

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANA RUANO OCHOA, AN
INDIVIDUAL,
Appellant,
vs.
DAVID TERRY, AN INDIVIDUAL,
Respondent.

No. 86752-COA

FILED

JUN 21 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

DEPUTY CLERK

ORDER OF AFFIRMANCE

Ana Ruano Ochoa (Ochoa) appeals from a district court judgment on a jury verdict in a negligence action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

This appeal stems from a car accident that occurred in October 2019 at the intersection of South Main Street and East Bridger Avenue in downtown Las Vegas.¹ Ochoa's cousin was driving, and Ochoa was sitting in the front passenger seat. Respondent David Terry (Terry) apparently hit their car from behind as Ochoa's cousin slowed down after crossing the intersection. Terry called 9-1-1, and Ochoa was taken to the hospital. Ochoa claims that the impact from the collision caused significant neck and shoulder injuries that required immediate medical attention and still require ongoing treatment.

Ochoa filed a negligence action against Terry in June 2020. Terry did not dispute liability but contested causation and the amount of Ochoa's damages. Counsel for both parties met and conferred in November 2022 regarding their proposed motions in limine. As a result of this meeting, Ochoa and Terry entered a stipulation and order in which they agreed to

¹We recount the facts only as necessary for our disposition.

extend the filing deadline for their proposed motions to December 9, 2022, with oppositions to be filed on or before December 23. The district court held a trial readiness hearing on December 6, which Ochoa did not attend, and set a trial date for March 2023.

Terry timely filed six motions on December 9, seeking to exclude testimony and evidence related to Ochoa's damages, three of which motions are at issue on appeal. Specifically, he sought to (1) exclude Ochoa's treating physician, Dr. Sean Armin, from testifying about his causation and surgical recommendation opinions because Ochoa failed to comply with NRCP 16.1's substantive disclosure requirements for non-retained experts; (2) exclude all evidence related to Ochoa's shoulder surgery and prevent her shoulder surgeon, Dr. Jonathan Berkowitz, from testifying to the same because Ochoa spoliated evidence of her shoulder's pre-operative condition; (3) exclude evidence or testimony regarding Terry's liability insurance coverage; (4) preclude the use of "reptilian" arguments and questions that appealed to the jurors' self-protective instincts; (5) limit the opinions of Ochoa's treating physicians to only those formed during the course of Ochoa's treatment; and (6) exclude evidence of future damages because Ochoa did not retain an expert to reduce those damages to present day cash value.

Ochoa filed five timely motions of her own on December 5 and December 9, which Terry properly opposed before the December 23 deadline. Ochoa, however, failed to timely file any oppositions, and Terry filed and served a notice of non-opposition on December 27. On December 31, Ochoa filed an opposition to Terry's non-opposition and requested an extension to oppose Terry's motions until January 5, 2023. In support of her request, Ochoa stated that her failure to timely oppose stemmed from her counsel's, Sam Heidari's, "unplanned staffing shortages;" namely, that "the sole full-

time litigation attorney suddenly resigned without notice from Heidari Law Group.”

The requested January 5 extension date came and went, but Ochoa filed no oppositions.² On January 11, the district court entered a minute order vacating the scheduled hearing on the parties’ motions based on insufficient compliance with EDCR 2.47(b)’s “meet and confer” requirement. The parties held an additional telephone conference to remedy any deficiencies, and Terry filed a notice of readiness pursuant to EDCR 2.20(j) on February 3. In this notice, Terry explained that it had been 41 days since the deadline to file oppositions, yet Ochoa had filed none, and he advised that he had filed a notice of non-opposition in the interim. Ochoa did not respond.

On February 7, the district court issued an order granting the three motions at issue on appeal. Specifically, the court granted Terry’s first motion to exclude Dr. Armin’s causation and surgical recommendation opinions (motion 1) pursuant to EDCR 2.20(e), NRCP 16.1, and NRCP 37(c); Terry’s second motion to exclude evidence of Ochoa’s shoulder surgery and prevent Dr. Berkowitz from testifying (motion 2) pursuant to EDCR 2.20(e) and NRCP 37(c); and Terry’s sixth motion to exclude evidence of Ochoa’s future damages (motion 6) pursuant to EDCR 2.20(e). The district court deferred ruling on the remaining three motions until trial, recognizing that those motions could be impacted by events occurring at trial.

