

IN THE SUPREME COURT OF THE STATE OF NEVADA

VERONICA JAZMIN CASTILLO, AN
INDIVIDUAL,

Appellant,

vs.

ARMANDO PONS-DIAZ, AN
INDIVIDUAL,

Respondent.

Supreme Court Case No. 82267

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District Court Case No. A-19-789525-C
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

No corporation that is the subject of NRAP 26.1 exists. Appellant is a natural person. However, the appeal is from a District Court Order directing Key Insurance Company, Inc., Appellant’s automobile liability insurer, to make monetary payment to Respondent.

Desert Ridge Legal Group, formerly Storm Legal Group, appeared for Appellant Veronica Jazmin Castillo in proceedings in the District Court and has appeared for Appellant before this Court.

Dated this 13th Day of January, 2022.

DESERT RIDGE LEGAL GROUP

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I.
JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to NRCP 3A(b)(1) because the District Court's November 24, 2020 Judgment on Arbitration Award is a final order resolving all claims between all parties. The November 24, 2020 Judgment on Arbitration Award was served on November 24, 2020 via the court's electronic e-file system. The Notice of Appeal was timely filed on December 23, 2020 pursuant to NRCP 4(a).

II.
ROUTING STATEMENT

This case raises as a principal issue a question of first impression involving the United States or Nevada Constitutions or common law and that the matters herein raised are of statewide public importance and is therefore presumptively retained by the Supreme Court pursuant to NRAP 17(a)(11).

III.
ISSUE PRESENTED FOR REVIEW

Given that the Nevada Constitution, the Nevada Rules of Arbitration, and Nevada Case Authority guarantee every litigant the right to a jury trial, did the District Court commit reversible error in granting Plaintiff/Respondent's Motion to Strike Defendant/Appellant's Request for Trial de Novo?

IV.
STATEMENT OF THE CASE

This is a personal injury action between Plaintiff/Respondent and Defendant/Appellant. Defendant/Appellant was insured under an automobile liability policy and his insurer provided a defense. The parties submitted the matter to the court-annexed arbitration program in Clark County, Nevada, and an award was rendered in favor of Defendant/Appellant and against Plaintiff/Respondent. Defendant/Appellant, as was his right under the Nevada Constitution, the Nevada Arbitration Rules, and Nevada case law, requested a Trial de Novo. Plaintiff/Respondent moved to strike the Trial de Novo. The District Court granted the Motion, striking Plaintiff/Respondent's Request for Trial de Novo. Defendant/Appellant timely appeals from the District Court's Order granting Plaintiff/Respondent's MOTION TO STRIKE REQUEST FOR TRIAL DE NOVO (the "Motion").

V.
STATEMENT OF THE FACTS

This case is a bodily injury claim arising from a car accident occurring on December 15, 2017. The matter was assigned to the court-annexed arbitration program. At that level, Defendant/Appellant served an EAC disclosure (see Ex. 1);

served written discovery upon Plaintiffs/Respondent (see Ex. 2); deposed Plaintiff/Respondent (see Ex. 3); conceded liability; extended a written offer to Plaintiff; submitted an arbitration brief (see Ex. 4). His counsel attended the arbitration hearing.

Defense/Appellant counsel was unsuccessful in communicating with his client. As a result, the defense could not properly respond to interrogatories served on Defendant. Defendant also did not appear at the arbitration hearing. The defense, however, conceded breach of duty.

The Arbitrator entered his award and Defendant/Appellant then filed a Request for Trial De Novo. Plaintiff moved to strike the Request for Trial De Novo, contending that Defendant did not arbitrate in good faith. The district court granted the Motion.

The Court must reverse the granting of the Motion.

VI. **SUMMARY OF ARGUMENT**

Given that Plaintiff/Appellant conceded liability, his personal participation in discovery was excused. Therefore, Plaintiff/Appellant meaningfully participated in the arbitration. His non-participation does not justify the denial of a jury trial

pursuant to the Nevada Constitution, the Nevada Arbitration Rules, and Nevada cases. Accordingly, the District Court’s granting of the Motion should be reversed.

VII. **ARGUMENT**

A. Defendant Arbitrated in Good Faith

The Nevada Arbitration Rules and case law discussed below defeat Plaintiff’s arguments. First, Defendant/Appellant was not even required to file a “brief” at arbitration, much less one that Plaintiff’s counsel found acceptable. Second, Defendant’s concession of breach of duty excuses his personal participation in the hearing and in verifying interrogatory replies. That is because the sole issues for Plaintiffs to prove are proximate cause and damages. Defendant could not add anything to these questions.

