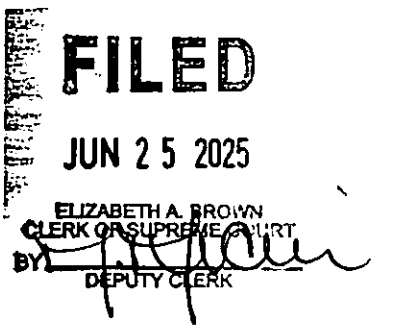
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUSA E. CONTE,
Appellant,
vs.
WAYNE D. CONTE,
Respondent.

No. 87945-COA



ORDER REVERSING JUDGMENT, VACATING SANCTIONS AWARD, AND REMANDING

Jesusa E. Conte appeals from a post-divorce decree order granting a motion to modify alimony and awarding NRCP 11 sanctions. Eighth Judicial District Court, Family Division, Clark County; Mary D. Perry, Judge.[1]

Jesusa and Wayne Conte married in 1986 and divorced in 2012. Wayne is a military veteran, and his only income is through his retirement pension, supplemental security income, and veterans' disability income. Pursuant to their divorce decree, Wayne was to pay Jesusa $1,000 per month in alimony for 15 years. Wayne, however, refused to voluntarily pay anything, and thus accumulated significant debt. As a result, Jesusa had to obtain court orders for the garnishment of Wayne's pension to satisfy his debt, and in the process she was also awarded attorney fees.

Since the divorce decree in 2012, this case has been heavily litigated. Primarily, the litigation involved Jesusa's motions to collect her

[1]Judge Sandra L. Pomrenze entered the divorce decree and presided over this matter until her retirement in 2021. Judge Mary D. Perry has presided over this matter since that time.

alimony and attorney fee arrearages and Wayne's motions to terminate his alimony obligations. Notably, in December 2014, the district court entered an order reducing "alimony arrears owing to Mrs. Conte through December[ ] 2014" to judgment in the amount of $16,307.50. The parties do not dispute that this debt was previously satisfied.

As Wayne continued refusing to voluntarily pay the ordered alimony, Jesusa continued filing schedules of arrearages and motions to obtain the ordered funds through garnishment. For nearly a decade, the amount garnished by Jesusa was less than the ordered $1,000 monthly alimony, such that Wayne's arrearages kept growing. Over time, however, the amount garnished increased, so that by 2021, Jesusa was finally receiving her full monthly alimony, with the garnished amounts over $1,000 per month going toward her arrearages.

In February 2021, the district court issued an order recognizing that "Mr. Conte ha[d] incurred alimony/spousal support arrears in the amount of $45,680.68" at that time and reducing that amount to judgment. Because of that large amount of debt, the district court also ordered that "Mr. Conte shall pay $300 to the Willick Law Group [Jesusa's counsel] every month . . . until the alimony/spousal arrears are paid off." The order provided that if Wayne did not make these additional payments, Jesusa could seek an order to show cause requesting incarceration as a punishment for contempt.

Wayne did not make these additional payments, and Jesusa moved to have Wayne held in contempt. The district court determined that Wayne was entitled to an attorney because Jesusa was "seeking jail as a punishment/result of contempt." Thus, in February 2022, the district court appointed Wayne counsel to represent him in connection with the contempt proceedings. Following a hearing in September 2022, the district court

denied Jesusa's request to hold Wayne in contempt and discharged Wayne's contempt counsel. However, that attorney subsequently agreed to represent Wayne pro bono.

In August 2022, Wayne filed a pro se motion to eliminate or reduce his alimony obligations. Although the district court denied that motion without prejudice at the September 2022 hearing, Wayne filed a similar motion with the assistance of his pro bono counsel in February 2023. In that motion, Wayne again sought to eliminate or reduce his alimony obligation. In support of his modification request, Wayne argued that the district court erred when it originally awarded alimony in the divorce decree because the court failed to consider the required factors set forth in NRS 125.150(9). He also argued that NRS 125.165 precluded the court from considering his veterans' disability compensation in determining his relative income when calculating alimony. He argued that he could no longer afford to pay alimony and that Jesusa no longer needed it because her income exceeded his. He also asked the court to find that all arrears and judgments against him had been discharged in a prior 2021 bankruptcy. Finally, he asked the court to award attorney fees in connection with his defense of Jesusa's prior contempt motion pursuant to EDCR 5.219.