Ochoa filed a motion for reconsideration on February 20, arguing that she had demonstrated “sufficient cause” and “excusable neglect” for her failure to timely oppose, such that the district court should

²We note that the record is silent as to whether the district court issued a ruling on Ochoa’s extension request.

vacate its order granting Terry's motions in part and allow her to file oppositions. In her motion, Ochoa reiterated Heidari's staffing issues and provided additional information regarding an office move that left Heidari's law firm without reliable internet servers for several weeks, as well as a sudden influx of new cases. Ochoa also mentioned that Heidari "underwent surgery on November 15, 2022, which necessitated an extensive period of recuperation and meant that he could not operate at 100% efficiency for three months." To support this claim, Ochoa offered to provide Heidari's medical records for the court's in-camera inspection but did not include an affidavit or declaration. Finally, Ochoa argued that Nevada public policy favors adjudication on the merits, but she did not include any proposed oppositions to Terry's motions.

In opposition to Ochoa's motion for reconsideration, Terry argued that "excusable neglect" was not a cognizable basis for reconsideration and, even if it were, that Ochoa had not shown it. Specifically, Terry contended that not only are staffing shortages, office logistics, technology issues, and an increased workload insufficient bases to demonstrate excusable neglect, but that Ochoa's motion was also unsupported by affidavit or declaration, which rendered all of her arguments insufficient to show excusable neglect as a matter of law. Ochoa filed a reply in support of her motion for reconsideration on March 13, in which Heidari submitted a declaration regarding his health, staffing, and logistical issues for the first time. As with her original motion, Ochoa likewise did not file or include any proposed oppositions to the motions in limine.

The district court denied Ochoa's motion for reconsideration in March 2023, reasoning that Ochoa had not provided "adequate cause" for her failure to timely oppose Terry's motions in limine. Ochoa filed an

emergency petition for writ of mandamus shortly thereafter, which this court denied.³

Ochoa's case went to trial in April 2023. After hearing testimony from both Ochoa and Terry, as well as Ochoa's cousin, an expert that Ochoa had timely disclosed, and Terry's competing expert, the jury rendered a verdict in Ochoa's favor and awarded her \$100,000 in damages. This amount represented \$62,000 for past medical expenses, \$19,000 for past pain and suffering, and \$19,000 for future pain and suffering.⁴ The district court entered an amended judgment in July 2023, which included an additional award of \$26,000 for pre-judgment interest, \$35,000 in costs, and \$4,000 in post-judgment interest, for a total amount of \$165,000.

Ochoa appealed the district court's original judgment in June 2023, prior to the filing of the amended judgment. On appeal, she argues that the district court abused its discretion when it (1) granted three of Terry's six motions in limine as unopposed pursuant to EDCR 2.20(e) and (2) denied her motion for reconsideration.

³See *Ochoa v. Eighth Jud. Dist. Ct.*, No. 86297-COA, 2023 WL 2746937 (Nev. Ct. App. Mar. 31, 2023) (Order Denying Petition for Writ of Mandamus or Prohibition).

⁴In her closing argument, Ochoa placed the onus on the jury to calculate her past medical expenses, stating "Ladies and gentleman, to be mindful of your time and patience, you'll have the[] medical records with you in the back . . . you can choose, if you wish, to add them up for the past medical expenses." Regarding past pain and suffering, Ochoa requested \$120,000, but Ochoa did not request a specific amount for future pain and suffering. On appeal, Ochoa avers that her past medical expenses amount to \$150,000, \$65,000 of which stem from her shoulder surgery.

We conclude that Ochoa has not demonstrated a basis for relief and affirm the district court's judgment on the jury verdict.⁵

The district court did not abuse its discretion when it granted Terry's motions in limine

Ochoa argues that the district court's February 2023 pretrial order granting three of Terry's motions in limine was an abuse of discretion because it was based solely on procedural grounds; was arbitrary; and violated Nevada public policy, which favors adjudicating cases on the merits. Terry responds that the district court did not grant his motions based solely on procedural grounds and that, even if it had, to do so would have been within its discretion because Ochoa's failure to file oppositions constituted an admission that his motions were meritorious. Terry further contends that Nevada public policy requires courts to balance the preference for adjudication on the merits with the competing preferences for expeditious resolution of cases and enforcing procedural deadlines.

