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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDEL RAMIREZ-NAVARETTE, an individual, Respondent, vs. HOLGA FLORES-REYES, an individual; ANTHONY VERDON, an individual; DOE DRIVER I-V; DOE OWNERS I-V; ROE EMPLOYER I-V; ROE CORPORATIONS I-V, inclusive, Appellants.	CASE NO: 82455-COA **NOTICE OF ENTRY OF ORDER OF AFFIRMATION**

NOTICE OF ENTRY OF ORDER OF AFFIRMANCE

TO: ALL PARTIES AND THEIR COUNSEL

YOU, AND EACH OF YOU, PLEASE TAKE NOTICE, that an Order of Affirmance

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was entered in the above-entitled matter on the 24th day of January, 2022, a copy of which is attached hereto.

DATED this 2nd day of February, 2022.

BIGHORN LAW

By: */s/ Gregory S. Caruso, Esq.*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of BIGHORN LAW, and on the 2nd day of February, 2022, I served the foregoing **NOTICE OF ENTRY OF ORDER OF AFFIRMATION** as follows:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below:

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/s/ Belinda Felix
An employee/agent of **BIGHORN LAW**

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HOLGA FLORES-REYES, AN INDIVIDUAL; AND ANTHONY VERDON, AN INDIVIDUAL,
Appellants,
vs.
EDEL RAMIREZ-NAVARRETE, AN INDIVIDUAL,
Respondent.

No. 82455-COA

FILED

JAN 24 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Holga Flores-Reyes and Anthony Verdon appeal from a district court judgment entered on an arbitration award following an order striking their request for a trial de novo in a tort matter.[1] Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

The underlying litigation stems from a fender-bender.[2] Flores-Reyes rear-ended Edel Ramirez-Navarrete while driving the access road that leads to the Paris Las Vegas Hotel & Casino parking garage. Flores-Reyes and Anthony Verdon (collectively Appellants) co-owned the vehicle Flores-Reyes operated during the accident. Flores-Reyes and Ramirez-Navarrete were the only parties to this case present at the scene.

Ramirez-Navarrete filed a complaint asserting negligence against Flores-Reyes and negligent entrustment against Verdon.[3] The case

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[1]The Honorable Bonnie A. Bulla, Judge, did not participate in the decision of this matter.

[2]We recount the facts only as necessary for our disposition.

[3]Ramirez-Navarrete pleaded separate causes of action against Flores-Reyes and Verdon. However, the parties group each individual Appellant together (sometimes referring to just Flores-Reyes) and only address the

continued on next page...

was transferred to the court-annexed arbitration program. After the arbitrator entered a discovery order, Ramirez-Navarrete served Appellants with requests for admission, interrogatories, and production, but Appellants never responded or moved to extend discovery. However, they did earlier provide Flores-Reyes' recorded statement to her insurance company regarding the accident wherein she admitted to hitting Ramirez-Navarrete.

Defense counsel attended the arbitration hearing alone because counsel was unable to make contact with Appellants throughout the litigation. Defense counsel served the arbitration brief after the scheduled start time for the hearing. Defense counsel also apparently appeared two hours late even though the arbitration appears to have taken place virtually. And defense counsel specifically stated in the arbitration brief and at the hearing that Appellants did not contest liability. Defense counsel purportedly cross-examined Ramirez-Navarrete regarding his back injury but did not offer an expert to counter Ramirez-Navarrete's medical experts or any other witnesses.[4] The arbitrator found for Ramirez-Navarrete and awarded $13,500 for "total past damages." The arbitrator also later awarded

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negligence claim in the relevant pleadings below and here on appeal. Thus, we address Appellants' collective conduct and only the negligence claim. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived); *Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 557 n.6, 170 P.3d 508, 512 n.6 (2007) ("The district court did not address this issue. Therefore, we need not reach the issue."); *see also Greenlaw v. United States*, 554 U.S. 237, 243 (2008) ("[I]n both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present.").

[4]The record contains no transcript from the arbitration hearing. The parties represent these assertions, and they are not disputed.

him attorney fees, costs, and interest, which Appellants did not oppose.

Appellants timely requested a trial de novo and made a demand for removal from the short trial program. Ramirez-Navarrete filed a motion to strike the request for a trial de novo. Following a hearing on the motion, the district court issued an order striking Appellants' request for a trial de novo. The court found that Appellants failed to meaningfully participate in good faith in the arbitration. The district court reasoned that (1) Appellants did not respond to Ramirez-Navarrete's discovery requests despite having 93 days to do so and thereby admitted all elements of the negligence claim; (2) Flores-Reyes failed to respond to Ramirez-Navarrete's interrogatories; (3) Appellants did not communicate with their counsel during the arbitration process; (4) Appellants did not attend the arbitration; (5) Appellants did not dispute liability or damages in addition to the lack of meaningful participation; and (6) Appellants failed to oppose Ramirez-Navarrete's application for fees, costs, and interest. The district court then entered judgment on the arbitration award.

Flores-Reyes and Verdon now appeal. They argue that they meaningfully participated in the arbitration proceedings. Ramirez-Navarrete counters that Appellants waived their right to a trial de novo by filing the arbitration brief late, failing to respond to written discovery, and not objecting to Ramirez-Navarrete's fees, costs, and interest. We conclude that the district court acted within its discretion when striking the request for a trial de novo and therefore affirm.

We review a district court's order denying a request for a trial de novo for an abuse of discretion. *Gittings v. Hartz*, 116 Nev. 386, 391, 996 P.2d 898, 901 (2000). However, "a somewhat heightened standard of review applie[s] to sanctioning orders that terminate[ ] the legal proceedings." *Chamberland v. Labarbera*, 110 Nev. 701, 704, 877 P.2d 523, 525 (1994)

(internal quotation marks omitted). Under this standard, the court does not abuse its discretion in denying a trial de novo when the "[e]vidence shows that appellants failed to defend their case in good faith." *See Casino Props., Inc. v. Andrews*, 112 Nev. 132, 135-36, 911 P.2d 1181, 1183 (1996).

