

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES T. PARKER, A/K/A JUSTIN
TRANZ, INDIVIDUALLY; AND THE
REKRAP GROUP, A NEVADA
CORPORATION,
Appellants,
vs.
MADELINE SENKAL,
Respondent.

No. 48733

FILED

MAY 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a breach of contract action. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

In 2000, respondent Madeline Senkal filed a district court complaint against appellant James T. Parker, a/k/a Justin Tranz, and his corporation, appellant The Rekrap Group.¹ According to the amended complaint, Senkal loaned Parker \$150,000 to conduct and promote his entertainment business and acted as his business manager for almost a year. In exchange, the complaint asserts, Senkal was to receive interest

¹Parker's limited liability company, Tell Me Now LLC, was added as a defendant in the amended complaint and judgment was entered against it. Tell Me Now did not appeal.

on the loan, an annual salary of \$60,000, and 15 percent of all gross amounts earned by Parker. Because Parker failed to carry out his part of the bargain, the complaint alleged, Senkal was entitled to compensatory and punitive damages and other relief, based on claims for breach of oral contract, breach of the implied covenant of good faith and fair dealing, fraud/misrepresentation, conversion, alter ego, and fraudulent conveyance.

Parker filed an answer denying the allegations, and after six continuances, the trial was scheduled for July 5, 2007. Although Parker moved to again continue trial, based on his stepsister's death, the court denied the motion, instead agreeing to take Parker's testimony out of turn so that he still would be able to attend the funeral. Senkal withdrew her request for a jury trial, and a bench trial was held on July 5.

Thereafter, the district court entered a judgment for Senkal, finding that the parties had entered into an oral agreement for Senkal to be Parker's business manager and that her efforts had made him successful. The court further found that Senkal had not gifted the loaned amount to Parker, that Parker had engaged in fraud, and that The Rekrap Group and Tell Me Now were Parker's alter egos. Consequently, the court held Parker and both companies jointly and severally liable for Senkal's damages, awarding her \$289,794 in compensatory damages and \$579,588 in punitive damages, along with pre- and post-judgment interest.

Parker and The Rekrap Group have appealed the district court's judgment. On appeal, they contend that the district court abused its discretion in (1) not allowing persons listed in his interrogatory

answers to testify as witnesses, (2) refusing to continue the trial, and (3) dismissing the jury and going forward with a bench trial.

The standard of review on appeal is whether the district court abused its discretion in its decisions regarding witnesses,² continuances,³ jury trial waivers,⁴ and discovery sanctions.⁵ The district court's conclusions of law, however, are reviewed de novo.⁶

Here, having reviewed the parties' briefs and the appendix, we determine that the district court did not abuse its discretion. First, the district court refused to allow Parker to call witnesses as a sanction for Parker's failure to timely provide proper witness lists, as set forth under NRCP 16.1(b)(5). Parker's responses to the interrogatories were inadequate under that rule, as they did not identify the potential witnesses' addresses, and Parker's later disclosures were untimely and did not provide general descriptions of the subject matters of the potential witnesses' testimonies, also as required by NRCP 16.1(b)(5). Accordingly,

²Barry v. Lindner, 119 Nev. 661, 81 P.3d 537 (2003).

³Bongiovi v. Sullivan, 122 Nev. 556, ___, 138 P.3d 433, 444 (2006).

⁴Kohlsaatt v. Kohlsaatt, 62 Nev. 485, 488, 155 P.2d 474, 475 (1945).

⁵Clark Cty. Sch. Dist. v. Richardson Constr., 123 Nev. ___, ___, 168 P.3d 87, 93 (2007).

⁶Bedore v. Familian, 122 Nev. 5, 9-10, 125 P.3d 1168, 1171 (2006).

the district court did not abuse its discretion in sanctioning Parker by excluding improperly or untimely identified witnesses' testimonies.⁷

Second, the district court did not abuse its discretion in denying Parker's request for a seventh trial continuance, as the court agreed that Parker could testify out of turn, which would have allowed him to attend his stepsister's funeral.⁸

Third, the district court did not abuse its discretion in going forward with a bench trial, since Parker voluntarily chose to leave the proceedings and authorized his attorney to continue without him. Further, Parker made no request for a jury trial and raised no objection to proceeding by bench trial after Senkal had withdrawn her request for a jury trial and the court was in the process of dismissing the jury. Thus, Parker impliedly consented and, as no objection was made, the district court did not abuse its discretion proceeding with the bench trial.

Finally, Senkal has requested that Parker be sanctioned for filing a frivolous appeal.⁹ Although we agree that this appeal at least

⁷NRCP 16.1(e)(3)(B); Clark Cty. Sch. Dist., 123 Nev. at ___, 168 P.3d at 93.


⁸Bongiovi, 122 Nev. at ___, 138 P.2d at 444; Dodd v. Cowgill, 85 Nev. 705, 711-13, 463 P.2d 482, 486-87 (1969).

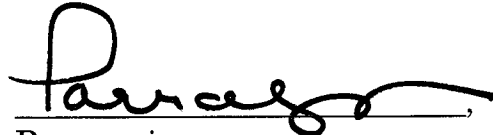
⁹See NRAP 38(a) and (b); Works v. Kuhn, 103 Nev. 65, 69, 732 P.2d 1373, 1376 (1987) (imposing a \$1500 sanction for frivolous appeal), disapproved on other grounds by Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 35 P.3d 964 (2001); Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987) (imposing a \$2500 sanction for reprehensible conduct and delay tactics).

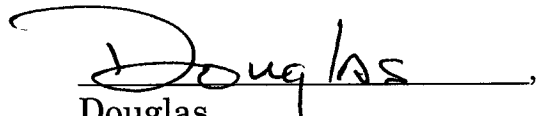
bordered on frivolity, we decline to impose monetary sanctions at this time.

As we perceive no abuse of discretion in any of the district court's challenged rulings, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Parraguirre

 J.
Douglas

cc: Hon. Jackie Glass, District Judge
William F. Buchanan, Settlement Judge
Boggess & Harker, Las Vegas
E. Brent Bryson, Ltd., Las Vegas
Eighth District Court Clerk