⁵Terry does not cross appeal, but he argues in his answering brief that this court does not have jurisdiction because Ochoa failed to appeal from the operative final judgment. We disagree. An aggrieved party has standing to appeal both final judgments and, with some exceptions, special orders entered after final judgments. See NRAP 3(A)(b)(1), (8). The Nevada Supreme Court has recognized that post-judgment orders awarding supplemental attorney fees and costs constitute independently appealable special orders that are distinct from the original final judgments from which they stem. See, e.g., *Lytle v. Rosemere Ests. Prop. Owners*, 129 Nev. 923, 925, 314 P.3d 946, 948 (2013) (“[T]he district court's order awarding supplemental attorney fees qualifies as a special order after final judgment . . .”). Here, the district court's original judgment entered on the jury verdict constituted the operative final judgment pursuant to NRAP 3A(b)(1). Because Ochoa appealed from this operative final judgment—which resolved the parties' rights and liabilities, as well as the substantive issues in the case—we have jurisdiction over Ochoa's appeal. See *Campos-Garcia v. Johnson*, 130 Nev. 610, 611, 331 P.3d 890, 890-91 (2014).

We review a district court's evidentiary and discovery sanctions decisions for an abuse of discretion, *FGA, Inc. v. Giglio*, 128 Nev. 271, 283, 278 P.3d 490, 497 (2012) (evidentiary decisions); *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042, 1048 (2010) (discovery sanctions), and conclude that the district court acted within its discretion when it granted Terry's motions in part.⁶

The district court's order was not an abuse of discretion under EDCR 2.20(e)

Procedurally, Ochoa argues that the district court's decision to grant motions 1, 2, and 6 as unopposed and meritorious pursuant to EDCR 2.20(e) was improper because she demonstrated that her failure to timely oppose the motions was for good cause and resulted from her counsel's

⁶Ochoa argues, for the first time on appeal, that a heightened standard of review applies because the district court's evidentiary rulings amounted to case-concluding sanctions, insofar as they limited her ability to present evidence relevant to her damages. A heightened standard of review applies in only limited circumstances. See *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92-94, 787 P.2d 777, 779-80 (1990) (reviewing a dismissal with prejudice under a heightened standard); see also *Foster*, 126 Nev. at 65, 227 P.3d at 1048 (reviewing a decision to strike all of a defendant's pleadings under a heightened standard); cf. *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 249, 235 P.3d 592, 596 (2010) (reviewing a decision to strike a defendant's answer as to liability only for an abuse of discretion and not under a heightened standard). Here, Ochoa's case was not dismissed with prejudice, and she presented evidence during trial regarding her past medical treatments, as well as her past and future pain and suffering. On appeal, Ochoa—the prevailing party—has also cited no authority to support that damage-limiting sanctions have ever been considered case-concluding, especially when the party still has an opportunity to meaningfully litigate their damages on the merits and ultimately recovers. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that we need not consider an appellant's argument when it is either not cogently argued or lacks the support of relevant authority). Accordingly, we reject Ochoa's argument.

medical incapacitation. Ochoa further avers that the court's decision to apply EDCR 2.20(e) to only motions 1, 2, and 6—and to defer ruling on Terry's remaining three motions until trial, despite those motions being similarly unopposed—was arbitrary. Substantively, Ochoa contends that the district court's reliance on NRCP 16.1 and NRCP 37(c) as additional bases to grant motion 1, which sought to exclude evidence of her non-retained expert's causation opinions, and NRCP 37(c) as an additional basis to grant motion 2, which sought to exclude evidence of her shoulder surgery and shoulder surgeon's testimony, was not supported by substantial evidence.