The district court did not abuse its discretion by finding that Appellants waived their right to a trial de novo. The Nevada Constitution provides litigants with the right to a jury trial, which "may be waived by the parties in all civil cases in the manner to be prescribed by law." Nev. Const. art. 1, §3. Nevada Arbitration Rule (NAR) 22(A) provides a method of waiver for a trial de novo following an arbitration award. Pursuant to NAR 22(A), "[t]he failure of a party or attorney to either prosecute or defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo." The supreme court has interpreted "good faith" under NAR 22(A) to mean "meaningful participation." *Casino Props.*, 112 Nev. at 135, 911 P.2d at 1182. And defendants who "impede[ ] the arbitration proceedings" do not meaningfully participate. *See id.* at 135, 911 P.2d at 1183.

Here, the district court did not abuse its discretion when it found that Appellants "failed to meaningfully participate in good faith during the arbitration proceedings pursuant to NAR 22(a)." The court provided numerous reasons to support its conclusion, such as Appellants' not responding to discovery requests at all, including the requests for admission and numerous interrogatories. In *Casino Properties*, the supreme court concluded that defendants who respond to discovery requests late impede the arbitration process and thereby waive their right to a trial de novo. 112 Nev. at 135, 911 P.2d at 1182-83. Appellants do not dispute that they never responded to Ramirez-Navarrete's requests for admission, interrogatories, and production. Among other things, Ramirez-Navarrete's interrogatories

asked for a list of Appellants' expert witnesses, the circumstances of the accident, and more details about the 20 affirmative defenses Appellants pleaded in their answer, which include defenses specific to damages. Ramirez-Navarrete's requests for production asked for items such as documents describing damages, visual renderings of the accident, and documents supporting Appellants' denials and affirmative defenses.

Even if Appellants had formally admitted liability before the arbitration hearing, which they did not, failing to provide Ramirez-Navarrete with the aforementioned discovery compromised his arbitration strategy on the issue of damages. Appellants did not file their arbitration brief until after the arbitration hearing had started, a violation of the Nevada Arbitration Rules. *See* NAR 13(A) (instructing that each party must submit their pre-arbitration statement "[a]t least 10 days prior to the date of the arbitration hearing"). The brief included specific arguments and authority supporting Appellants' decision to not bring a medical expert to the arbitration hearing, which Ramirez-Navarrete was unable to review prior to the arbitration. Appellants claim on appeal and at the hearing on the motion to strike that these failures regarding discovery were due to COVID-19 related delays (two outbreaks in defense counsel's law office) even though they had 93 days to respond. But Appellants never filed a motion to extend discovery to account for these delays. Thus, Appellants impeded the arbitration proceedings, and the district court did not abuse its discretion by finding that Appellants' failure to respond to discovery constituted a lack of good faith.

The district court also did not abuse its discretion in finding that Appellants lacked good faith by neglecting to communicate with their counsel or oppose Ramirez-Navarrete's post-arbitration application for fees, costs, and interest. While these facts do not necessarily on their own amount

to a lack of good faith, Appellants on appeal have failed to provide any authority indicating that this conduct, together with their failure to produce discovery, constitutes meaningful participation. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Therefore, the district court did not abuse its discretion by finding this conduct constituted a lack of good faith.

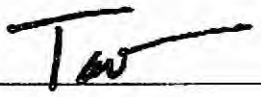
It appears that the district court's remaining reasons for striking Appellants' request—Appellants' failure to attend the hearing or "dispute liability or damages in addition to the lack of meaningful participation"—may not constitute a lack of good faith. *See Gittings*, 116 Nev. at 392, 996 P.2d at 902 (concluding that failing to attend an arbitration hearing does not amount to bad faith); *Chamberland*, 110 Nev. at 705, 877 P.2d at 525 (concluding that defendants acted in good faith even when they did not dispute liability). However, even if the district court improperly considered these circumstances, it nevertheless reached the right conclusion. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (holding that we affirm the district court if it reaches the correct result, even if for the wrong reason). That conclusion is supported by all other bases in the district court order, as stated above—defendant's failure to respond to discovery requests, lack of communication with their counsel, and failure to oppose Ramirez-Navarrete's motion for fees, costs, and interest.

Therefore, assuming without deciding, that Appellants are correct that their failure to personally appear or "dispute liability or damages in addition to the lack of meaningful participation" does not amount to a lack of good faith, they have not shown a substantial enough

error to warrant reversal. Specifically, Appellants have not argued nor demonstrated that these few incorrect reasons are sufficient to outweigh the many appropriate reasons supporting the district court order. *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."); *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010).[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

cc: Hon. Nancy L. Allf, District Judge
Pyatt Silvestri
Desert Ridge Legal Group
Bighorn Law/Las Vegas
Eighth District Court Clerk

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[5]We also note the district court reasonably concluded that, by failing to respond to Ramirez-Navarrete's requests for admission, Appellants admitted (1) Flores-Reyes rear-ended Ramirez-Navarrete; (2) Flores-Reyes actually and proximately caused Ramirez-Navarrete's injuries and damages; (3) Ramirez-Navarrete's medical treatment was reasonable and necessary; (4) Ramirez-Navarrete bore no fault; and (5) Flores-Reyes attempted to flee the scene. *See* NRCP 36(a)(3) ("A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney"); NRCP 36(b) ("A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended."). Appellants never moved to set aside these admissions.