

IN THE SUPREME COURT OF THE STATE OF NEVADA

JENNY RISH,

Appellant,

vs.

WILLIAM JAY SIMAO, individually; and CHERYL
ANN SIMAO, individually and as husband and
wife,

Respondents.

Case No. 58504

Electronically Filed
AMENDED
Jul 20 2011 09:08 a.m.
Tara K. Lindeman
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attachments.

1. **Judicial District:** Eighth **Department:** 10 **County:** Clark
Judge: The Honorable Jessie Walsh **District Ct. Docket No.** A539455

2. **Attorney filing this docket statement:**

Attorney: DANIEL F. POLSENBERG Telephone: (702) 474-2616
Firm: LEWIS AND ROCA LLP
Address: 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Client(s): Jenny Rish

If this is a joint statement filed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an addition sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondent(s):**

Attorney: Robert T. Eglet Telephone: (702) 450-5400
Firm: Mainor Eglet
Address: 400 South Fourth Street
Las Vegas, Nevada 89101

Client(s): William Jay Simao and Cheryl Ann Simao

4. **Nature of disposition below (check all that apply):**

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant/Denial of injunction |
| <input type="checkbox"/> Summary Judgment | <input type="checkbox"/> Grant/Denial of declaratory relief |
| <input checked="" type="checkbox"/> Default Judgment | <input type="checkbox"/> Review of agency determination |
| <i>Defendant's Answer was stricken.</i> | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Lack of jurisdiction | <input type="checkbox"/> Other disposition (specify). |
| <input type="checkbox"/> Failure to state a claim | |
| <input type="checkbox"/> Failure to prosecute | |
| <input type="checkbox"/> Other (specify)..... | |

5. **Does this appeal raise issues concerning any of the following:** No

- | | |
|--|--|
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Termination of parental rights |
| <input type="checkbox"/> Venue | <input type="checkbox"/> Grant/denial of injunction or TRO |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile matters |

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. **Nature of action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

This is a motor vehicle accident occurring on April 15, 2005. Plaintiff's complaint alleged negligence and loss of consortium. The case presented for a jury trial on March 14, 2011. On March 31, 2011, plaintiff made an oral motion to strike defendant's answer which was granted. After a prove-up hearing on April 1, 2011, judgment was entered on April 28, 2011, in favor of plaintiff in the amount of \$3,493,983.45.

9. **Issues on Appeal.** State concisely the principal issue(s) in this appeal:

1. Whether the district court erred in striking defendant's answer during trial, as a sanction for eliciting testimony about the facts of a low-impact automobile collision, where the court repeatedly refused to clarify the meaning of her pre-trial order on a motion in limine or otherwise make clear that such evidence was inadmissible.
2. Whether EDCR 7.27, the local rule that permits confidential, ex parte briefs, was abused in this case, and ought to be abolished.
3. Whether defendant's right voir dire of the jury was wrongfully curtailed.
4. Whether the district court erred in admitting previously undisclosed evidence of future medical expenses during trial.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

None.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A Yes..... No.....

If not, explain.....

12. **Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- ☒ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first-impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of the court's decisions
- ☐ A ballot question

If so, explain. The district court's errors in this case, including its reliability on secret, ex-parte briefing, constituted a deprivation of defendant's right to due process of law, guaranteed under the United States and Nevada Constitutions.

13. **Trial.** If this action proceeded to trial, how many days did the trial last?...15-day Jury trial

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from:** 6/1/11 (Exhibit A) **Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.**

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

.....
.....

16. **Date of written notice of entry of judgment or order served:** 6/2/11 (Exhibit A.) **Attach a copy, including proof of service, for each order or judgment appealed from.**

(a) Was service by delivery hand delivery on 6/2/11

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) specify the type of motion, and the date and method of service of the motion:

NRCP 50(b)	Date served	By delivery	or by mail	Date of filing
NRCP 52(b)	Date served	By delivery	or by mail	Date of filing
NRCP 59	X Date served 5/17/11	By delivery	or by mail X	Date of filing 5/16/11

Attach copies of all post-trial tolling motions. (See Exhibit C attached to original docketing statement.)

