramirez also argues that an expert was not retained for arbitration. However, Flores and Verdon made sincere and meaningful arguments against Ramirez's damages, an expert is not required for arbitration, nor could an expert have added any value to this case. 1 A. App. 86, 87.

In attendance at the arbitration hearing was counsel for both parties, and Ramirez. 1 A. App. 25. The Arbitrator does not make any finding that parties were unable to attend or that the lack of attendance caused any type of delay to the proceeding. In fact, the Arbitrator's award states, "[p]resent at the hearing were the above identified attorneys and the parties in the present action." 1 A. App. 25.

An arbitration award was rendered in favor of Ramirez, issued on September 15, 2020. 1 A. App. 25. The award consisted of total past damages in the amount of $13,500.00. 1 A. App. 25. Subsequently, the arbitrator granted Ramirez costs in

the amount of $1,141.34, interest of $959.19, and attorney's fees consisting of $1,000.00. 1 A. App. 29.

II.
Summary of Argument

Respondent misconstrues the facts of *Casino Properties, Inc. v. Andrews* in his favor and does not look at the more complex facts of that case as they are compared to the instant case which is a simple rear-end auto accident. Further, Liability in that case was disputed, whereas in this case it is not. As such responses to discovery were crucial in that case in order not to impede the arbitration process because documents that hinged on deciding liability were not produced.

Respondent also contends that because written discovery was not responded to that Appellants were required to retain an expert to refute their claims. In the same vein, Respondent states that the arbitration process is a simplified procedure for obtaining prompt and equitable resolution of civil matters. Respondent cannot have it both ways. Regardless, case law does not require the retention of experts in arbitration. In this case, Flores and Verdon meaningfully participated in the arbitration process by submitting an arbitration brief which they were not required to do under N.A.R 13, cross-examined Respondent at arbitration, and made counter arguments as to Respondent's injuries due to his age-related degenerative findings in his MRI. 1 A. App. 85-86.

Discovery responses by Flores and Verdon are ultimately irrelevant since the only issue that was to be decided at arbitration was the extent of pain and suffering that should be awarded to Ramirez. Discovery responses could not add anything to that portion of Respondent's damages, and it is Ramirez's burden to prove such.

Finally, denying a Flores and Verdon their right to further participate in the litigation process following arbitration is a severe and "draconian" sanction. This is because the constitutional right to a jury trial is important. *Gittings v. Hartz*, 996 P.2d 898, 900-901 (Nev. 2000); see also *Campbell v. Maestro*, 996 P.2d 412, 415 note 5 (Nev. 2000) (recognizing the importance the Nevada Supreme Court attaches to the right to a jury trial in all civil matters).

As such, the Appellants respectfully request that this Court follow well settled caselaw and reverse the district Order Granting Respondent's Motion to Strike Appellants' Request for Trial De Novo, Request for Removal from the Short Trial Program, and the resulting Arbitration Award of $13,500.

III.
Argument

A. Standard of Review

The standard of review on appeal of a district court order denying a request for trial de novo is abuse of discretion. *Gittings*, 996 P.2d at 901; See also, *Casino Properties, Inc. v. Andrews*, 911 P.2d 1181, 1183 (Nev. 1996); *Chamberland*. 877 P.2d at 525. A district court abuses its discretion where it disregards controlling

law or its factual findings are not based on substantial evidence. *MB Am., Inc. v. Alaska Pac. Leasing Co*., 367 P.3d 1286, 1292 (Nev. 2016); *Campbell*. 996 P.2d at 414. While the power to sanction a party is ordinarily reviewed for an abuse of discretion, "a somewhat heightened standard of review" is applied to sanctioning orders that terminate legal proceedings. *Chamberland*, 877 P.2d at 525.

B. The Facts of *Casino Properties* Do Not Align with The Facts of The Instant Case Because Liability Was Not in Dispute in This Case.

Ramirez points to *Casino Properties, Inc. v. Andrews*, 112 Nev. 132, 135, 911 P.2d 1181, 1182-83 to support his position that Flores and Verdon did not meaningfully participate. However, Ramirez misrepresents the facts of *Casino Properties*. The facts of that case are more complex than just a simple rear-end auto accident that we are dealing with in this case. That case involved a situation in which security guards of a hotel performed a "lock out" of two hotel rooms, which in turn caused damages to the respondents. *Id*. at 134. The respondents in that case issued written discovery to obtain the security manuals to determine the nature of the lock-out procedures but were unable to obtain them because they were not produced by the appellant. *Id*. As such, the Court ruled that the arbitration proceedings were impeded because the appellant failed to provide respondents with information regarding security and employment manuals. *Id*. at 135. Thereafter, only 10 days prior to the arbitration hearing, the appellants never

informed respondents that those requested procedures never existed, so it was clear that appellants impeded the arbitration hearing and issues of liability. *Id*. at 135.