Thereafter, Wayne filed a motion for NRCP 11 sanctions against Jesusa based on arguments she made in her opposition to his motion to eliminate or reduce alimony. In his NRCP 11 motion, Wayne made four specific claims: (1) Jesusa incorrectly asserted that the court requested briefing rather than a motion in order to harass Wayne; (2) Jesusa falsely asserted that Wayne did not comply with EDCR 5.501 before filing his motion; (3) Jesusa falsely claimed that Wayne's financial disclosure form was incorrect and did not contain proof of income; and (4)

Jesusa improperly argued that Wayne's citation to an unpublished bankruptcy case was inappropriate.

In January 2024, without holding a hearing, the district court entered an order granting Wayne's motion to eliminate alimony and his motion for NRCP 11 sanctions.[2] In its written order, the district court indicated that it had conducted an independent examination of the prior record and found that Jesusa had made various misrepresentations to the court since 2014. Relying almost exclusively on the legislative history behind NRS 125.165, the district court determined that Wayne's veterans' disability income could not be considered when awarding alimony. In addition, the court found that a prior order issued in December 2014 had "overcharged" Wayne $6,698, so it credited this amount against his existing alimony arrears. The court then compared Wayne's monthly income (excluding the $4,456.22 he received each month in veterans' disability benefits) with Jesusa's monthly income and determined that Jesusa had a larger net income per month than Wayne. The district court thus ordered Wayne's alimony obligation terminated. In doing so, the court ordered this termination to be retroactive to the date Wayne filed his pro se motion to modify in August 2022 and credited him for the months between that motion and the order based on its calculations of the amount Jesusa had been receiving during that period.[3]

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[2]The district court denied Wayne's request to find all his arrears and judgments had been discharged in his 2021 bankruptcy.

[3]The court further indicated that it would be awarding Wayne attorney fees for "each Motion for an Order to Show Cause filed by [Jesusa] since January 1, 2021 and the Motion to Modify Alimony, and the times that [Wayne] had an attorney."

Then, without addressing any of the four arguments Wayne raised in support of NRCP 11 sanctions, the district court granted Wayne's sanctions motion, in the amount of $5,000 to be credited against Wayne's total arrears. In doing so, the court relied on its independent finding that Jesusa "and/or her counsel" had for years been intentionally "misleading" the court, and therefore sanctions were warranted under EDCR 5.219, NRS 7.085, NRS 18.010(2)(b), *and* NRCP 11.

Jesusa timely appealed. On appeal, she argues that: the district court erred in determining that NRS 125.165 disallows the consideration of veterans' disability benefits when calculating alimony; the district court erred in calculating Wayne's arrears; the district court erred in granting Wayne's NRCP 11 sanctions motion; and this case should be reassigned on remand. After review, we reverse the district court's order terminating alimony and its sua sponte recalculation of arrears, vacate the sanctions award, and remand for further proceedings. On remand, we also direct the chief judge or presiding judge to reassign this case to a different department to ensure fairness in the ongoing proceedings.

The district court abused its discretion in determining that veterans' disability income cannot be considered when calculating alimony

Jesusa argues that the district court erred in determining that veterans' disability income cannot be considered in calculating an award of alimony. Wayne responds that the consideration of veterans' disability benefits to calculate income directly conflicts with both NRS 125.165 and federal law, and that the district court properly terminated alimony. We agree with Jesusa.

"We review questions of law, including interpretation of caselaw, de novo." *Martin v. Martin*, 138 Nev. 786, 789, 520 P.3d 813, 817 (2022). Statutory construction also presents questions of law that this court reviews de novo. *Id.* "[W]hen a statute's language is plain and its meaning

clear, [we generally] apply that plain language." *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007).