NOTE: Motions made pursuant to NRCP 60 or motion for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion: **Motions are still pending.**

(c) Date written notice of entry of order resolving motion served:
Attach a copy, including proof of service.

(i) Was service by delivery or by mail (specify).

18. Date notice of appeal was filed: 6/27/11 (Exhibit B.)

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other.....NRAP 4(a).....

SUBSTANTIVE APPEALABILITY

20. Specify the statute, rule or other authority which grants this court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1)	X	NRS 155.190	(specify subsection).....
NRAP 3A(b)(2)		NRS 38.205	(specify subsection).....
NRAP 3A(b)(3)		NRS 703.376	

Other (specify).....

Explain how each authority provides a basis for appeal from the judgment or order:

Appeal from a final judgment.

21. List all parties involved in the action in the district court:

Plaintiff:	William Jay Simao and Cheryl Ann Simao
Defendant:	Jenny Rish; James Rish and Linda Rish

(a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Defendants James Rish and Linda Rish	Dismissed March 31, 2011 (See Exhibit E attached to original docketing statement)
--------------------------------------	---

22. Give brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (i.e., order, judgment, stipulation and the date of disposition of each claim. Attach a copy of each disposition.

Plaintiff's complaint alleged negligence and loss of consortium. Judgment was entered on April 28, 2011, in favor of plaintiffs in the amount of \$3,493,983.45.

23. **Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.**

Attached as Exhibit F to original docketing Statement.

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

Yes ☒ No

25. If you answered "No" to the immediately previous question, complete the following:

(a) Specify the claims which remain pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes.....No..... **If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service.**

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes.....No.....

26. **If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

July 19, 2011

By: Joel D. Henriod
DANIEL F. POLSENBERG
Nevada Bar No. 2376
JOEL D. HENRIOD
Nevada Bar No. 8492
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed electronically with the Nevada Supreme Court on the 19th day of July, 2011, Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Robert T. Eglet
David T. Wall
Mainor Eglet
400 South Fourth Street
Las Vegas, NV 89101

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

Ara H. Shirinian
10651 Capesthorne Way
Las Vegas, NV 89135

s/Mary Kay Carlton
An Employee of Lewis and Roca LLP

EXHIBIT A
TO
DOCKETING
STATEMENT

MAINOR EGLET

NJUD
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
MAINOR EGLET
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Ph.: (702) 450-5400
Fx.: (702) 450-5451
badams@mainorlawyers.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

WILLIAM JAY SIMAO, individually and
CHERYL ANN SIMAO, individually, and
as husband and wife,

Plaintiffs,

v.

JENNY RISH; JAMES RISH; LINDA
RISH; DOES 1 through V; and ROE
CORPORATIONS 1 through V, inclusive,

Defendants.

CASE NO.: A539455
DEPT. NO.: X

NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that the Judgment, was entered with the above entitled
Court on the 1st day of June, 2011, a copy of which is attached hereto.

DATED this 1st day of June, 2011.

MAINOR EGLET

By: 
DAVID T. WALL, ESQ.

MAINOR EGLET

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing file stamped NOTICE OF ENTRY OF
JUDGMENT in the matter of SIMAO v. RISH, et al is hereby acknowledged:

Date: _____ Time: _____

Stephen H. Rogers, Esq.
**ROGERS, MASTRANGELO,
CARVALHO & MITCHELL, LTD.**
300 S. Fourth Street, #710
Las Vegas, NV 89101
Attorneys for Defendants

Date: 6/2/11 Time: 11:01 am

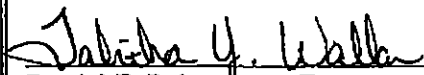
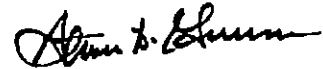

Daniel F. Polsenberg, Esq.
Jowl D. Henriod, Esq.
LEWIS AND ROCA, LLP.
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89129
Attorneys for Defendants

EXHIBIT "1"

ORIGINAL

Electronically Filed
06/01/2011 09:26:39 AM



CLERK OF THE COURT

JUDG

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

DAVID T. WALL, ESQ.