B. Defendant/Appellant Has A Right To A Jury Trial

First and foremost, Defendant/Appellant has a right to a jury trial. The Nevada Constitution, Article 1, Section 3 states in pertinent part: “The right of trial by jury shall be secured to all and remain inviolate forever” (emphasis added) and this has always been held to apply to civil actions. *State v. McClear*, 11 Nev. 39 (1876).

C. Pertinent Nevada Arbitration Rules

N.A.R. 1 states the program is “non-binding” in nature for the precise reason that Defendant has the right to a jury trial. N.A.R. 2 establishes the program in a way

that it is a “simplified procedure” intended to be “informal” and “expeditious.”

N.A.R. 8 indicates arbitrators have a significant amount of discretion to “relax all applicable rules of evidence and procedure to effectuate a speedy and economical resolution of the case without sacrificing a party’s right to a full and fair hearing on the merits.”

N.A.R. 11 gives significant discretion to the arbitrator as to even permitting any discovery as the rule states:

The conference may be held by telephone in the discretion of the arbitrator. The extent to which discovery is allowed, **if at all**, is in the discretion of the arbitrator who must make every effort to insure that discovery, **if any**, is neither costly nor burdensome. Types of discovery shall be those permitted by the Nevada Rules of Civil Procedure, but may be modified in the discretion of the arbitrator to save time and expense. (Emphasis added).

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

Finally, N.A.R. 15 specifically allows the arbitration hearing to proceed

without a party's presence and participation at the hearing. The rule states:

An arbitration may proceed in the absence of any party who, after due notice, fails to presents or fails to obtain a continuance. The arbitrator shall require that the party present such evidence as he or she may require for the making of an award and may offer the absent party an opportunity to appear at the subsequent hearing if such a hearing is deemed appropriate by the arbitrator.

D. Pertinent Nevada Case Authority

In the case of *Chamberland v. Labarbera*, 877 P.2d 523 (1994), the Nevada Supreme Court overturned the District Court's striking of the defendant's request for trial de novo under similar circumstances. In that matter, the case was assigned to the mandatory arbitration program, and liability was not disputed as the accident was of the rear-end nature. When the District Court struck the defendant's request for trial de novo, the Supreme Court held it abused its discretion by "delivering such a severe sanction" as striking a party's right to a jury trial:

The magnitude of the sanction brings the action under the purview of *Young*. *Young* instructs that the district court must enter specific findings and conclusions when dismissing a party from a legal proceeding under NRCP 37. This not only facilitates appellate review, but also impresses upon the district court the severity of such a sanction. *Id.* at 525.

The Court noted that the defendant was not required to conduct any discovery

and that the defendant's failure to attend the arbitration hearing was not a basis for the District Court to strike the defendant's request for trial de novo as liability was not disputed. In the end, the Court stated:

With liability apparently not at issue, the entire dispute involved the extent of Labarbera's damages. Chamberland's counsel offered a defense at the arbitration hearing by cross-examining Labarbera and disputing her alleged injuries.

In sum, we conclude that the district court abused its discretion by imposing such a severe sanction upon Chamberland. Arbitration matters often involve simple disputes and meager claims for damages that do not warrant expensive prearbitration discovery or sophisticated 'trial' techniques. *Id.*

Next, in the matter of *Gittings v. Hartz*, 996 P.2d 898 (2000), the Nevada Supreme Court stated:

The Court Annexed Arbitration Program is intended to be a simplified, informal procedure to resolve certain types of cases. (Citations omitted). It is designed to give the arbitrator a good understanding of the essential factual disputes and the legal positions of the parties.

In *Gittings*, the defendant ran a red light and T-boned the plaintiff's vehicle.

Liability was not disputed. The contested matter was plaintiff's alleged damages.

The Court stated:

For purposes of requesting a trial de novo, this court has equated 'good faith' with 'meaningful participation' in the arbitration proceeding...However, the important right to a constitutional jury trial

is not waived simply because individuals can disagree over the most effective way to represent a client at an arbitration hearing. See *Chamberland*, 110 Nev. at 705, 877 P.2d 525 (despite failing to conduct discovery or attend the arbitration hearing, appellant meaningfully participated in the arbitration where liability was not an issue by engaging in cross-examination and disputing alleged injuries). (Emphasis added).

