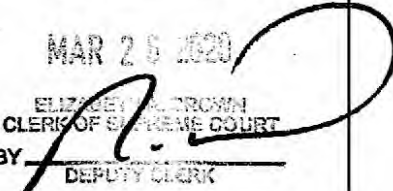IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLARK COUNTY CREDIT UNION, A
DOMESTIC NON-PROFIT
COOPERATIVE CORPORATION,
Appellant,
vs.
YVONNE SAUNDERS, M.D., AN
INDIVIDUAL; AND YVONNE
SAUNDERS, M.D., LTD., A NEVADA
CORPORATION,
Respondents.

No. 77768-COA

FILED

MAR 25 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY_____
DEPUTY CLERK

ORDER OF AFFIRMANCE

Clark County Credit Union appeals from a district court order granting summary judgment in a contract dispute. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

This is the second time this case has come before us on appeal.[1] Originally, the district court granted respondent Yvonne Saunders' motion in limine, barring appellant Clark County Credit Union (CCCU) from introducing any evidence pertaining to its damages at trial and dismissing CCCU's case in its entirety. CCCU appealed. This court vacated the district court's order and remanded with instructions to determine whether Saunders complied with EDCR 2.34(a) or waived her sanction arguments. *See Clark Cty. Credit Union v. Saunders*, Docket No. 69744-COA (Order

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[1]The Honorable Bonnie Bulla, Judge, did not participate in the decision on the previous appeal. Although she was the discovery commissioner for the proceedings below, the current matter on appeal was decided by the district court judge after the close of discovery and, therefore, Judge Bulla participated in the decision of this matter on appeal.

Vacating Judgment and Remanding, Mar. 30, 2017). If Saunders did not waive her arguments, the district court was instructed to apply the *Young*[2] factors before dismissing the case. *Id.*

On remand, the district court considered supplemental briefing and oral arguments by the parties before entering its amended order granting Saunders' motion in limine to exclude CCCU's damages. Although the district court acknowledged this court's instructions, it concluded that EDCR 2.34(a) was inapplicable in light of intervening case law, *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 396 P.3d 783 (2017). Further, the district court also found that the "discovery dispute regarding failure to produce damages and documents was raised during the pretrial conference/trial so as to properly be heard by the district court judge," citing to EDCR 2.34(a). The district court characterized its decision to strike CCCU's damages as a "discovery sanction" under NRCP 37.[3] The court then applied the *Young* factors and concluded that precluding CCCU from admitting any evidence of its damages at trial was an appropriate discovery sanction. Thus, the district court granted Saunders' motion in limine to preclude all evidence of damages at trial.

The district court, however, did not dismiss the case in the same order, but rather granted Saunders leave to file a renewed motion for

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[2]*Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92-93, 787 P.2d 777, 779-80 (1990) (providing the standard for dispositive sanctions).

[3]NRCP 37 and NRCP 16.1 were amended effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Accordingly, we cite the prior version of the rules herein.

summary judgment based on the district court's exclusion of CCCU's damages. After Saunders filed her renewed motion, CCCU filed an opposition, arguing only that the district court improperly applied this court's order on remand. The district court ultimately granted Saunders' renewed motion for summary judgment, finding that Saunders was entitled to judgment as a matter of law because CCCU could not establish damages. CCCU moved the district court to reconsider, which the district court denied.

On appeal, CCCU asserts that the district court erred when, as directed by this court, it failed to properly apply EDCR 2.34(a), and instead relied on *Pizarro-Ortega*. Specifically, CCCU argues that EDCR 2.34(a) is applicable and thus Saunders waived her right to argue for sanctions because she failed to raise the argument before the discovery commissioner. Additionally, CCCU argues that the district court failed to follow this court's instructions on remand, and, therefore, the district court erred by granting Saunders' renewed motion for summary judgment.

Summary judgment is appropriate when there is no genuine issue of material fact and "the moving party is entitled to a judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotation marks omitted). To avoid summary judgment once the movant has properly supported the summary judgment motion, the nonmoving party may not rest upon general allegations and conclusions, but must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a genuine issue of material fact for trial. NRCP 56(e); *Wood*, 121 Nev. at 731, 121 P.3d at 1030-31. This court reviews an order granting summary judgment de novo. *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

As a preliminary matter, we decline to consider CCCU's arguments regarding whether the district court erred by granting Saunders leave to file a renewed motion for summary judgment. "A point not urged in the trial court, unless it goes to the jurisdiction of 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). When Saunders requested leave to file a renewed motion for summary judgment, CCCU failed to object, and thus it failed to preserve this issue for review.

Turning to the merits of Saunders' renewed motion for summary judgment, we note that CCCU acknowledges that the material facts as set forth by the parties are not in dispute. Rather, CCCU argues on appeal that the district court improperly applied this court's instructions on remand as well as *Pizarro-Ortega* when considering Saunders' motion in limine.

We first consider the district court's application of *Pizarro-Ortega*. In *Pizarro-Ortega*, the Nevada Supreme Court clarified that the district court could impose discovery sanctions under NRCP 37(c)(1) where a party failed to submit its computation of damages as required by NRCP 16.1(a)(1). 133 Nev. at 265, 396 P.3d at 787. Therefore, the district court did not err by applying the holding of *Pizarro-Ortega* to strike CCCU's damages for failing to comply with NRCP 16.1(a)(1). Thus, because CCCU had no evidence of damages to present at trial, and there were no other disputed material facts at issue, we agree that Saunders was entitled to summary judgment as a matter of law.

CCCU also argues that Saunders was precluded from refiling its motion in limine and its summary judgment motion in view of our prior order pursuant to the law-of-the-case doctrine. However, our prior order

did not reach or resolve the merits of Saunders' previous motions. We vacated the district court's order on procedural grounds only because the district court dismissed the case when neither party had requested such relief, nor were they given the opportunity to argue for or against such relief.

Because we did not reach the merits of the motions on the initial appeal, the law-of-the-case doctrine did not bar Saunders from refiling her motions and asserting those merits on remand. Moreover, even if we had reached the merits, the law-of-the-case doctrine does not apply when there has been an intervening change in, or clarification of, the relevant law, which occurred here when the supreme court issued its decision in *Pizarro-Ortega*. *See Hsu v. Cty. of Clark*, 123 Nev. 625, 632, 173 P.3d 724, 730 (2007) (stating that the doctrine does not apply when, "in the interval between two appeals of a case, there has been a change in the law by . . . a judicial ruling entitled to deference" (internal quotation marks omitted)).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Michael Singer, Settlement Judge
Bowen Law Offices
Greene Infuso, LLP
Eighth District Court Clerk