"Alimony is financial support paid from one spouse to the other whenever justice and equity require it." *Rodriguez v. Rodriguez*, 116 Nev. 993, 999, 13 P.3d 415, 419 (2000); *see also* NRS 125.150(1)(a) (providing that an alimony award must be "just and equitable"). When determining if alimony is just and equitable, a district court must consider 11 statutory factors, including "[t]he financial condition of each spouse" and "[t]he income, earning capacity, age and health of each spouse." NRS 125.150(9).

Nevada law provides some limitations on the use of a veteran's disability benefits in paying alimony. In 2015, the legislature enacted NRS 125.165, which provides, in pertinent part:

> Unless the action is contrary to a premarital agreement . . . , in making an award of alimony, the court shall not:
>
> 1. *Attach, levy or seize by or under any legal or equitable process* . . . any federal disability benefits awarded to a veteran for a service-connected disability pursuant to 38 U.S.C. §§ 1101 to 1151, inclusive . . . .

(Emphasis added). Federal law provides a similar limitation:

> Payments of [veterans'] benefits due or to become due under any law administered by the Secretary shall not be assignable . . . and such payments . . . *shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever*, either before or after receipt by the beneficiary.

38 U.S.C. § 5301(a)(1) (emphasis added).

While the plain language of NRS 125.165 precludes a district court from attaching, levying, or seizing a veteran's disability benefits to satisfy an alimony obligation, it does not bar the court from *considering*

whether a veteran is receiving such benefits in calculating the amount that may be awarded as alimony.[4] The process of "considering" a veteran's financial condition and income is distinct from any attempt to "attach, levy or seize" disability benefits under NRS 125.165(1). *Compare Consider*, *Merriam-Webster's Collegiate Dictionary* (11th ed. 2019) (defining "consider," in relevant part as "to think about carefully . . . to take into account") *with Attach*, *Black's Law Dictionary* (12th ed. 2024) (defining "attach," in relevant part, as "[t]o take or seize under legal authority"); *Levy*, *Black's Law Dictionary* (12th ed. 2024) (defining "levy," in relevant part, as "[t]o take or seize property in execution of a judgment"); *Seize*, *Black's Law Dictionary* (12th ed. 2024) (defining "seize," in relevant part as "[t]o forcibly take possession (of a person or property)").

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[4]Because the plain language of NRS 125.165 is unambiguous, "it is not necessary to resort to legislative history" regarding A.B. 140, which enacted the statute. *Bolden v. State*, 139 Nev., Adv. Op. 46, 538 P.3d 1161, 1166 (Ct. App. 2023). Nevertheless, we briefly address this legislative history because the district court relied heavily on statements made by various legislators to reach a contrary conclusion in this case. We note that the district court's order focused almost entirely on discussions regarding an *initial draft* of A.B. 140 which provided, "the court *shall not consider* any federal disability benefits awarded to the other spouse for a service-connected disability." A.B. 140, 78th Leg. § 3 (Nev. 2015) (as introduced) (emphasis added). However, after those initial discussions, the Assembly amended A.B. 140 to remove the words, "shall not consider" and replace them with the following language, "shall not: . . . [a]ttach, levy or seize by or under any legal or equitable process." A.B. 140, 78th Leg. § 2 (Nev. 2015) (as enrolled); *see also* Assembly Daily Journal, 78th Leg., at 1652 (Nev., Apr. 17, 2015). The latter language was codified into the statute itself. *See* 2015 Nev. Stat., ch. 170, § 2, at 792. The deliberate removal of the words, "shall not consider" from A.B. 140 indicates that the Nevada Legislature did not intend to prevent district courts from considering veterans' disability benefits in calculating alimony. *See, e.g.*, *United States v. Youts*, 229 F.3d 1312, 1316 (10th Cir. 2000) (relying on Congress's removal of specific language from draft legislation as evidence of legislative intent).