The instant case did not hinge on such crucial information. In fact, no such information was requested in this case that would amount to impeding the arbitration. Many of the requested documents were likely already produced in appellants initial disclosures, and none of the requested documents if produced would have changed the outcome of this case at arbitration 1. A. App. 73-80. For example, Ramirez requested witness statements. However, a recorded statement was already produced in this case, which Ramirez had in their possession already. 1. A. App. 51-58. Many of the other written discovery contained contention requests, which would have been objected to regardless, were overbroad in nature, and were not proportionate to the case. 1 A. App. 60-80. In a case where liability is not contested, the production of irrelevant documents would not have changed the outcome.

Additionally, Ramirez states that in *Casino Properties*, the appellants delivered their pre-arbitration statement the day before the arbitration. *Id*. at 134. Then Ramirez attempts to compare that fact with the allegation that Flores and Verdon's arbitration brief was delivered twenty minutes after the arbitration was set to begin. Aside from the fact that Ramirez fails to point out this reference in the record, this alone does not constitute a lack of meaningful participation or is even

similar to that situation in *Casino Properties*. Importantly, the reason that the failure to timely deliver an arbitration statement in *Casino Properties* was so crucial was because liability was in dispute so the respondent was unable to see what arguments would be put forth with respect to liability. Here, even if the allegation that the arbitration brief was delivered untimely is true, it is ultimately irrelevant because liability was not at issue. Much of the argument to be made at arbitration with respect to pain and suffering were going to come from cross-examination by Appellant's counsel.

Further, N.A.R. 13 does not even mandate an arbitration brief but simply a list of witnesses and documents that a party will rely upon at the arbitration hearing. That Rule goes on to state that a party is not even required to present case law or legal citations to the arbitrator; but list witnesses and documents with a description of the documents or the anticipated testimony. Such is consistent with the above-described rules that the arbitration hearing is "simplified" and economical.

In this case, Appellants provided an arbitration brief which conceded liability, provided initial disclosures including a recorded statement by Flores which gave Ramirez all of the information he needed for their arbitration brief. 1 A. App. 51-58, 85-90, 135. Further, Ramirez did not need to call any additional witnesses at arbitration due to the simple nature of the case and Appellant's

counsel still cross-examined Ramirez at arbitration. 1 A. App. 51-58, 85-90, 135. While *Casino Properties* resulted in a striking of a trial de novo request, it is distinguished significantly here, and Ramirez purposefully ignores the facts that were used to reach the conclusion in that case.

Despite Ramirez's claim that liability was being contested, Ramirez acknowledges that liability was not at dispute, because Flores admitted it in her recorded statement. 1 A. App. 38, 56-57, 135. Thus, there was never an issue as to liability in this case, and even deposing Flores would not have added anything to this argument or to Ramirez's damages. Therefore, liability was not a serious issue in this case.

C. An Expert Is Not Required at Arbitration Because It Is Meant to Be a Simplified Procedure for Equitable Resolution.

Ramirez contends that because no medical expert was retained to counter the diagnosis done by Ramirez's treating medical experts, that Flores and Verdon were barred from challenging causation. Ramirez also argues that Flores and Verdon should have hired a medical expert and an expert regarding property damage and forces involved in the collision. However, it is undisputed that the purpose of arbitration "is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." N.A.R 2(A); *see also Casino Prop. Inc.*, 112 Nev. at 135, 911 P.2d at 1182. The Nevada Supreme Court has further

stated that a parties' "meaningful participation" in the arbitration proceedings must be viewed in light of the fact that "arbitration matters often involve simple disputes and meager claims for damages that do not warrant expensive pre-arbitration discovery or sophisticated "trial" techniques." *Chamberland*, 877 P.2d at 525

Therefore, it would defeat the purpose of the Court Annexed Arbitration Program if appellants were required to hire experts in all cases, let alone this case where there was no dispute as to liability and it was not a serious issue. The cost of experts would outweigh the benefit of retaining them in a case where liability was not disputed in the first place, in this case it made sense not to hire any medical expert. The amount at stake was small. 1 A. App. 25. Ramriez's injuries consisted of soft tissue injuries. 1 A. App. 86, 89. Preparing an arbitration brief and cross-examining Ramirez was an appropriate and sufficient defense. Ramirez would prefer that Flores and Verdon spent thousands of dollars on experts, rather than counsel showing up at arbitration and cross-examining Ramirez regarding his injuries.