The Nevada Supreme Court stated the defendant “meaningfully participated” in the arbitration program by conducting discovery which was permitted by the arbitrator and presenting arguments at the arbitration hearing regarding damages. The defendant served Interrogatories, Requests for Production of Documents and deposed the plaintiff. The Court noted that defendant Gittings did not need to attend the arbitration hearing as:

...did not need to personally attend the arbitration hearing because liability was not at issue.

The Nevada Supreme Court further stated:

There may be many valid reasons why a party would not wish to expend money at the arbitration stage of a case on medical experts. Effective cross-examination may be sufficient to point out discrepancies in a person’s claim of injury without such testimony, or without presentation of ‘counterveiling of medical evidence.’ (Emphasis added).

The Nevada Supreme Court, when addressing the issue of whether a defendant’s insurer files Requests for Trial De Novo, the Court stated:

While a comparatively high percentage of de novo requests are filed by Allstate, there is no analysis accompanying the statistics to support a

conclusion that the statistics prove that Allstate automatically requests a trial de novo regardless of the arbitration process. For example, no correlation has been shown between requests for trial de novo and verdicts for and against the party who filed the request. (Emphasis added).

The Nevada Supreme Court in *Campbell v. Maestro*, 996 P.2d 412 (2000) determined that the trial court's striking of a defendant's Request for Trial De Novo was improper and too severe of a sanction. In *Campbell*, plaintiff's cause of action arose out of an automobile accident.

The District Court made the following findings in supporting its Order to strike Campbell's constitutional right to a jury trial:

- 1) Defendant Campbell admitted in his deposition the accident was his fault;
- 2) Defendant Campbell's insurer denied liability for one year and a half after the accident;
- 3) Defendant Campbell's insurer did not pay plaintiff's property damage until one year and a half after the incident, allegedly because the insurer disputed the case on liability;
- 4) Defendant Campbell's attorney asserted liability affirmative defenses;
- 5) The attorney arbitrator made some type of finding defendant's insurer failed to arbitrate in good faith;

6) Defendant Campbell's insurer failed to make any settlement offer for personal injury claims until one and a half years after the accident.

The Nevada Supreme Court in *Campbell* stated:

...a conclusion that Campbell was contesting liability in bad faith does not necessarily support a finding that Campbell's position regarding the value of any injuries suffered by Maestro and Costantino is also invalid. The record before the district court contains little or no factual allegations that would support a conclusion that Campbell's position regarding a trial on damages was unfounded and made for the purposes of delay or harassment. For this reason, we conclude that the severe sanction of striking the request for trial de novo was not warranted in this case. See *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92-93, 787 P.2d 777, 780 (1990) (where dismissal with prejudice was granted for discovery abuse, this court noted that such a severe sanction should be imposed only after consideration of all factors involved). (Emphasis added).

...

With failures to pay property damages and make settlement offers the district court noted the apparent intransigence of NGI and its counsel with regard to the prosecution of Campbell's defense. However, there is no duty under the arbitration rules governing good and bad faith participation in arbitration proceedings to enter into settlement negotiations or to agree to make payment to any claim at any time regardless of the merits thereof. Refusals regarding settlement or payment, whether ill-advised or not, must be resolved under NRCPC 68, NRS 17.115, NRS 18.010, NRCPC 11, NAR 22(B)(b), and the various rules regarding the payment of interest on judgments. Thus, the refusals by NGI to honor certain claims or enter into meaningful settlement negotiations, although possibly implicating its obligations to Campbell to act in good faith to avoid a judgment in excess of its policy limits, were not pertinent to the questions of good faith participation in the arbitration program.

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VIII.
CONCLUSION

In sum, under the applicable Nevada Arbitration Rules and cases, Defendant more than “meaningfully participated” in all proceedings to this point.

Defendant/Appellant respectfully requests that the District Court’s grant of the Motion be reversed and the Judgment be vacated.

ATTORNEY CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type style.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either: Proportionately spaced, has a typeface of 14 points or more and contains 4220 words; or

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of appellate procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I May be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 13th Day of January, 2022.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on 13th Day of January, 2022, I served a true and complete copy of the foregoing **APPELLANT’S OPENING BRIEF** addressed to the parties below as follows:

by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail, enclosed in a sealed envelope upon which first class postage was fully prepaid; and /or

via facsimile; and or

by hand delivery to parties listed below; and or

by electronic service via E Flex through the Supreme Court of the State of Nevada.

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