Wayne's counterargument that federal law prevents the mere consideration of veterans' disability benefits for the purposes of calculating alimony is not persuasive. In *Rose v. Rose*, the United States Supreme Court held that 38 U.S.C. § 3101—which was subsequently recodified as 38 U.S.C. § 5301[5]—did not conflict with or preempt a Tennessee statute that required courts to consider the "earning capacity, obligations and needs, and financial resources of each parent" in awarding child support. 481 U.S. 619, 622, 630-34 (1987). In reaching this conclusion, the Supreme Court noted that veterans' disability benefits were designed to "compensate for impaired earning capacity" and "provide reasonable and adequate compensation for disabled veterans *and their families*." *Id.* at 630 (citations and internal quotation marks omitted). Thus, the Supreme Court held that a Tennessee court could properly hold a party in contempt for failing to pay child support, even if their only means of satisfying their child support obligation was to use their veterans' disability benefits.[6] *Id.* at 636.

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[5]The relevant language in the prior and current versions of the statutes are identical.

[6]We note that most state courts that have addressed this issue have concluded, in line with *Rose*, that veterans' disability benefits may be considered when determining whether to award alimony without violating 38 U.S.C. § 5301. *See Urbaniak v. Urbaniak*, 807 N.W.2d 621, 624-27 (S.D. 2011) (recognizing that "[a]n overwhelming majority of courts have held that VA disability payments may be considered as income in awarding spousal support" and concluding that "no federal law demonstrates a clear intent to prohibit state courts from considering VA disability benefits when deciding alimony" (internal quotation marks omitted)); *accord Zickefoose v. Zickefoose*, 724 S.E.2d 312, 318 (W. Va. 2012) (concluding that veterans' disability benefits may be considered by the family court, along with the payor's other income, in assessing the ability of the payor to pay alimony); *Steiner v. Steiner*, 788 So. 2d 771, 777-78 (Miss. 2001) (same); *In re Marriage of Bahr*, 32 P.3d 1212, 1216 (Kan. App. 2001) (same); *Kramer v. Kramer*, 567 N.W.2d 100, 113 (Neb. 1997) (same); *In re Marriage of Kraft*, 832 P.2d

Wayne relies on the Supreme Court's subsequent decision in *Howell v. Howell*, 581 U.S. 214 (2017), and this court's decision in *Byrd v. Byrd*, 137 Nev. 587, 593, 501 P.3d 458, 464 (Ct. App. 2021), to argue that veterans' disability payments may not be considered by a district court when determining alimony. However, *Howell* and *Byrd* are distinguishable because those cases addressed the division of veterans' disability payments as *community property*, and did not involve the calculation of alimony. *See Howell*, 581 U.S. at 220-21 (concluding that a state court could not order a disabled veteran to use their disability benefits to indemnify a former spouse for a reduction in their community property share of retirement benefits caused by a waiver of retirement pay in favor of disability benefits); *see also Byrd*, 137 Nev. at 587, 501 P.3d at 460 (relying on *Howell* to hold "that federal law prohibits state courts from ordering reimbursement and indemnification from a veteran's disability payments for the purpose of offsetting military pension waivers").

Notably, *Howell* left open the possibility that veterans' disability benefits could be considered in the alimony context by stating that

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871, 875 (Wash. 1992) (same); *Weberg v. Weberg*, 463 N.W.2d 382, 384 (Wis. Ct. App. 1990) (same); *Riley v. Riley*, 571 A.2d 1261, 1265-66 (Md. Ct. Spec. App. 1990) (same); *Holmes v. Holmes*, 375 S.E.2d 387, 395 (Va. Ct. App. 1989) (same).

In his answering brief, Wayne identified a single case, *Ex Parte Billeck*, 777 So.2d 105, 109 (Ala. 2000), which held that a state court would violate federal law by making "an alimony award based upon its consideration of the amount of veteran's disability benefits" because this "essentially is awarding the wife a portion of those veteran's disability benefits." However, we note that this case is an outlier, and its conclusion has been expressly rejected by several courts. *See, e.g.*, *Urbaniak*, 807 N.W.2d at 627; *Steiner*, 788 So.2d at 778; *Zickefoose*, 724 S.E.2d at 317-18.