Terry responds that EDCR 2.20(e) procedurally justified the district court's decision to treat motions 1, 2, and 6 as unopposed and meritorious, and that the court's decision to grant only three of the six motions pursuant to the rule was not arbitrary because, unlike the motions the court granted, the deferred motions may have been impacted by trial testimony. Terry also argues that the district court's substantive reliance on NRCP 16.1 and NRCP 37(c) as additional bases to grant motion 1, and NRCP 37(c) as an additional basis to grant motion 2, was supported by substantial evidence because Ochoa failed to properly disclose her non-retained expert.

The district court acted within its discretion when it granted motions 1, 2, and 6 as unopposed

Under EDCR 2.20(e), a district court has the discretion to construe a party's failure to oppose a motion "as an admission that the motion . . . is meritorious and a consent to granting the same." This is true even where the opposition is eventually filed but is untimely. *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 277 n.15, 182 P.3d 764, 768 n.15 (2008) (reasoning that the district court did

not abuse its discretion by applying EDCR 2.20(b) (now EDCR 2.20(e) (amended 2020)) where the opposition was eventually filed but untimely); *see also O'Keefe v. Eighth Jud. Dist. Ct.*, 79704-COA, 2020 WL 5793812 (Nev. Ct. App. Sept. 28, 2020) (Order of Affirmance) (noting that non-opposition and untimeliness are both independent grounds for a district court to consider a motion as unopposed pursuant to EDCR 2.20(e)).

Notably, the language of EDCR 2.20(e) does not require district courts to consider whether a party has demonstrated good cause for either failing to file, or untimely filing, their oppositions before the court may deem the motion unopposed and meritorious. *See also King v. Carlidge*, 121 Nev. 926, 928, 124 P.3d 1161, 1162 (2005) (holding that “delay alone” was a sufficient basis for the district court to deem a motion for summary judgment as unopposed and meritorious—the specific circumstances justifying the delay were inconsequential to the court’s decision).

Here, we conclude that the district court acted within its discretion when it determined motions 1, 2, and 6 were unopposed and meritorious pursuant to EDCR 2.20(e). Nearly 60 days had elapsed between the time Ochoa failed to file her oppositions in December 2022 and the court’s February 2023 order. In that time, Ochoa not only failed to timely file oppositions to Terry’s motions, but never filed any oppositions at all, despite having previously agreed to the December discovery deadlines. The failure to file alone was a sufficient basis for the district court to grant motions 1, 2, and 6, and the court’s decision was likewise not arbitrary. Namely, unlike the motions the district court granted, the deferred motions may have been impacted by trial testimony and sought to exclude evidence that may have been admissible under certain circumstances.

Accordingly, we conclude that the district court acted within its discretion when it determined that motions 1, 2, and 6 were unopposed and meritorious on procedural grounds pursuant to EDCR 2.20(e).

The district court's reliance on NRCP 16.1 and NRCP 37(c) as additional substantive bases to grant motion 1 was not erroneous

Substantively, Ochoa argues that because she did not retain her physician, Dr. Armin, as an expert, and because she properly disclosed him as a non-retained expert, the district court's reliance on NRCP 16.1 and NRCP 37(c) as additional bases to grant motion 1—which sought to exclude Dr. Armin's testimony—was misplaced. Terry responds that Ochoa failed to comply with any of the mandatory disclosure requirements, as she did not identify the subject matter, facts, and opinions to which Dr. Armin was expected to testify; did not disclose Dr. Armin's compensation or include his qualifications; and did not designate Dr. Armin as a non-retained expert physician, such that sanctions were warranted. We conclude that Ochoa has not shown error.

Failure to heed NRCP 16.1's mandates may result in sanctions pursuant to NRCP 37(c), which gives district courts broad discretion to sanction parties for, among other things, inadequate compliance with the discovery requirements. *See* NRCP 37(c)(1); *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 265, 396 P.3d 783, 787 (2017) (“[W]hen a party has failed to abide by NRCP 16.1's disclosure requirements, NRCP 37(c)(1) provides the appropriate analytical framework for district courts to employ in determining the consequences of that failure.”). Pursuant to the rule, a party who fails to comply with NRCP 16.1 is prohibited from using the improperly disclosed witness or information “unless the party can show there was ‘substantial justification’ for the failure to disclose or ‘unless such

failure is harmless.” *Id.* (quoting NRCP 37(c)(1)). As previously mentioned, this court reviews sanctions for an abuse of discretion and does not consider whether, as an original matter, it would have imposed the sanctions itself. *Bahena*, 126 Nev. at 249, 235 P.3d at 596.