Nevada Bar No. 2805

ROBERT M. ADAMS, ESQ.

Nevada Bar No. 6551

MAINOR EGLET

400 South Fourth Street, Suite 600

Las Vegas, Nevada 89101

Ph.: (702) 450-5400

Fx.: (702) 450-5451

reglet@mainorlawyers.com

dwall@mainorlawyers.com

badams@mainorlawyers.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and
CHERYL ANN SIMAO, individually, and as
husband and wife,

Plaintiffs,

v.

JENNY RISH; JAMES RISH; LINDA RISH;
DOES I through V; and ROE
CORPORATIONS I through V, inclusive,

Defendants.

CASE NO.: A539455

DEPT. NO.: X

JUDGMENT

WHEREAS, a hearing for Default Judgment having come before the Court on April 1, 2011.

1 IT IS ORDERED, ADJUDGED AND DECREED, that Judgment was hereby entered in favor of
2 Plaintiffs and against Defendant, Jenny Rish as follows:¹

3 IT IS ORDERED AND ADJUDGED that Plaintiff, WILLIAM SIMAO, have and recover of
4 the Defendant, JENNY RISH, the following sums:

5 PAST DAMAGES:

6 Past Medical and Related Expenses	\$ 194,390.96
7 Past Pain, Suffering, Disability	\$ 1,378,209.00
8 and Loss of Enjoyment of Life	
9	
10 Total Past Damages:	\$ 1,572,599.96

11 FUTURE DAMAGES:

12 Future Pain, Suffering, Disability	\$ 1,140,552.00
13 and Loss of Enjoyment of Life	
14	
15 Total Future Damages:	\$ 1,140,552.00

16 TOTAL DAMAGES: \$ 2,713,151.96

17 IT IS ORDERED AND ADJUDGED that Plaintiff, CHERYL SIMAO, have and recover
18 of the Defendant, JENNY RISH, the following sums:

19 PAST DAMAGES:

20 Loss of Consortium:	\$ 681,286.00
21	
22 Total Past Damages:	\$ 681,286.00

23 TOTAL DAMAGES: \$ 681,286.00

24 IT WAS FURTHER ORDERED that Plaintiffs be awarded and entitled to costs in the
25 amount of \$99,555.49.

26
27 ¹ Exhibit 1 - Judgment

MAINOR EGLET

1 IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs' past damages in the amount
2 of Two Million Two Hundred Fifty Three Thousand Eight Hundred Eighty-Five and 96/100 Dollars
3 (\$2,253,885.96), shall bear pre-judgment interest in accordance with *Lee v. Ball*, 116 P.3d 64, (2005)
4 at the rate of 5.25% per annum² from the date of service of the Summons and Complaint, on July 23,
5 2007 through May 18, 2011 as follows:³
6

7 **PRE-JUDGMENT INTEREST:**

8 07/23/07 THROUGH 05/18/11 = \$ 452,231.10

9 (1395 days x \$324.18 per day)

10 NOW, THEREFORE, Judgment in favor of Plaintiffs. WILLIAM SIMAO and CHERYL
11 SIMAO, is hereby given for Three Million Nine Hundred Forty Six Thousand Two Hundred Twenty-
12 Four and 55/100 Dollars (\$3,946,224.55) against Defendant which shall bear post-judgment interest
13 at the current rate of 5.25% or \$567.60 per day, until satisfied.
14

15 DATED this 31st day of May, 2011.

16 
DISTRICT COURT JUDGE

17 Prepared & Submitted by:

18 MAINOR EGLET

19 By:

20 ROBERT T. EGLET, ESQ.

21 Nevada Bar No. 3402

22 DAVID T. WALL, ESQ.

23 Nevada Bar No. 2805

24 ROBERT M. ADAMS, ESQ.

25 Nevada Bar No. 6551

26 400 South Fourth Street

27 Las Vegas, Nevada 89101

28 Attorneys for Plaintiffs

² Exhibit *Lee v. Ball*

³ Exhibit Affidavit of Service

EXHIBIT “1”

DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO; and
CHERYL ANN SIMAO,

Plaintiffs,

v.

