

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL D.S. EDWARDS,
Appellant,

vs.

CORONET ENTERPRISES, INC., D/B/A
CORONET HOME LOANS, A/K/A
CORONET HOME LOANS MORTGAGE;
AND RONALD F. DAVIS, A/K/A RON
DAVIS,
Respondents.

No. 44426

FILED

JAN 23 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a complaint alleging violations of a federal telephone consumer protection law. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

After his proper person complaint was filed and the matter was assigned to District Judge Valerie Adair, appellant Paul D.S. Edwards moved for the recusal of Judge Adair, based on her having previously dismissed a similar case of his. Both the chief judge and Judge Adair denied Edwards' recusal motion, finding that there was no cause for disqualification.

Meanwhile, respondents Coronet Enterprises and Ronald F. Davis moved to dismiss the action. After hearing the dismissal motion, the court dismissed without prejudice Edwards' complaint for his failures to "file a verified complaint as required under NRCP 11 and EDCR 7.42,"

to state a claim exceeding the jurisdictional threshold, and to state a claim for injunctive relief. Edwards appeals.

Preliminarily, Edwards challenges the propriety of Judge Adair having remained assigned to the matter after he accused her of being biased.¹ Below, he asserted that she had ruled against him in a separate, but similar, case, and that, based on her ruling and remarks in that case, she necessarily had formed preconceived conclusions in this case. As the party alleging impartiality, however, Edwards had the burden of presenting sufficient grounds for Judge Adair's recusal.² Having failed to allege and present any evidence of improper motive or instances of actual bias,³ we conclude that Judge Adair properly remained assigned to the underlying matter.⁴

¹Respondents' argument that Edwards waived this issue on appeal by failing to petition this court for relief is without merit. Cf. Brown v. F.S.L.I.C., 105 Nev. 409, 412, 777 P.2d 361, 363 (1989) (noting that a recusal issue was not properly preserved for appeal when the appellants had not sought recusal in the district court, but nonetheless addressing the issue); see also Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (providing that, generally, interlocutory orders may be challenged within the context of an appeal from the final judgment).

²Sonner v. State, 112 Nev. 1328, 1335, 930 P.2d 707, 712 (1996).

³Id.

⁴See, e.g., NRS 1.230; NCJC, Canon 3E(1)(a) and Commentary Canon 3E(1) (2004); Las Vegas Downtown Redev. Agency v. Hecht, 113 Nev. 644, 649-50, 940 P.2d 134, 137-38 (1997) (holding that disqualification of a judge based on bias toward an attorney is warranted only in rare, extreme circumstances); In re Smith, 317 F.3d 918, 933 (9th Cir. 2002) (providing that, without evidence of strong favoritism or antagonism, recusal was unnecessary when allegations of bias were based on previous adjudications and statements made during settlement

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Edwards' next argument on appeal is that the district court improperly dismissed the action for his admitted failure to verify or acknowledge his signed complaint, because acknowledgement is not required, and if it is required, then he should have been given an opportunity to file an errata or amended complaint.

At the time Edwards filed his complaint, NRCP 11 required that "[a] party who is not represented by an attorney . . . sign his pleading, . . . and . . . acknowledge his pleading."⁵ The failure to do so resulted in a defective complaint, which the district court could strike or set aside, thereby effectively dismissing the action.⁶ Before dismissing a defective complaint, however, the plaintiff had to be "given an opportunity to correct the defect."⁷

Here, respondents, on November 4, 2004, moved to dismiss the complaint for Edwards' failure to comply with NRCP 11 and served the motion that same day. On November 15, 2004, Edwards filed an opposition to the dismissal motion, in which he recognized his "oversight" and indicated that he had filed an "errata" incorporating the acknowledgement "immediately" upon notification.⁸ In the opposition,

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proceedings) (citing Litkey v. United States, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.")).

⁵NRCP 11 (2001) (amended 2004).

⁶Cheek v. Bell, 80 Nev. 244, 247, 391 P.2d 735, 736 (1964).

⁷Id.

⁸While Edwards also maintained that an acknowledgement was not required, but permissive, under EDCR 7.42, he did not address this
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Edwards maintained that a copy of the acknowledgement was on file in the district court. Then, on November 24, 2004, respondents filed a reply in which they pointed out that the court had no errata to the complaint on file.

The district court held a hearing on December 2, 2004, at which it was again brought to Edwards' attention that no errata was on file with the court and that respondents had received no acknowledgement. Edwards then indicated that he would amend the complaint to cure the defect, and stated that the court should allow him to do so.⁹ The court replied that, while it was going to further consider the other asserted grounds for dismissal, and thus would not dismiss the matter immediately, a complaint must be verified (or acknowledged). Although the court indicated that it would later determine whether to allow Edwards to amend the complaint or to just dismiss it, the court's dismissal order was not entered until December 14, 2004, twelve days later. As of December 14, however, Edwards had still not attempted to cure the defect by amending the complaint, moving to amend the complaint, filing an errata, or otherwise.


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argument in light of NRCP 11. He did, however, recognize Nevada decisional law interpreting the former NRCP 11 requirement. Accordingly, it appears that Edwards has no basis for arguing that an acknowledgement was not required under NRCP 11.

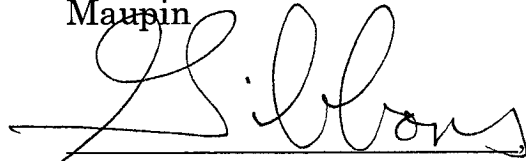
⁹Although Edwards suggested that the acknowledgement "is not a mandatory requirement" unless the court or defendants so requested, in this case, the defendants did request an acknowledgement when they moved to dismiss for lack of one, and the court on December 2 indicated that an acknowledgement was required.

Given that Edwards had a forty-day “opportunity” in which to cure the defect, or at least make some formal attempt to do so, we cannot conclude that the district court abused its discretion when it dismissed the complaint for failure to comply with NRCP 11.¹⁰ Accordingly, we affirm the district court’s order dismissing Edwards’ complaint.¹¹


It is so ORDERED.

 J.

Maupin

 J.

Gibbons

 J.
Hardesty

¹⁰See generally Naimo v. Fleming, 95 Nev. 13, 588 P.2d 1025 (1979) (indicating that the district court has discretion to strike a pleading defective under NRCP 11); cf. Cheek, 80 Nev. 244, 391 P.2d 735 (concluding that the appellant should have been afforded an opportunity to correct a defective pleading before the court granted an ex parte motion of which the appellant had not been notified); In re Eaton Vance Mut. Funds Fee Litigation, 380 F. Supp. 2d 222, 242 (S.D.N.Y. 2005) (dismissing certain claims for defective pleadings when the plaintiffs had notice of the defects and opportunities to cure them), sustained on reconsideration, ___ F. Supp. 2d ___ (2005).

¹¹As the district court properly dismissed the complaint for failure to comply with NRCP 11, we do not reach Edwards’ other arguments on appeal, including those regarding the district court’s jurisdiction over complaints seeking injunctive relief under the federal consumer protection act.

cc: Hon. Valerie Adair, District Judge
Paul D.S. Edwards
Flangas McMillan Law Group, Inc.
Clark County Clerk