Here, Dr. Armin did not provide a written report pursuant to NRCP 16.1(a)(2)(B), so Ochoa was required to disclose him in accordance with NRCP 16.1(a)(2)(C), which she failed to do. Specifically, if a non-retained expert physician does not provide a written report, then the disclosure must include the subject matter on which the physician is expected to present evidence, a summary of the facts and opinions to which the physician is expected to testify, the physician’s qualifications, and the physician’s compensation for testifying. *See* NRCP 16.1(a)(2)(C)(i)-(iv). Further, the record does not indicate, and Ochoa does not argue, that she timely disclosed the missing information elsewhere, such that her lack of compliance was harmless. *See* NRCP 37(c)(1). Thus, the district court could reasonably find that Ochoa did not properly disclose Dr. Armin as a non-retained expert physician, such that its decision to rely upon NRCP 16.1 as an additional basis to grant motion 1 was not erroneous.

Stemming from Ochoa’s failure to comply with NRCP 16.1’s disclosure requirements, the district court also acted within its discretion when it exercised its ability to sanction Ochoa pursuant to NRCP 37(c). *See Pizarro-Ortega*, 133 Nev. at 265, 396 P.3d at 787. Thus, the district court acted within its discretion when it cited its ability to sanction Ochoa under NRCP 37(c) as an additional basis to grant motion 1.

Accordingly, we conclude that the district court’s February 2023 order granting Terry’s motions in part was not an abuse of discretion. Procedurally, its decision to treat all three motions as unopposed and

meritorious pursuant to EDCR 2.20(e) was within its discretion and not arbitrary. Substantively, as to motion 1, the court's additional reliance on NRCP 16.1 and NRCP 37(c) was supported by the record because Ochoa did not properly disclose Dr. Armin as a non-retained expert in accordance with NRCP 16.1 or otherwise comply with the rule's practical requirements.⁷

The district court's order comports with Nevada public policy

Independent of whether the district court's order was procedurally justified and substantively supported by substantial evidence, Ochoa argues that the court's order violated Nevada's public policy, which favors adjudication on the merits. Terry responds that the policy in favor of adjudication on the merits is not boundless and must be balanced against the countervailing policies favoring the enforcement of procedural deadlines and deterring misconduct. We conclude that the district court's order does not violate Nevada public policy, particularly because the law is clear that litigants may be held responsible for their counsel's acts and omissions.

Nevada courts favor deciding cases on the merits and typically disfavor sanctioning litigants "based solely on the missteps of counsel." *Huckabay Props., Inc. v. NC Auto Parts*, 130 Nev. 196, 201, 322 P.3d 429,

⁷In light of our conclusion that the district court did not abuse its discretion in granting motion 2 based on EDCR 2.20(e), we need not address Ochoa's argument that the alternative grounds the district court relied on to grant motion 2 were improper. See *Engelson v. Dignity Health*, 139 Nev., Adv. Op. 58, 542 P.3d 430, 446 n.14 (Ct. App. 2023) (explaining that this court need not address issues that are unnecessary to resolve the case at bar). This includes Ochoa's argument that the district court improperly relied on NRCP 37(c) in granting motion 2 because it viewed her shoulder surgery—which she underwent shortly before her stipulated scheduled exam with David's expert—as spoliative of the evidence of her pre-operative condition.

432 (2014) (internal quotation marks omitted). However, that policy has limits and

must be weighed against other policy considerations, including the public's interest in expeditious appellate resolution, which coincides with the parties' interests in bringing litigation to a final a stable judgment; prejudice to the opposing party; and judicial administration concerns, such as the court's need to manage its large and growing docket.

Id. at 203, 322 P.3d at 433.