"a family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, *or . . . take account of reductions in value when it calculates or recalculates the need for spousal support.*" 581 U.S. at 222 (citing *Rose*, 481 U.S. at 630-34 & n.6) (emphasis added). We thus conclude that neither the plain language of NRS 125.165 nor federal law preclude a district court from considering veterans' disability benefits when calculating alimony. As such, the district court abused its discretion when it refused to consider Wayne's disability benefits as a source of income for alimony purposes.

Given this conclusion, we must determine whether the district court's refusal to consider Wayne's $4,456.22 in monthly veterans' disability benefits when evaluating his ability to pay alimony warrants reversal. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that, to establish an error is not harmless and reversal is warranted, "the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"); *cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

After excluding Wayne's monthly disability benefits, the district court determined that Wayne's net monthly income after expenses and deductions was –$1,563.38, while Jesusa's net monthly income was $2,587.66. Had the court included Wayne's monthly disability benefits in its calculation, it would have determined that Wayne's net monthly income was $2,892.84—which is over $300 more per month than Jesusa's net

monthly income.[7] We cannot say that the district court's decision to discontinue alimony would have been the same absent this error. *See, e.g.*, *Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842, 850 (Ct. App. 2025); *see also In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) ("[B]ecause it is not clear that the district court would have reached the same conclusion . . . had it applied the correct standard of proof, we must reverse the district court's decision and remand for further proceedings."). Thus, we conclude that reversal of the district court's order terminating alimony is warranted.[8]

The district court abused its discretion when it sua sponte recalculated Wayne's arrears

Jesusa argues that the district court committed numerous factual and mathematical errors in its calculation of Wayne's arrearages. However, we need not assess the district court's specific calculations because we agree with Jesusa's alternative arguments that the court's

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[7]To the extent Jesusa briefly argues that the district court's determination of their respective incomes was erroneous because the court excluded Wayne's supplemental security income (SSI) when calculating his income, while it included her social security disability (SSD) benefits as part of her income, this was not an abuse of discretion under existing Nevada Supreme Court precedent. *See Metz v. Metz*, 120 Nev. 786, 793-96, 101 P.3d 779, 784-86 (2004) (recognizing that SSI and SSD are treated differently in the context of child and spousal support and holding that federal law only preempts consideration of SSI in calculating child support).

[8]The district court also abused its discretion by retroactively terminating Wayne's alimony obligation effective August 2022, when he filed his pro se motion, as the court denied that motion in September 2022. Because the operative motion for modification was filed in February 2023, Wayne's previously accrued payments should not have been modified. *See* NRS 125.150(8) (stating that an award of periodic alimony "is not subject to modification by the court as to accrued payments," although payments "which have not accrued *at the time a motion for modification is filed* may be modified upon a showing of changed circumstances" (emphasis added)).

independent review of prior final orders was itself reversable error, both because she had no notice the court would be revisiting prior final orders, and because doing so violated principles of res judicata.

We review an award of alimony and an order entering judgment on arrearages for an abuse of discretion. *See Sprenger v. Sprenger*, 110 Nev. 855, 859, 878 P.2d 284, 287 (1994). In doing so, we do not defer "to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (citations omitted).

In his February 2023 motion, Wayne did not ask the district court to revisit prior final orders and recalculate his alimony arrears. Although Wayne did argue that his 2021 bankruptcy discharged his alimony and attorney fee arrears, the district court disagreed, and Wayne does not challenge that determination on appeal. The only other issues Wayne raised below were whether he should have to keep paying alimony, whether he should receive attorney fees for defending Jesusa's prior contempt motion, and whether NRCP 11 sanctions were warranted based on Jesusa's opposition to his February 2023 motion.