JENNY RISH,

Defendant.

CASE NO.: A539455
DEPT. NO.: X

JUDGMENT

WHEREAS, a hearing for Default Judgment having come before the Court on April 1, 2011. IT IS ORDERED, ADJUDGED AND DECREED, that Judgment is hereby entered in favor of Plaintiffs and against Defendant, Jenny Rish as follows:

William Simao's past medical and related expenses	\$194,390.96
William Simao's pain and suffering:	
- Past pain and suffering	\$473,040.
- Future pain and suffering	\$1,140,552.
- Loss of Enjoyment of Life	\$905,169.
Cheryl Simao's loss of consortium (Society and Relationship)	\$681,286.
Attorneys' fees	\$ TBD
Litigation costs	\$99,555.49
TOTAL	\$3,493,983.45

1 IT IS FURTHER ORDERED that Judgment against Defendant, Jenny Rish, shall bear interest in
2 accordance with N.R.S. 17.130 and Lee v. Ball, 116 P.3d 64 (2005).
3

4 Dated this 27th day of April, 2011.
5

6 Jessie Walsh
7 DISTRICT COURT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “2”



8 of 8 DOCUMENTS

BARRY J. LEE, Appellant, vs. CHRISTOPHER G. BALL, Respondent.

No. 41686

SUPREME COURT OF NEVADA

121 Nev. 391; 116 P.3d 64; 2005 Nev. LEXIS 43; 121 Nev. Adv. Rep. 38

July 28, 2005, Decided

PRIOR HISTORY: [***1] Appeal from a district court judgment granting additur and denying attorney fees and costs. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

DISPOSITION: Reversed and remanded.

COUNSEL: Ronald M. Pehr, Las Vegas, for Appellant.

Piazza & Associates and Carl F. Piazza and David H. Purney, Las Vegas, for Respondent.

JUDGES: BEFORE MAUPIN, DOUGLAS and PARRAGUIRRE, JJ. DOUGLAS and PARRAGUIRRE, JJ., concur.

OPINION BY: MAUPIN

OPINION

[*393] [**65] OPINION

By the Court, MAUPIN, J.:

In this appeal, we clarify that a district court's grant of additur is only appropriate when presented to the defendant as an alternative to a new trial on damages.

FACTS AND PROCEDURAL HISTORY

The litigation below arose from a car accident in which the passenger in a vehicle, respondent Christopher Ball, sustained injuries after the driver, appellant Barry Lee, negligently turned into oncoming traffic. Ball sued Lee, alleging general and special damages. Unhappy with the results of court-annexed arbitration, Lee requested a trial de novo. Before trial, Lee served Ball with an offer of judgment for \$ 8,011.46. After [**66] a two-

day trial, the jury awarded Ball \$ 1,300. Lee subsequently moved for costs and attorney fees because [**2] Ball failed to recover an amount in excess of the offer of judgment. Ball opposed this motion, requesting a new trial or, in the alternative, additur. After an untranscribed hearing, the district court granted an \$ 8,200 additur and awarded Ball prejudgment interest but did not offer Lee the option of a new trial. The district court further calculated prejudgment interest using a pro-rata formula based on the differing statutory rates of interest in effect before the entry of final judgment. Lee appeals, arguing that the district court erred by granting an additur, failing to offer a new trial, and erroneously calculating prejudgment interest. As a result, Lee argues he is entitled to attorney fees and costs.

DISCUSSION

Additur

Under *Drummond v. Mid-West Growers*,¹ Nevada courts have the power to condition an order for a new trial on acceptance of an additur.² In line with *Drummond*, our subsequent decisions have confirmed [**394] a "two-prong test for additur: (1) whether the damages are clearly inadequate, and (2) whether the case would be a proper one for granting a motion for a new trial limited to damages."³ If both prongs are met, then the district court has [**3] discretion to grant a new trial, unless the defendant consents to the court's additur.⁴ The district court has broad discretion in determining motions for additur, and we will not disturb the court's determination unless that discretion has been abused.⁵ However, granting additur in the absence of a demonstrable ground for a new trial is an abuse of discretion.