Notably, the Nevada Supreme Court has cautioned that litigants cannot “hide behind” the preference for merits-based adjudication, particularly when the litigant fails to comply with procedural rules. *Willard v. Berry-Hinckley Indus.*, 139 Nev., Adv. Op. 52, 539 P.3d 250, 257 (2023) (internal quotation marks omitted) (acknowledging Nevada's preference for adjudicating cases on the merits but finding that the defendant frustrated that policy by failing to provide expert disclosures and damages calculations); *Huckabay Props*, 130 Nev. at 209, 322 P.3d at 437 (noting that “litigants should not read the rules or any of this court's decisions as endorsing noncompliance with court rules and directives”).

Finally, stemming from general agency principles, a litigant may be held responsible for their attorney's misconduct. *See Huckabay Props*, 130 Nev. at 204, 322 P.3d at 434 (noting that “an attorney's act is considered to be that of the client in judicial proceedings when the client has expressly or impliedly authorized the act”); *see also Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507 U.S. 380, 396 (1993) (underscoring that, in a representative litigation system, “clients must be held accountable for the acts and omissions of their attorneys”).

Here, as an initial matter, we note that Ochoa's case went to a trial on the merits and was not decided on purely procedural grounds. The jury heard evidence regarding Ochoa's past medical expenses—minus her shoulder surgery—as well as her ongoing pain and suffering. Thus, Ochoa's argument that the district court's order ran afoul of the preference for deciding cases on the merits is inapposite. Moreover, Ochoa has provided no authority to support that damage-limiting sanctions equate to deciding a case on purely procedural grounds. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Additionally, setting aside the issue of whether Ochoa's case was adjudicated on the merits, the district court acted within its discretion when it prioritized the expeditious resolution of cases over allowing Ochoa to present full evidence of her damages. At least two attorneys and five additional staff members at Heidari's law firm received notice of Terry's motions, as well as Terry's notice of non-opposition. In fact, during the relevant time period in which Ochoa failed to oppose Terry's motions, Ochoa filed her own motions in limine against Terry. Pursuant to both Nevada caselaw and general agency principles, Ochoa has not shown that the general policy preference for merits-based adjudication is dispositive when she was properly notified of the impending deadline to oppose Terry's motions and failed to abide by it.

Accordingly, we conclude that the district court's order was procedurally justified, and Ochoa has not shown a violation of Nevada public policy.

The district court did not abuse its discretion when it denied Ochoa's motion for reconsideration

Ochoa argues that the district court abused its discretion when it denied her motion for reconsideration because she demonstrated good

cause and excusable neglect for her failure to timely file oppositions in accordance with NRCP 60(b)(1).⁸ Terry responds that the standard to review a motion for reconsideration is not excusable neglect; rather, it is whether the party has provided substantially different evidence or demonstrated that the court's order was clearly erroneous. Under the appropriate standard, Terry argues that the district court acted within its discretion when it denied Ochoa's motion for reconsideration because she neither offered new evidence nor demonstrated that the court's order was clearly erroneous. *See* NRCP 60(b)(1). Terry also avers that, even if this court were to consider excusable neglect pursuant to NRCP 60(b)(1), Ochoa has not shown it. We agree Ochoa has not demonstrated error.

Standard of review

An order denying a motion for reconsideration is not itself appealable, but when such an order is properly made part of the appellate record, this court can review the motion in "deciding an appeal from the final judgment." *Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007). In doing so, we review the order "for abuse of discretion." *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).

⁸We note that Ochoa neither mentioned NRCP 60(b)(1) in her original motion for reconsideration nor filed a separate 60(b)(1) motion after the court issued its final order. It was only in her reply in support of her original motion that Ochoa requested that the district court alternatively "review her motion for reconsideration as a request for relief from a final judgment due to excusable neglect under NRCP 60([b])(1)." Here, the court's order denying Ochoa's motion also states that Ochoa "failed to provide adequate cause" for filing no oppositions, which implies that the court considered Ochoa's excusable neglect argument when it denied her motion. Accordingly, because both Ochoa's reply and the district court's order denying Ochoa's motion for reconsideration are properly included in the appellate record, we conclude that we may consider Ochoa's NRCP 60(b)(1) argument.

Here, we conclude that the district court did not abuse its discretion when it denied Ochoa's motion for reconsideration because (1) under the applicable standard for reconsideration, Ochoa neither offered new facts or law to support a contrary ruling nor demonstrated that the court's order was clearly erroneous, and (2) Ochoa did not demonstrate excusable neglect for her failure to timely oppose Terry's motions sufficient to satisfy NRCP 60(b)(1).