Instead of focusing on the limited issues before it, the district court investigated prior orders and filings by Jesusa dating back nearly a decade. In doing so, the court revisited a December 2014 order without holding a hearing on the matter, determined that order incorrectly calculated Wayne's arrears, and ordered that Wayne was entitled to a $6,698 credit. The court's independent review and recalculation of Wayne's arrears deprived Jesusa of notice and an opportunity to respond to its concerns. *Cf. Anastassatos v. Anastassatos*, 112 Nev. 317, 320, 913 P.2d 652, 653-54 (1996) (concluding a district court erred by addressing issues that were not raised in the pleadings in its order modifying child support, thereby effectively denying a party the opportunity to respond to those

issues). Because Jesusa had no notice or opportunity to respond to the court's concerns about the December 2014 order, that matter was not properly before it, and the court abused its discretion by recalculating Wayne's arrears.

Moreover, as Jesusa argues, the district court's review of the December 2014 order was barred by the doctrine of res judicata. "Res judicata, or claim preclusion, applies when a valid and final judgment on a claim precludes a second action on that claim or any part of it." *Martin*, 138 Nev. at 793, 520 P.3d at 819 (cleaned up). To determine whether claim preclusion applies, this court applies a three-part test: "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." *Id.* (internal quotation marks omitted). Claim preclusion, in the context of divorce proceedings, is a state law issue. *Id.* at 793, 520 P.3d at 820 (*citing Mansell v. Mansell*, 490 U.S. 581, 586 n.5 (1989)). State courts may enforce divorce decrees that are res judicata, and subject to claim preclusion, even if those decrees involve distributions of disability pay. *Shelton v. Shelton*, 119 Nev. 492, 496, 78 P.3d 507, 509 (2003). The application of claim preclusion is a question of law which is reviewed de novo. *Kuptz-Blinkinsop v. Blinkinsop*, 136 Nev. 360, 364, 466 P.3d 1271, 1275 (2020).

As to the first factor, there is no dispute that the parties are the same. As to the second factor, the December 2014 order reducing $16,307.50 in arrears to judgment was a valid final judgment. *See* NRS 125.180(1) (providing that, when a party in a divorce action defaults in paying any sum as required, "the district court may make an order directing entry of judgment for the amount of such arrears"); *see also* NRS 125.180(3) ("The judgment may be enforced by execution or in any other manner

provided by law for the collection of money judgments."). As to the third factor, Wayne had not previously appealed the December 2014 order or otherwise challenged the calculation of arrears. Thus, while Wayne was certainly permitted to seek modification of the alimony award, *see* NRS 125.150(11)(b), the district court should not have used that request to independently review a prior calculation of arrears from a decade earlier and determine that the calculation was invalid. Accordingly, the district court's revisiting of this final, un-appealed order was barred by claim preclusion and constitutes an abuse of discretion.

The district court abused its discretion by sanctioning Jesusa and her counsel pursuant to NRCP 11

Jesusa argues that there was no justification for the district court's sanctions award under NRCP 11. We agree.

This court reviews the district court's NRCP 11 sanctions order for an abuse of discretion. *Simonian v. Univ. & Cmty. Coll. Sys. of Nev.*, 122 Nev. 187, 196, 128 P.3d 1057, 1063 (2006). A court may abuse its discretion if its decision is "in clear disregard of the guiding legal principles." *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014) (internal quotation marks omitted). In its order granting NRCP 11 sanctions, the district court must describe what conduct violated NRCP 11 and the basis for the sanction imposed. *See* NRCP 11(c)(6). However, "NRCP 11 is not implicated by a violation of other rules unless the violation of such other rule also constitutes a violation of NRCP 11." *Ford Motor Credit Co. v. Crawford*, 109 Nev. 616, 621, 855 P.2d 1024, 1026 (1993).