¹ 91 Nev. 698, 708-13, 542 P.2d 198, 205-08 (1975).

121 Nev. 391, *; 116 P.3d 64, **;
2005 Nev. LEXIS 43, ***; 121 Nev. Adv. Rep. 38

2 *Id.* at 708, 542 P.2d at 205.

3 *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 616, 5 P.3d 1043, 1054 (2000) (citing *Drummond*, 91 Nev. at 705, 542 P.2d at 203).

4 *Drummond*, 91 Nev. at 712, 542 P.2d at 208.

5 *Donaldson v. Anderson*, 109 Nev. 1039, 1041, 862 P.2d 1204, 1206 (1993).

We conclude that Lee has failed to demonstrate that the district court abused its discretion in determining that additur was warranted. First, the hearing during which the district court [***4] orally granted additur was not reported, the parties have not provided a trial transcript in the record on appeal, and the parties have not otherwise favored us with the district court's oral explanation for granting Ball such relief. * Second, because the award was substantially less than the conceded proofs of special damages, there is at least some indication that the jury award was "clearly inadequate" in violation of the district court's instructions. Although the jury, acting reasonably, could have disbelieved Ball's evidence concerning alleged pain and suffering and reasonably inferred that he was not injured as severely as claimed, * and although the jury was not bound to assign any particular probative value to any evidence presented, * it is incumbent upon Lee to demonstrate that the additur, in and of itself, constitutes an abuse of discretion. * He has failed to do so.

6 See *Stover v. Las Vegas Int'l Country Club*, 95 Nev. 66, 68, 589 P.2d 671, 672 (1979) (stating "when evidence on which a district court's judgment rests is not properly included in the record on appeal, it is assumed that the record supports the lower court's findings"). We further note that the district court's written order granting additur is silent as to the reasons for this award.

[***5]

7 See *Quintero v. McDonald*, 116 Nev. 1181, 1184, 14 P.3d 522, 524 (2000).

8 *Id.*

9 See *Wallace v. Haddock*, 77 Conn. App. 634, 825 A.2d 148, 151-52 (Conn. App. Ct. 2003) (declining to upset an award of additur when the appellant failed to provide transcripts and "failed to seek any further articulation of the court's reasoning for granting the motion for an additur").

We conclude, however, that the district court abused its discretion in failing to offer Lee the option of a new trial or acceptance of the additur. We clarify that, under *Drummond*, additur may not [***95] stand alone as a discrete remedy; rather, it is only appropriate [***67] when presented to the defendant as an alternative to a new trial on damages. "

10 See *Drummond*, 91 Nev. at 712, 542 P.2d at 208; see also *Donaldson*, 109 Nev. at 1043, 862 P.2d at 1207 (reversing a district court order and remanding with instructions to grant a new trial limited to damages, unless the defendant agreed to additur); *ITF Hartford Ins. Co. of the S.E. v. Owens*, 816 So. 2d 572, 575-76 (Fla. 2002) (holding the relevant Florida statute requires a trial court to give the defendant the option of a new trial when additur is granted); *Wallace*, 825 A.2d at 153 (finding the relevant Connecticut statute requires parties have the option of accepting additur or receive a new trial on the issue of damages); *Runta v. Marguth Agency, Inc.*, 437 N.W.2d 45, 50 (Minn. 1989) ("[A] new trial may be granted for excessive or inadequate damages and made conditional upon the party against whom the motion is directed consenting to a reduction or an increase of the verdict. Consent of the non-moving party continues to be required."); *Tucci v. Moore*, 875 S.W.2d 115, 116 (Mo. 1994) ("Additur requires that the party against whom the new trial would be granted have, instead, the option of agreeing to additur."); *Belanger by Belanger v. Teague*, 126 N.H. 110, 490 A.2d 772, 772 (N.H. 1985) (mem.) (holding "a jury verdict supplemented with an additur may go to judgment only if the defendant waives a new trial").