Ochoa neither offered new facts or law to support a contrary ruling nor demonstrated that the district court's order was clearly erroneous

The applicable standard for a district court to review a motion for reconsideration is not whether the movant demonstrated good cause or excusable neglect; rather, "[a] district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

As to the standard's "substantially different evidence" prong, simply raising additional facts or law is insufficient; rather, the new facts or law must "support[] a ruling contrary to the ruling already reached." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). As to the "clearly erroneous" prong, the district court must be "left with [a] definite and firm conviction that a mistake has been committed." *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)); see, e.g., *Masonry*, 113 Nev. at 741, 941 P.2d at 489 (concluding that an arbitration order was clearly erroneous because the dispute "was not

arbitrable as a matter of law,” such that the district court was within its discretion when it granted a motion for reconsideration).

Here, in her original motion for reconsideration, Ochoa neither offered substantially different facts or law that would support a contrary ruling nor argued that the district court’s order was clearly erroneous. Any “new facts” Ochoa proffered related solely to Heidari’s staffing issues, sudden influx of new cases, office relocation, and alleged medical incapacitation.⁹ These facts were not only initially unsupported by affidavit or declaration, but they also sought to merely justify her conduct and did not support a contrary ruling on EDCR 2.20(e) grounds. Further, Ochoa offered no authority to support that the district court’s order denying her motion was clearly erroneous or improper as a matter of law. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Accordingly, pursuant to the applicable standard, we conclude that the district court did not abuse its discretion when it denied Ochoa’s motion for reconsideration.

Ochoa did not demonstrate excusable neglect under NRCP 60(b)(1)

⁹Ochoa argues, for the first time on appeal, that her “filed oppositions to Motions in Limine 1, 2, and 6” constituted substantially different evidence that warranted reconsideration. However, Ochoa did not make this argument in her motion for reconsideration, and this statement is also belied by the record. While Ochoa referenced “oppositions” in her motion for reconsideration, Ochoa has identified nothing in the record to show that she ever filed oppositions or provided proposed oppositions for the district court to consider pretrial. Thus, this court need not consider the argument. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are “deemed to have been waived and will not be considered on appeal”); *see also Carson Ready Mix*, 97 Nev. at 476, 635 P.2d at 277 (noting that it is the appellant’s responsibility to make an adequate appellate record).

Ochoa argues that she demonstrated excusable neglect pursuant to NRCP 60(b)(1) for her failure to timely file oppositions to Terry's motions in limine, such that the district court abused its discretion when it denied her motion for reconsideration. Specifically, Ochoa avers that her counsel, Heidari, had undergone surgery and was medically incapacitated during the relevant time period; that Heidari's firm was confronted with staffing shortages and a sudden influx of cases; and that Heidari's firm had recently moved offices, which resulted in IT issues. Finally, Ochoa argues that she offered to pay monetary sanctions to "remunerate [Terry]," and that the court should have considered this offer in determining whether reconsideration was warranted. Terry responds that none of Ochoa's stated bases adequately excuse her neglect—especially because Heidari was not the only attorney staffed on Ochoa's case. Considering Ochoa's arguments from NRCP 60(b)(1)'s "excusable neglect" perspective, we conclude that the district court's determination that Ochoa had not demonstrated "adequate cause" sufficient to warrant reconsideration was supported by substantial evidence.

NRCP 60(b)(1) allows a party to request relief from a final order for, among other things, "mistake, inadvertence, surprise, or excusable neglect." District courts have wide discretion in determining whether neglect is excusable, and excusable neglect may "encompass situations in which the failure to comply with a filing deadline is attributable to negligence" and include "omissions caused by carelessness." *Pioneer Inv. Servs. Co.*, 507 U.S. at 388, 394. The determination of whether neglect is excusable "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id.* at 395.