In his motion, Wayne alleged he was entitled to NRCP 11 sanctions based on the contents of Jesusa's opposition to his motion to modify alimony. However, the district court did not address *any* of the arguments Wayne raised in that motion. Instead, the court awarded sanctions based on its independent investigation into Jesusa's filings over

the course of many years, and its conclusion that Jesusa "and/or her counsel both current and past[ ] intentionally sought to increase the litigation unnecessarily." The court determined sanctions were warranted because this conduct violated NRS 7.085 (stating a court may require an attorney to pay additional costs and fees if the attorney unreasonably and vexatiously extends a civil action); NRS 18.010(2)(b) (stating when attorney fees may be awarded); EDCR 5.219 (stating sanctions may be imposed for certain conduct); and *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 650, 218 P.3d 853, 856 (2009) (holding a district court did not abuse its discretion in finding fraud upon the court). Yet, Wayne cited none of these authorities in his NRCP 11 motion.

Although the district court concluded Wayne's NRCP 11 motion was meritorious, it did not determine whether the contents of Jesusa's opposition to his motion to modify actually violated NRCP 11. *See* NRCP 11(c)(1) (stating a court may award sanctions if it determines a party violated NRCP 11(b)); *see also* NRCP 11(c)(6) (stating "[a]n order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction"). Because the district court deviated from the requested relief and failed to hold a hearing on its sua sponte investigation into Jesusa's filings, Jesusa was effectively deprived of "notice and a reasonable opportunity to respond" to the basis for the award of sanctions. NRCP 11(c)(1); *cf. Anastassatos*, 112 Nev. at 320, 913 P.2d at 653-54. We therefore vacate the award of sanctions and remand this matter to the district court so that it may consider the allegations in the motion and make the requisite factual findings. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well suited to make factual determinations in the first instance.").

Reassignment on remand is warranted

Last, Jesusa argues that this case should be reassigned on remand due to perceived bias by Judge Perry. Wayne submits that Jesusa's actions throughout the years have warranted any animosity from the district court. Given the unique circumstances of this case, we agree that reassignment is appropriate.

"This court exercises its independent review of the undisputed facts to determine if a judge's impartiality might objectively be questioned." *In re J.B.*, 140 Nev., Adv. Op. 39, 550 P.3d 333, 340 (2024). When evaluating if a case should be reassigned on remand, this court considers the following:

> (1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

Roe v. Roe, 139 Nev. 163, 180, 535 P.3d 274, 291 (Ct. App. 2023) (quoting *Smith v. Mulvaney*, 827 F.2d 558, 562-63 (9th Cir. 1987)).

As discussed above, Judge Perry terminated the alimony award and sanctioned Jesusa based on her own independent examination of Jesusa's filings throughout the history of the case. In doing so, Judge Perry erroneously revisited a prior court order in violation of claim preclusion principles and failed to grant Jesusa any opportunity to respond to the purportedly sanctionable conduct that she discovered. These unique circumstances lead us to doubt Judge Perry's ability to put out of her mind previous findings determined to be erroneous and to believe that

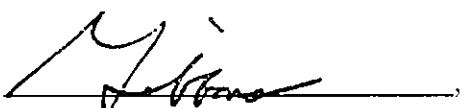
reassignment is advisable to preserve the appearance of justice. *Id.* We thus conclude that reassignment is warranted.[9]

Accordingly, we

ORDER the judgment of the district court REVERSED, the sanctions award VACATED, and the matter REMANDED to the district court for proceedings consistent with this order.



_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

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[9]We note that Jesusa presents additional arguments in support of reassignment based on statements allegedly made by Judge Perry that were contained in unofficial, uncertified transcripts prepared by the external transcription service, Rev.com. Although Wayne did not object to Jesusa's inclusion of such transcripts in the record on appeal, we note that the transcripts were not prepared by a duly sworn court reporter or court recorder. *See, e.g.*, NRS 3.360; NRS 3.380; NRAP 9; NRAP 10. Because we grant Jesusa's request for reassignment, we need not address whether the use of such transcripts was permissible in this case.

Insofar as Jesusa has raised other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for further relief or need not be reached given the disposition of this appeal.

cc: Hon. Mary D. Perry, District Judge, Family Division
Chief Judge, Eighth District Court
Presiding Judge, Family Division
Willick Law Group
Roberts Stoffel Family Law Group
Eighth District Court Clerk