[***6] Prejudgment interest

Lee argues that the district court erred in calculating both the rate and period of prejudgment interest. We agree and conclude that the district court's calculation was plainly erroneous. "

11 See *Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986) ("The ability of this court to consider relevant issues *sua sponte* in order to prevent plain error is well established. Such is the case where a statute which is clearly controlling was not applied by the trial court." (citation omitted)).

Under NRS 17.130(2), "a judgment accrues interest from the date of the service of the summons and complaint until the date the judgment is satisfied. Unless provided for by contract or otherwise by law, the applicable rate for prejudgment interest is statutorily determined. " In determining what rate applies, NRS 17.130(2) [***96] instructs courts to use the base prime rate percentage "as ascertained by the Commissioner [***7] of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent. "

121 Nev. 391, *; 116 P.3d 64, **;
2005 Nev. LEXIS 43, ***; 121 Nev. Adv. Rep. 38

12 NRS 17.130(2) provides:

When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment draws interest from the time of service of the summons and complaint until satisfied, except for any amount representing future damages, which draws interest only from the time of the entry of the judgment until satisfied, at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

13 NRS 17.130(2); see also *Gibellini v. Klindt*, 110 Nev. 1201, 1208, 885 P.2d 540, 544-45 (1994) (holding that the "or specified in the

judgment" language does not permit a judge to vary an interest rate outside of the statutory rate).

[**8] The district court calculated the rate of pre-judgment interest using periodic biannual legal rates of interest in effect between May 27, 1999, and March 24, 2003. This was error. Under the plain language of NRS 17.130(2), the district court should have calculated pre-judgment interest at the single rate in effect on the date of judgment.

The district court further determined that pre-judgment interest accrued from May 27, 1999, to March 24, 2003. NRS 17.130(2) explicitly provides that "the judgment draws interest from the time of service of the summons and complaint until satisfied." Ball completed service of process on June 9, 1999, and the district court entered final judgment on March 29, 2003. Therefore, pre-judgment interest accrued beginning June 9, 1999, not May 27, 1999. Accordingly, the district court also erred in calculating the period pre-judgment interest accrued.

CONCLUSION

We hold that the district court erred in granting an additur without providing Lee the option of accepting the additur or a new trial on damages and in calculating pre-judgment interest. Accordingly, we reverse the district court's judgment and [**9] remand this [**68] matter for proceedings consistent with this opinion.

DOUGLAS and PARRAGUIRRE, JJ., concur.

EXHIBIT “3”

SUM

District Court
CLARK COUNTY, NEVADA

Chaf
CLERK OF COURT

AUG 10 12 07 PM '07

FILED

WILLIAM JAY SIMAO, individually, and
CHERYL ANN SIMAO, individually,
and as husband and wife,

Plaintiffs,

vs.

JENNY RISH; JAMES RISH; LINDA RISH;
DOES I through V; and ROE CORPORATIONS
I through V, inclusive,

Defendants.

SUMMONS

CASE NO.

Dept. NO.

A 5 3 9 4 5 5

X

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT. A Civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

JENNY RISH
223 NORTH COTTONWOOD DRIVE
GILBERT, ARIZONA 85234

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

- File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
- Serve a copy of your response upon the attorney whose name and address is shown below

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at the direction of:

AARON & PATERNOSTER, LTD.

CHARLES J. SHORT, CLERK OF COURT

By: 

Matthew E. Aaron, Esq.
Nevada Bar No. 4900
AARON & PATERNOSTER
2300 West Sahara, Suite 650
Attorneys for Plaintiffs

By: 

Deputy Clerk
County Courthouse
200 South Third Street
Las Vegas, NV 89155

APR 13 2007
PATRICIA BOGGESS

CLARK COUNTY DISTRICT COURT
In And For The County Of Maricopa, State Of Arizona

**WILLIAM JAY SIMAO AND CHERYL ANN
SIMAO**

Plaintiff(s), Represented By THE PLAINTIFF

vs.

