

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 46329

VIRGINIA PRUSHA, F/K/A VIRGINIA
SALOPEK,
Appellant,
vs.
PETER ELIADES,
Respondent.

FILED

FEB 02 2007

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order striking the answer of the appellant Virginia Prusha and entering a default judgment in favor of the respondent Peter Eliades as a result of Prusha's failure to appear at the calendar call. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge. For the reasons stated below, we affirm.

In February of 2004, Eliades filed a complaint for declaratory and injunctive relief against Prusha. Eliades requested that the district court compel Prusha to produce a contract purportedly signed by Eliades after Prusha gave birth to Eliades's child in 1981. Prusha claimed that the contract entitled her to a portion of Eliades's estate. In his complaint, Eliades further requested the district court to declare the contract revocable and void.

Prusha eventually produced the contract and several related documents with her pretrial disclosures, well after the set deadline for discovery. As a result, the district court continued the trial and awarded discovery sanctions against Prusha in the amount of \$1,500. On September 29, 2005, Eliades notified Prusha via first class mail that a calendar call for the matter was set for October 11, 2005. Prusha acknowledged in her own court filings that she received this notice. Nonetheless, Prusha failed to appear at the scheduled calendar call. As a result, the district court determined that Prusha's failure to appear,

combined with other discovery violations and dilatory behavior, warranted entry of judgment by default pursuant to EDCR Rule 7.60(a)(3).¹

When sanctions are within the power of the district court, this court will not reverse the imposed sanctions absent a showing of abuse of discretion.² Written notice of default is not required when the default is imposed as a sanction.³ However, when a district court imposes sanctions in the form of default or dismissal with prejudice, this court performs a slightly heightened review, requiring the sanction to be supported by “an express, careful and preferably written explanation of the [district] court’s analysis of the pertinent factors.”⁴ Pertinent factors include the degree of willfulness of the offending party, the severity of the sanction in relation to the offense, whether the sanction unfairly penalizes a party for attorney misconduct, and the need to deter the parties and future litigants from similar abuses.⁵

In this case, the imposed sanction was clearly within the power of the district court, as EDCR 7.60(a)(3) allows entry of judgment by default when a party fails to appear at a calendar call. The district court detailed the basis for its decision in a written order, finding that Prusha

¹EDCR 7.60(a) provides a list of sanctions available when a party fails to appear at a calendar call, hearing, pretrial conference, or at trial. These sanctions include striking of the answer and entry of judgment by default. EDCR 7.60(a)(3).

²Young v. Johnny Ribeiro Building, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990); see also Durango Fire Protection v. Troncoso, 120 Nev. 658, 662, 98 P.3d 691, 693 (2004).

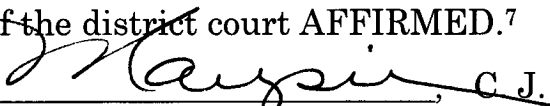
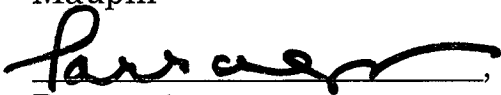
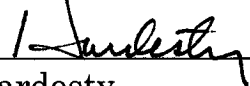
³Durango, 120 Nev. at 662, 98 P.3d at 693.

⁴Young, 106 Nev. at 93, 787 P.2d at 780.

⁵Id.

had proper notice of the calendar call and that her failure to appear was not the fault of her attorney, as Prusha was representing herself in proper person. The district court also determined that the severity of the sanction was appropriate given Prusha's prior dilatory behavior, including her suppression of documents until after the discovery deadline, her failure to respond to Eliades's requests for admission in a timely manner, her failure to give deposition testimony despite receiving deposition notices on three separate occasions, and her general history of abuse of the judicial system, which the district court outlined in its order. Given these findings, we conclude that the district court did not abuse its discretion in entering a default judgment.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


Maupin, C.J.
Maupin

Parraguirre, J.
Parraguirre

Hardesty, J.
Hardesty

⁶We have also reviewed Prusha's other claims on appeal and in her supplemental filing on November 27, 2006, including those claims regarding destruction of evidence, newly discovered evidence, civil rights violations, personal injury and fraud, and conclude that these claims either lack merit or are not appropriate for appellate review. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981) (noting that this court cannot consider on appeal matters not properly appearing in the district court record). We also reject Prusha's claim that her inability to attach documents to her proper person appeal statement violates her constitutional rights, as this court has received and reviewed the entire district court record on appeal.

⁷We deny appellant's March 6, 2006, request for transcripts, as transcripts are not necessary for resolving this appeal.

cc: Eighth Judicial District Court Dept. 18, District Judge
Virginia Prusha
Solomon Dwiggin & Freer
Eighth District Court Clerk