

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC ZESSMAN,  
Appellant,  
vs.  
CHUBB GROUP OF INSURANCE COMPANIES,  
Respondent.

No. 43243

**FILED**

MAY 19 2006

LANE T. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Proper person appellant Eric Zessman and three others were charged with the armed robbery of United Coin. Zessman was convicted based on his pleading guilty to conspiracy to commit robbery and nolo contendere to the actual robbery. United Coin's insurer, respondent Chubb Group of Insurance Companies, paid the loss and instituted the underlying civil action against Zessman and the other defendants to recover the approximately \$1.5 million it had paid on the claim. Chubb Group filed a motion for summary judgment, which the district court granted. This appeal followed.

This court reviews orders granting summary judgment de novo.<sup>1</sup> Summary judgment was appropriate if the pleadings and other evidence on file, viewed in a light most favorable to Zessman, demonstrate that no genuine issue of material fact remains in dispute and that Chubb

<sup>1</sup>See Wood v. Safeway, Inc., 121 Nev. \_\_, \_\_, 121 P.3d 1026, 1029 (2005).

Group is entitled to judgment as a matter of law.<sup>2</sup> Having considered the record in light of this standard, we conclude that the district court did not err when it granted summary judgment to Chubb Group.

Specifically, NRS 41.133 provides that “[i]f an offender has been convicted of the crime which resulted in the injury to the victim, the judgment of conviction is conclusive evidence of all facts necessary to impose civil liability for the injury.”<sup>3</sup> Here, Zessman was convicted of conspiracy to commit robbery pursuant to a guilty plea. This judgment of conviction, then, under NRS 41.133, constitutes evidence sufficient to impose civil liability on Zessman.<sup>4</sup>

Zessman argues that the district court erred by conducting the hearing on Chubb Group’s motion in his absence, despite his motion to be transported to the hearing. The right of a proper person inmate to appear in civil proceedings unrelated to the inmate’s conviction is within the district court’s discretion.<sup>5</sup> Nothing in the record on appeal indicates that

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<sup>2</sup>Id.

<sup>3</sup>See also Taylor v. Thunder, 116 Nev. 968, 973, 13 P.3d 43, 45-46 (2000) (providing that, in general, evidence of a guilty plea from a prior criminal proceeding is admissible in a subsequent civil proceeding).

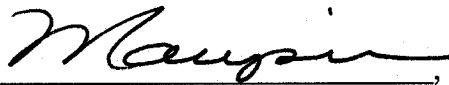
<sup>4</sup>Zessman’s argument that the district court erred because the summary judgment was based on a district court order directing Zessman to pay restitution, which Zessman was in the process of appealing, is unavailing. As discussed above, the judgment of conviction pursuant to Zessman’s guilty plea is sufficient in and of itself to impose civil liability regardless of any restitution award therein or appeal therefrom.

<sup>5</sup>See Jerry v. Francisco, 632 F.2d 252 (3d Cir. 1980); see generally Stone v. Morris, 546 F.2d 730, 735-36 (7th Cir. 1976) (noting factors suitable for consideration in balancing an inmate’s interest and the state’s interest at stake when an inmate seeks to appear personally in a civil proceeding).

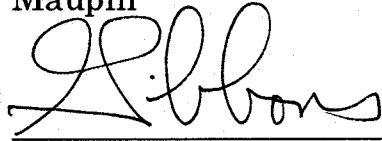
the district court abused its discretion when it conducted the hearing in Zessman's absence.<sup>6</sup> Thus, his argument lacks merit.

Accordingly, we

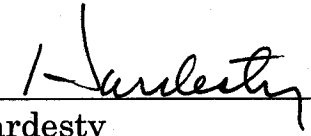
ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Valorie Vega, District Judge  
Eric W. Zessman  
Morris Polich & Purdy, LLP/Las Vegas  
Clark County Clerk

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<sup>6</sup>Based on our review of the record, no motion to be transported to the summary judgment hearing exists—nor does any written district court order denying the alleged motion. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981); Anderson v. State, 81 Nev. 477, 482, 406 P.2d 532, 534 (1965); cf. Stover v. Las Vegas Int'l Country Club, 95 Nev. 66, 68, 589 P.2d 671, 672 (1979) (providing that “[w]hen evidence on which a district court’s judgment rests is not properly included in the record on appeal, it is assumed that the record supports the lower court’s findings”).

<sup>7</sup>Having considered all the issues raised by Zessman, we conclude that his other arguments lack merit and thus do not warrant reversal of the district court judgment.