JENN RISH, JAMES RISH, LINDA RISH

Defendant(s), In Propria Persona

A 539455

Declaration Of Service

I, TYLER TREECE, being qualified under ARCP, 4(d) and 4(e), to serve legal process within the State of Arizona and having been so appointed by Maricopa County Superior Court, did receive on July 12, 2007 from THE PLAINTIFF, Attorney For The Plaintiff, the following Court Issued documents:

SUMMONS AND COMPLAINT

On Monday, July 23, 2007 at 7:10 PM, I personally served true copies of these documents as follows:

**JENNY RISH BY LEAVIN COPIES WITH HER DAUGHTER, ARLENE VILLA AN OCCUPANT OF
SUITABLE AGE AND DISCRETION WHO RESIDES THEREIN.**

Description of Person Served:	H	F	30-40	5'8	160	BRN	
	Race	Sex	DOB or Approx Age	Height	Weight	Hair	Eyes

Documents Were Served At The	223 N COTTONWOOD DR
Place Of at the place of abode	GILBERT, AZ 85234
Located at:	

SECURED

I declare under penalty of perjury th
the foregoing is true and correct an
was executed on this date.

July 24, 2007



AAA Landlord Services, Inc.

www.aaalandlord.com

TYLER TREECE, Declarant
An Officer Of Maricopa County Superior Court

AAA Landlord Services
P.O. Box 3084 Mesa, AZ 85205
480.881.7632 fax 480.881.7631

EXHIBIT B
TO
DOCKETING
STATEMENT


CLERK OF THE COURT

1 AMEN
2 DANIEL F. POLSENBERG
3 State Bar No. 2376
4 JOEL D. HENRIOD
5 State Bar No. 8492
6 LEWIS AND ROCA LLP
7 3993 Howard Hughes Parkway, Suite 600
8 Las Vegas, Nevada 89169
9 (702) 474-2616

6 STEPHEN H. ROGERS (SBN 5755)
7 ROGERS MASTRANGELO CARVALHO & MITCHELL
8 300 South Fourth Street, Suite 170
9 Las Vegas, Nevada 89101
10 (702) 383-3400

11 *Attorneys for Defendant Jenny Rish*

DISTRICT COURT

CLARK COUNTY, NEVADA

12 WILLIAM JAY SIMAO, individually and
13 CHERYL ANN SIMAO, individually and as
husband and wife,

14 Plaintiffs,

15 vs.

16 JENNY RISH; JAMES RISH; LINDA RISH;
17 DOES I through V; and ROE
Corporations I through V, inclusive,

18 Defendants.

Case No. A539455

Dept. No. XX

19 **AMENDED NOTICE OF APPEAL**

20 Please take notice that defendant JENNY RISH hereby appeals to the Supreme
21 Court of Nevada from:

- 22 1. All judgments and orders in this case;
- 23 2. "Decision and Order Regarding Plaintiffs' Motion to Strike Defendant's
24 Answer, filed April 22, 2011";
- 25 3. Judgment, filed April 28, 2011;
- 26 4. Judgment filed June 1, 2011, notice of entry of which was served via
27 hand delivery on June 2, 2011; and
- 28

1 5. All rulings and interlocutory orders made appealable by any of the
2 foregoing.

3
4 DATED this 27th day of June 2011.

5 LEWIS AND ROCA LLP

6
7 By: s/ Joel D. Henriod
8 DANIEL F. POLSENBERG (SBN 2376)
9 JOEL D. HENRIOD (SBN 8492)
10 LEWIS AND ROCA LLP
11 3993 Howard Hughes Parkway, Suite 600
12 Las Vegas, Nevada 89169
13 (702) 474-2616

14 *Attorneys for Defendant Jenny Rish*
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I HEREBY CERTIFY that on the 27th day of June, 2011, I served the foregoing NOTICE OF APPEAL by depositing a copy for mailing, first-class mail, postage prepaid, at Las Vegas, Nevada, to the following:

ROBERT T. EGLET
DAVID T. WALL
ROBERT M. ADAMS
MAINOR EGLET
400 South Fourth Street, Suite 600
Las Vegas, NV 89101

s/ Mary Kay Carlton
An Employee of Lewis and Roca LLP