Ramirez also argues that Flores and Verdon would somehow possess information regarding the payment for property damage and loss of use at arbitration but fails to point out what information they could provide in that regard, as if Flores and Verdon themselves were responsible for the alleged non-payment

of property damage. Ramirez has provided no reference to the record to support that property damage was unpaid.

Ultimately none Ramirez's arguments hold weight because liability was accepted by Flores and Verdon. Ramirez also contends that Flores's attempt at "fleeing the scene" was a central contested issue. However, Ramirez fails to explain how such a non-supported fact would have affected the outcome of the arbitration given that liability was not at issue.

D. Flores And Verdon Did Not Waive Their Right to Trial De Novo and Are Entitled to A Trial by Jury on All Issues.

In Appellant's Opening Brief, it was argued for numerous reasons that Flores and Verdon meaningfully participated. However, Ramirez in his brief states that Flores and Verdon have waived their right for a trail de novo based upon Respondent's belief that they did not meaningfully participate. However, even if it is found that they did not meaningfully participate, it does not waive their right to a jury trial.

Article 1, Section 3 of the Nevada Constitution, provides a litigant with the right to a jury trial in a civil action. This should not be taken lightly and should be afforded critical scrutiny by this Court. The Supreme Court commented that such a review involves a "somewhat heightened standard of review applied to sanctioning

orders that terminated the legal proceedings." *Chamberland v. Labarbera*, 877 P.2d 523, 525 (Nev. 1994).

In *Chamberland v. Labarbera*, Chamberland crashed his car into the back of Labarbera's vehicle. *Id*. at 523. Chamberland failed to conduct any pre-arbitration discovery and did not attend the arbitration hearing. *Id*. at 525. The arbitrator found in favor of Labarbera and awarded her approximately $16,000 in damages. *Id*. at 523-524. Chamberland filed a request for a trial de novo and Labarbera moved to strike that request, arguing that Chamberland failed to participate in the arbitration process in good faith. *Id*. at 524. The district court granted Labarbera's motion to strike and Chamberland appealed. Id. at 524.

The Nevada Supreme Court overturned the district court decision holding that even though Chamberland did not conduct any discovery and failed to attend the arbitration, the district court abused its discretion in concluding that he failed to meaningfully participate in the arbitration process. *Id*. at 524-525. In that case, since liability was not at issue the Court stated Chamberland's counsel offered a defense at the arbitration hearing by cross-examining Labarbera and disputing her alleged injuries. *Id*. In fact, the Court stated the failure of Chamberland to attend the arbitration hearing did not warrant such a draconian sanction as terminating his right to further participate in the litigation process. *Id*.

Here, Appellant's counsel provided the exact same defense, so taking away the right to a jury trial is not warranted and the facts of this case are very similar to *Chamberland*. In fact, Flores and Verdon did even more in this case as has already been demonstrated in Appellant's Opening Brief. Further, "the important right to a jury trial is not waived simply because individuals can disagree over the most effective way to represent a client at an arbitration proceeding." *Gittings*, 116 Nev. at 391, 996 P.2d at 901. The right of trial by jury shall be secured to all and remain inviolate forever, and this has always been held to apply to civil actions. *State v. McClear*, 11 Nev. 39 (1876). Therefore, even if it is found that Appellants did not meaningfully participate, that does not take away their right to a jury trial in this case because that is a severe sanction to issue.

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IV.
Conclusion

Based on the facts articulated above and the evidence presented to the district court below, as well as the legal authority cited in this brief, Appellants Holga Flora-Reyes and Anthony Verdon, requests the following relief:

1. An order and Decision reversing the lower court's Order Granting Plaintiff's/Respondent's Motion to Strike Defendants'/Appellants' Request for Trial De Novo and Request for Removal from the Short Trial Program and resulting Arbitration Award of $13,500.

DATED: November 5, 2021.

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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 of style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type style.

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2. 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 appropriate references to 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: November 5, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November 2021, I deposited in the United States Mail at Las Vegas, Nevada a copy of the foregoing document entitled **APELLANTS' REPLY BRIEF** in a sealed envelope, mailed regular U.S. mail, upon which first class postage was fully prepaid addressed to the following:

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