

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK ZAFFRON,
Appellant,
vs.
LONGS DRUGS,
Respondent.

No. 45031

FILED

APR 13 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's motion for NRCF 60(b) relief and dismissing appellant's case with prejudice. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Jack Zaffron filed a tort lawsuit against respondent Longs Drugs. As Zaffron's complaint had a probable jury award of less than \$40,000, the case proceeded through the court-annexed arbitration program.¹ The arbitrator found in favor of Longs Drugs, awarding nothing to Zaffron, and thereafter, in a separate order, awarded attorney fees and costs to Longs Drugs.

After the arbitrator entered his initial award, Zaffron filed a timely request with the district court for a trial de novo. Longs Drugs moved to strike Zaffron's trial de novo request under NAR 22, based on Zaffron's alleged failure to participate in good faith during the arbitration proceedings. On December 16, 2004, the district court granted the unopposed motion to strike.

¹NAR 3(A).

Zaffron then filed a motion, purportedly under NRCP 60(b), for relief from the December 16 order striking his trial de novo request. In a March 2, 2005 order, the district court denied Zaffron's motion for relief, entered judgment on the arbitrator's award of attorney fees and costs, and dismissed the case with prejudice. Zaffron has appealed.

On appeal, Zaffron contends that the district court's March 2 order denying his motion for relief and dismissing his case with prejudice operated as an improper "de facto sanction." Consequently, Zaffron asserts that the district court abused its discretion in denying NRCP 60(b) relief and imposing such a severe penalty.

According to Zaffron, the district court's March 2 order dismissing his case with prejudice was improper because the court did not comply with the requirements set forth by this court in Young v. Johnny Ribeiro Building² and Chamberland v. Labarbera.³ Those cases hold that the district court, when entering a sanctioning order that effectively ends a case, must make specific written findings of fact and conclusions of law. Here, however, while the court's orders did not specify any conduct that rose to the level of failed good faith participation, the court noted that Zaffron failed to oppose the motion to strike.

Under EDCR 2.20(b), "[f]ailure of the opposing party to serve and file written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same." As Zaffron failed to oppose the motion to strike, which was supported by a detailed account of his failure to participate in good faith during the arbitration

²106 Nev. 88, 787 P.2d 777 (1990).

³110 Nev. 701, 877 P.2d 523 (1994).

proceedings, he is deemed to have admitted that the allegations of misconduct specified therein are meritorious and to have agreed to the court's striking of his trial de novo request based on that misconduct. Thus, under these circumstances, the district court was not required to separately enter facts supporting its decision to strike.⁴ Additionally, based upon the facts asserted in the motion to strike, we discern no abuse of the district court's discretion in striking the trial de novo request.⁵

With respect to the denial of Zaffron's NRCP 60(b) motion, the district court has broad discretion in deciding whether to set aside a judgment under NRCP 60(b), and we will not disturb that decision absent an abuse of that discretion.⁶ As this court noted in Barry v. Lindner, NRCP 60(b) applies only to final judgments.⁷ Here, however, the district court's December 16 order granting Longs Drugs' motion to strike was an interlocutory order, not a final judgment, as it did not enter judgment on the arbitration award and dispose of all the issues in the case.⁸ As an interlocutory order, the December 16 order was not subject to challenge

⁴Cf. Chamberland, 110 Nev. 701, 877 P.2d 523.

⁵Cf. Gittings v. Hartz, 116 Nev. 386, 996 P.2d 898 (2000); Campbell v. Maestro, 116 Nev. 380, 996 P.2d 412 (2000).

⁶Cook v. Cook, 112 Nev. 179, 912 P.2d 264 (1996).

⁷119 Nev. 661, 669, 81 P.3d 537, 542-43 (2003).

⁸See NAR 18(F) and 19 (as amended, effective January 1, 2005) (describing final judgments in the context of court annexed arbitration awards); Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (clarifying that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney fees and costs).

under NRCP 60(b).⁹ Accordingly, the district court did not abuse its discretion when it denied Zaffron's NRCP 60(b) motion for relief.

To the extent that the district court treated Zaffron's motion as one for reconsideration and examined its merits, the court's conclusion that reconsideration was not warranted because Zaffron's failure to oppose the motion was not due to "any excusable neglect or surprise," is supported by substantial evidence and thus constitutes no abuse of discretion.¹⁰

Finally, since the district court properly struck the trial de novo request after the arbitrator had entered an award in favor of Longs Drugs on the merits of Zaffron's case, all of the issues presented by Zaffron's complaint were finally resolved and the court appropriately dismissed Zaffron's complaint with prejudice.

Accordingly, we affirm the district court's March 2 order dismissing Zaffron's case and entering judgment on the arbitrator's attorney fees and costs award.

It is so ORDERED.

Parraguirre, J.
Parraguirre

Hardesty, J.
Hardesty

Douglas, J.
Douglas

⁹Barry, 119 Nev. at 669, 81 P.3d at 542-43.

¹⁰First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (providing that substantial evidence in that which "a reasonable mind might accept as adequate to support a conclusion" (citing State, Emp. Security v. Hilton Hotels 102 Nev. 606, 608, 729 P.2d 497, 498 (1986))).

cc: Hon. Valerie Adair, District Judge
Carolyn Worrell, Settlement Judge
Neil J. Beller, Ltd.
Jones Vargas/Reno
Eighth District Court Clerk