

IN THE SUPREME COURT OF THE STATE OF NEVADA


SHRENIK BAVISHI,
Appellant,
vs.
SAM ALADABBAGH, D/B/A DIAMOND
INN MOTEL,
Respondent.

No. 44214

FILED

JAN 31 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

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

Procedural history

Appellant Shrenik Bavishi alleges that he was attacked in a parking lot owned by respondent Sam Aladabbagh, d/b/a Diamond Inn Motel (the Motel). In August 2004, the district court permitted Bavishi's counsel to withdraw from the case. Bavishi alleges that he did not have access to his case until after the district court entered summary judgment against him.

After Bavishi's counsel withdrew, the Motel filed several motions in limine. On September 13, 2004, the Motel sent a copy of an unfiled motion for summary judgment to Bavishi. Accompanying that copy was a cover letter indicating that the Motel would send Bavishi a copy of the filed motion, which would include notice of the date on which the motion would be heard.

On September 15, 2004, the Motel sent Bavishi, via FedEx, a copy of the filed summary judgment motion, which included notice that the hearing was set for September 27, 2004. Bavishi alleges that FedEx

delivered the motion to Bavishi's neighbor, but Bavishi never received it. On September 24, 2004, Bavishi sent the district court an affidavit requesting that the motion for summary judgment be denied. Bavishi stated that he had not received notice of the hearing date, because he had not received a copy of the filed motion. The affidavit also stated that Bavishi's former counsel had not returned his file to him.

On September 27, 2004, the district court heard all pending motions. Bavishi filed an opposition to the Motel's motions in limine, but, other than his affidavit of September 24, 2004, he did not oppose the motion for summary judgment. In his opposition to the motions in limine, Bavishi admitted that the Motel's counsel informed him of the hearing date set for September 27, 2004.

Later that day, the district court received a communication from Bavishi indicating that he could not appear at the hearing, that he did not receive notice of the date of the hearing, and that he wanted more time to oppose the Motel's motions. The district court continued the hearing on the motion for summary judgment until September 29, 2004, which was also the date set for calendar call.

On September 29, 2004, Bavishi did not appear at the motions and calendar call hearing or file a supplemental opposition to the Motel's summary judgment motion. The district court granted the Motel's motion for summary judgment, dismissed the case for Bavishi's failure to appear at calendar call, and granted several of the Motel's motions in limine. Bavishi now appeals.

Discussion

We review for abuse of discretion the district court's order granting summary judgment because Bavishi failed to file an opposition

setting forth any evidence showing a genuine issue for trial.¹ If opposition to a motion for summary judgment does not “set forth specific facts showing that there is a genuine issue for trial,” the district court may enter summary judgment against the party opposing the motion.² However, if the party opposing the motion “cannot for reasons stated present by affidavit facts essential to justify the party’s opposition, the court may . . . order a continuance.”³ DCR 13(3) states that “[i]f the opposing party fails to . . . file an opposition, the district court has the discretion to construe that failure as an admission that the motion is meritorious and a consent to granting the motion.”⁴

In this case, Bavishi’s affidavit opposing the Motel’s motion for summary judgment did not set forth material facts showing that there is a genuine issue for trial. When Bavishi requested more time to oppose the Motel’s motion, the district court continued the matter for two days until the date of calendar call. Bavishi did not request any additional time.⁵

¹King v. Cartlidge, 121 Nev. 926, 926-27, 124 P.3d 1161, 1162 (2005).

²NRCP 56(e).

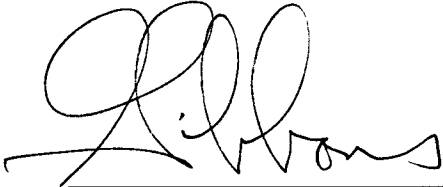
³NRCP 56(f).

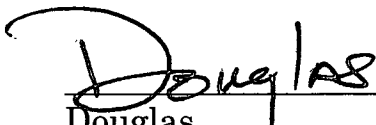
⁴King, 121 Nev. at 927, 124 P.3d at 1162.


⁵The fact that Bavishi might not have had access to a hard copy of his case file does not change our conclusion. The courts cannot postpone their calendars because of a party’s, or its chosen counsel’s, neglect. Bavishi could have raised that issue in a motion pursuant to NRCP 60(b) after the district court entered judgment against him.

Therefore, we cannot conclude that the district court abused its discretion in granting the Motel's motion for summary judgment.

Accordingly, we ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Valorie Vega, District Judge
Shrenik Bavishi
Lincoln, Gustafson & Cercos
Eighth District Court Clerk

⁶Based on our conclusion regarding the motion for summary judgment, Bavishi's contentions regarding the district court's orders granting motions in limine and dismissal need not be addressed.