

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE LAVOIE,
Appellant,
vs.
MANDALAY CORP., D/B/A MANDALAY
BAY RESORT AND CASINO, A
NEVADA CORPORATION,
Respondent.

No. 43840

FILED

FEB 15 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a complaint for failure to comply with NRCP 16.1. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Michelle Lavoie filed a complaint against respondent Mandalay in August 2003. The case was placed in the court-annexed mandatory arbitration program where it was dormant for four months. The case was later exempted from arbitration after Lavoie's counsel became aware that Lavoie's ankle that she alleged was injured at Mandalay had been surgically repaired. Mandalay filed a motion to dismiss for failure to comply with NRCP 16.1, which was granted by the district court.

We conclude the district court abused its discretion in dismissing Lavoie's complaint for failure to comply with NRCP 16.1, spoliation of evidence, and failure to prosecute; therefore, we reverse the district court's order and remand the case to the district court.

Dismissal under NRCP 16.1

Under the 2003 version of NRCP 16.1, the district court may dismiss a case without prejudice if an early case conference is not held within 180 days after the summons and complaint are served upon a

defendant.¹ The court may also dismiss a case without prejudice if a case conference report is not filed within 240 days after a defendant's appearance.²

NAR 4(C), governing the relationship between district courts and court-annexed arbitration, states:

Before a case is submitted or ordered to the program, and after a request for trial de novo is filed, and except as hereinafter states, all applicable rules of the district court and the Nevada Rules of Civil Procedure apply. After a case is submitted or ordered to the program, and before a request for trial de novo is filed, or until the case is removed from the program, these rules apply. Except as stated elsewhere herein, once a case is accepted or remanded into the program, the requirements of N.R.C.P. 16.1 do not apply.

(Emphasis added.)

The plain language of NAR 4(C) indicates that NRCP 16.1 is not applicable while a case is in arbitration. As a result, Lavoie complied with NRCP 16.1 by scheduling an early case conference after her petition for exemption from arbitration was granted.

Dismissal based on spoliation of evidence and failure to prosecute

Mandalay also claims dismissal was proper because Lavoie's surgery resulted in the spoliation of evidence and she failed to diligently prosecute her claim. The district court order is unclear whether the court intended spoliation and failure to prosecute as additional justifications for dismissal separate from the alleged NRCP 16.1 violation.

¹NRCP 16.1(e)(1) (2003) (amended 2005).

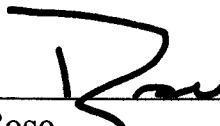
²NRCP 16.1(e)(2) (2003) (amended 2005).

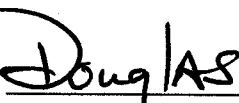
We agree with Mandalay that a plaintiff has a duty to prosecute a case and ensure it continues to progress through arbitration.³ In the instant case, however, the district court had a broad range of lesser sanctions available short of dismissal. In addition, dismissal was too harsh a sanction given the lack of any evidence demonstrating Lavoie's surgery was a willful attempt to destroy evidence and runs counter to Nevada's strong public policy that cases be adjudicated on their merits.⁴ As a result, dismissal for spoliation of evidence or failure to prosecute was not justified.

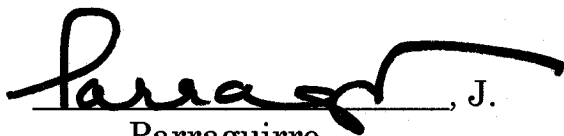
Conclusion

For the foregoing reasons, we conclude that the district court abused its discretion by dismissing Lavoie's complaint. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

³See Moore v. Cherry, 90 Nev. 390, 395, 528 P.2d 1018, 1021 (1974).

⁴See Young v. Johnny Ribeiro Building, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990).

cc: Hon. Jessie Elizabeth Walsh, District Judge
Royal, Jones, Dunkley & Wilson
Weil & Drage, APC
Clark County Clerk