The Nevada Supreme Court has rarely found neglect caused by business issues, staffing problems, increased workload, or timing errors to be excusable. See *Intermountain Lumber & Builders Supply, Inc. v. Glens Falls Ins. Co.*, 83 Nev. 126, 130, 424 P.2d 884, 886 (1967) (concluding that transcription errors, an inexperienced secretary, and the fact that counsel “was terribly busy with the press of other matters” did not amount to excusable neglect); see also *Bryant v. Gibbs*, 69 Nev. 167, 168, 170, 243 P.2d 1050, 1051-52 (1952) (concluding that inadvertently losing a summons and complaint did not constitute excusable neglect); *Guardia v. Guardia*, 48 Nev. 230, 233, 229 P.386, 386 (1924) (concluding that miscalculating the time set for an appearance does not amount to excusable neglect, even where counsel acted “immediately upon the discovery of the default judgment” to remedy his errors); see also *Torremoro v. Eighth Jud. Dist. Ct.*, 138 Nev., Adv. Op. 54, 512 P.3d 765, 769 (2022) (stating that excusable neglect may not be based on “the party’s own carelessness, inattention, or willful disregard of the court’s process” (internal quotation marks omitted)).

In contrast to Nevada caselaw’s settled principles regarding neglect caused by business issues, the caselaw is scant regarding when health issues may excuse neglect. As to mental health, the Nevada Supreme Court has concluded that procedural errors caused by an attorney’s mental illness were inexcusable when notice was otherwise proper, the defendant knew the procedural requirements, and the defendant was aware of his attorney’s failure to meet those requirements. *Willard*, 539 P.3d at 255-57. As to physical health, federal caselaw is persuasive and suggests that the severity of the health issues, and the particularity with which they are presented to the district court, are paramount. See *Lemoge v. United States*, 587 F.3d 1188, 1191, 1197 (9th Cir. 2009) (determining that counsel’s failure

to comply with a filing deadline was excusable when counsel “suffered medical complications, including a staph infection, from an injury to his leg,” and underwent “three surgeries, skin grafts, extensive therapy, and a full regimen of medications”); *see also Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 195-96 (9th Cir. 2004) (finding excusable neglect where counsel’s filing delays stemmed from mental impairments caused by undiagnosed metastatic liver cancer, and eight attorneys submitted affidavits in support of counsel’s mental impairments).

Here, we conclude that the district court acted within its discretion when it determined that neither of Ochoa’s proffered reasons for failing to file oppositions—logistical issues and Heidari’s medical incapacitation—provided compelling bases to excuse her neglect. As to the logistical issues, the district court could permissibly conclude that Heidari’s alleged staffing shortages, office move, and increased caseload were all insufficient reasons to deem Ochoa’s neglect excusable. *See Intermountain Lumber*, 83 Nev. at 130, 424 P.2d at 886.

Regarding Heidari’s health issues, Ochoa did not present them in her motion with any particularity—she alleged only that Heidari had undergone surgery and was “medically incapacitated” during the relevant time period with no additional details or supporting medical reports. For instance, Ochoa did not explain what, specifically, occurred during Heidari’s recovery period as a result of his medical incapacitation that precluded her from timely filing oppositions to Terry’s motions. By including no specific information, Ochoa hindered the district court’s ability to conduct its reconsideration analysis. Moreover, while Ochoa offered to provide Heidari’s medical records for the district court’s in-camera inspection, neither those records nor a summary of Heidari’s ailments were included

either in her original motion or now in the record on appeal. *See Carson Ready Mix*, 97 Nev. at 476, 635 P.2d at 277.

Finally, Ochoa's offer to remunerate Terry by paying monetary sanctions associated with her neglect is not controlling. The district court could consider her mitigation efforts, but it was not required to accept them. Ochoa's offer also alleviated neither the reality that trial was impending nor the district court's determination that her stated bases for neglect were inadequate. *See Guardia*, 48 Nev. at 230, 229 P. at 386.

Consequently, we conclude that the district court's determination that Ochoa had not demonstrated "adequate cause" for her neglect was supported by substantial evidence, and that the court therefore acted within its discretion when it denied her motion for reconsideration.

Accordingly, we

ORDER the district court judgment AFFIRMED.¹⁰


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹⁰Insofar as Ochoa raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Susan Johnson, District Judge
Black & Wadhams
Heidari Law Group, PC
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk