

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGELA CAVOSIE AND CALVIN
STEVENS,
Appellants,

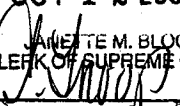
vs.

ICON HEALTH & FITNESS; BOULDER
PALM, LLC; AND SEARS ROEBUCK
AND COMPANY,
Respondents.

No. 46668

FILED

OCT 12 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion to strike appellants' request for trial de novo and entering judgment on a court annexed arbitration award. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

This appeal originates from a personal injury action filed by appellants Angela Cavosie and Calvin Stevens, which was placed into the mandatory court annexed arbitration program. Before the arbitration commenced, Cavosie apparently discovered that her injuries were more severe than originally thought and as a result, her claimed damages would exceed the program's \$40,000 maximum award.¹ Cavosie and Stevens were represented by the same attorney. It appears that

¹The cap on awards was raised to \$50,000 effective January 1, 2007. See NAR 3 and 16 (amended effective January 1, 2007). Because the arbitration in this case took place before the amendment took effect, the \$40,000 cap applied.

appellants' counsel mistakenly believed that she could not remove the case from the court annexed arbitration program unless both her clients' injuries exceeded the maximum award.² Thus, because Stevens' claimed damages were less than \$40,000, appellants' counsel never sought to exempt the case from the program. Instead, appellants' counsel sent a letter to respondents' attorneys expressing her intent to request a trial de novo regardless of the result of the arbitration, based on the increase in Cavosie's claimed damages. The letter further proposed that the parties stipulate to enter the short trial program as a means of resolving the case.

Despite the offer to stipulate to a short trial, the case remained in the arbitration program. The arbitrator ultimately found in favor of respondents, awarding nothing to appellants.³ Appellants then filed a request for trial de novo, which respondents moved to strike, based on their contention that appellants failed to participate in the arbitration in good faith under NAR 22(A) since they had expressed an intent to request a trial de novo regardless of the arbitration's result. The district court granted the motion to strike and entered judgment on the arbitration award.

²Under NAR 3(E), when one party's claims qualify for exemption from the court annexed arbitration program, any party whose claims qualify for participation in the program may request that his or her claims also be exempted from the program and included in the district court action.

³The arbitrator's award also resolved various cross claims, counter claims, and third party claims brought by the parties.

In rendering its decision, the district court found that the letter sent by appellants' counsel documented appellants' intention to seek a trial de novo regardless of the arbitration's outcome. On that basis, the district court concluded that appellants failed to participate in good faith in the arbitration process.

This court reviews a district court's order striking a request for trial de novo for an abuse of discretion.⁴ NAR 22(A) provides that "[t]he failure of a party or an attorney to either prosecute or defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo." In Casino Properties, Inc. v. Andrews, this court explained that good faith requires meaningful participation in the arbitration proceedings, and that when parties fail to participate in the arbitration process in a meaningful manner the purposes of mandatory arbitration are compromised.⁵ Casino Properties relied on a federal district court case, Gilling v. Eastern Airlines, Inc.,⁶ for this proposition. But, this court did not adopt Gilling's statement that, when a party to an arbitration intends to request a trial de novo regardless of the outcome, the purposes of the arbitration proceeding are thwarted.⁷ Thus, the district court's reliance on Gilling, in this case, was misplaced.

⁴Gittings v. Hartz, 116 Nev. 386, 996 P.2d 898 (2000).

⁵Casino Properties v. Andrews, 112 Nev. 132, 135, 911 P.2d 1181, 1182-83 (1996) (citing Gilling v. Eastern Airlines, Inc., 680 F. Supp. 169 (D N.J. 1988)).

⁶680 F. Supp. 169 (D N.J. 1988).

⁷Gilling, 680 F. Supp at 169-170.

Since Casino Properties was decided, this court has clarified that even extremely limited participation in the arbitration process by a party fails to demonstrate sufficient bad faith to waive the party's right to a trial de novo under NAR 22(A).⁸

Based on the record, appellants' counsel mistakenly believed that she could not remove the case from arbitration and sought to move the case into the short trial program. Although appellants' trial counsel failed to familiarize herself with the Nevada Arbitration Rules, the letter demonstrates a good faith effort to avoid wasting time and resources by proposing an alternative to the arbitration. Indeed, under the circumstances in this case, appellants' counsel's letter is irrelevant for the purposes of determining whether appellants prosecuted their case in good faith during the arbitration proceedings.

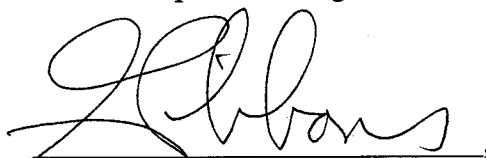
In moving to strike appellants' request for trial de novo, respondents relied solely on the letter to support their contention that appellants failed to prosecute their case in good faith. Respondents made no arguments to the district court with regard to appellants' level of actual participation in the arbitration process. Moreover, nothing in the record indicates that appellants failed to prosecute their case in good faith during the arbitration proceedings. As set forth in Gittings and Campbell, even very limited participation will generally suffice as good faith participation.⁹

⁸See Gittings, 116 Nev. at 391-94, 996 P.2d at 901-03; Campbell v. Maestro, 116 Nev. 380, 996 P.2d 412 (2000).

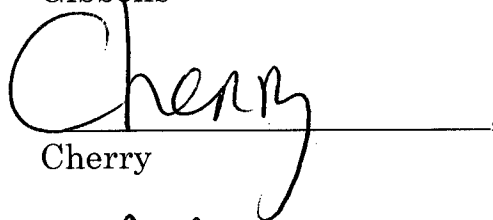
⁹Gittings, 116 Nev. 386, 996 P.2d 898; Campbell, 116 Nev. 380, 996 P.2d 412.

We therefore conclude that the district court abused its discretion in striking appellants' request for a trial de novo and entering judgment on the arbitration award. Accordingly, we reverse the district court's order and remand this matter for further proceedings.

It is so ORDERED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

cc: Hon. Michelle Leavitt, District Judge
William C. Turner, Settlement Judge
Lewis & Roca, LLP
DaCorsi & Associates, P.C.
Atkin Winner & Sherrod
Bremer Whyte Brown & O'Meara, LLP
Olson, Cannon, Gormley & Desruisseaux
Eighth District Court Clerk