IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN BLANCHARD,
Appellant,
vs.
SIERRA TRUCK & TRANSPORT, INC., D/B/A CITY AUTO TOWING,
Respondent.

No. 48789

FILED

JUN 08 2007

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

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order granting respondent's motion to strike appellant's trial de novo request and entering judgment on the arbitration award. Second Judicial District Court, Washoe County; Bridget Robb Peck, Judge.

According to the record, in October 2003, respondent Sierra Truck & Transport, Inc., towed a vehicle belonging to appellant Alan Blanchard. Shortly thereafter, Blanchard filed a complaint in the justice's court against the owners of the property from which the vehicle was towed, alleging that the vehicle had been towed illegally. The justice's court found that the vehicle had been legally towed.

Meanwhile, Blanchard signed the title of his vehicle over to Sierra Truck & Transport to stop the storage fees from further accruing. The vehicle was sold at public auction, leaving a total remaining balance of $1,510 for the storage fees. After receiving a collection notice concerning the outstanding balance, Blanchard filed a district court complaint, in proper person, against Sierra Truck & Transport, Inc., expressly asserting claims of unfair business practices and breach of contract, and alleging conduct sounding in negligence, concerning the towing, storage, and sale of his vehicle. Sierra Truck & Transport filed

counterclaims for statutory towing and storage fees, breach of contract, and quantum meruit. As Blanchard's case had a probable jury award of less than $40,000, the case proceeded through the court-annexed arbitration program.[1]

At the close of the arbitration hearing, the arbitrator found in favor of Sierra Truck & Transport and awarded it towing and storage fees in the amount of $1,510. The arbitrator also found that "Blanchard failed to prosecute this action in good faith having previously had a Justice Court ruling of his vehicle having been lawfully towed," and he recommended that Blanchard be denied a trial de novo.[2]

After the arbitrator entered the award, Blanchard filed a timely request with the district court for a trial de novo. Sierra Truck &

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[1]NAR 3(A). The rule has since been amended, and the former rule applies. Notwithstanding, the new rule is nearly identical except that it increases the maximum threshold for civil cases subject to court-annexed are from $40,000 to $50,000.

[2]The arbitrator determined that Blanchard was not entitled to a trial de novo even after expressing to Blanchard on several occasions that a trial de novo would be available in the event he did not like the outcome of the court-annexed arbitration. In his decision, the arbitrator purported to deny Blanchard his trial de novo right.

We note that, under NAR 18(A) and (D), any party may request a trial de novo within thirty days of the arbitration award's service, and any party who does so is entitled to a trial de novo. Under NAR 18(D) and (F), upon a timely-filed trial de novo request, the case is to proceed in the district court, unless NAR 22 sanctions are applied. As NAR 22 sanctions thus are available only once the matter is before the district court, it is up to the district court to determine, ultimately, whether such sanctions are warranted, not the arbitrator, although the district court may consider the arbitrator's recommendation in resolving a motion to strike the trial de novo request.

Transport moved to strike Blanchard's trial de novo request, based on Blanchard's alleged failure to prosecute his action in good faith. Blanchard opposed Sierra Truck & Transport's motion to strike.

On December 18, 2006, the district court entered an order striking Blanchard's trial de novo request and entering judgment on the arbitration award. The district court made several findings with respect to striking the request, including that Blanchard had failed to disclose the previous justice's court lawsuit regarding the unlawful towing of his vehicle, that Blanchard's claims were not well grounded in fact or law, and that it was improper for Blanchard to use judicial resources and cause the resulting expenses to Sierra Truck & Transport in order to pursue his "frivolous and unsupportable" claims. Blanchard has appealed. Sierra Truck & Transport filed a response to Blanchard's civil appeal statement, as directed, and Blanchard has filed a reply.

This court reviews orders striking trial de novo requests for abuse of discretion.[3] Under NAR 22(A), a party waives his right to a trial de novo if he fails to prosecute his case in good faith during court-annexed arbitration proceedings. We have equated "good faith" prosecution in arbitration proceedings with "meaningful participation."[4] "Meaningful participation" is not lacking, however, simply because parties differ as to the most effective means of presenting their cases during the arbitration

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[3]Gittings v. Hartz, 116 Nev. 386, 391, 996 P.2d 898, 901 (2000).

[4]Casino Properties, Inc. v. Andrews, 112 Nev. 132, 135, 911 P.2d 1181, 1182 (1996) (holding that a party that compromises the purposes of arbitration by repeatedly failing to provide requested information or timely disclose that that information did not exist failed to meaningfully participate, as it hindered the opposing party's ability to depose the proper parties and form an adequate arbitration strategy).

proceedings.[5] Accordingly, we have pointed out that, when a party actively engaged in the process—for example, by cross-examining witnesses and disputing allegations—that party meaningfully participated, even though she did not conduct discovery, present extensive evidence, or call witnesses.[6]

Here, the record reveals that Blanchard conducted discovery, participated in telephonic conferences, subpoenaed witnesses, was present at the arbitration proceeding, made opening and closing statements, submitted evidence, and cross-examined witnesses. Thus, under Nevada decisional law, it appears that Blanchard meaningfully participated in the arbitration proceeding. The findings set forth in the district court's order do not mention this participation by Blanchard, however, but instead focus on the fact that Blanchard had previously litigated the legality of towing his vehicle, and whether his claims had merit.

Although such findings could be relevant in determining a motion to strike a trial de novo request, the district court abused its discretion in concluding that this extreme sanction was warranted here.[7] Blanchard's justice's court action involved a different issue, illegal towing, against different parties, the property owners who had the vehicle towed. Consequently, Blanchard's alleged failure to timely disclose the justice's court's "legal tow" determination does not conclusively show "bad faith"

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[5]Gittings, 116 Nev. at 391, 996 P.2d at 901.

[6]Campbell v. Maestro, 116 Nev. 380, 385, 996 P.2d 412, 415 (2000); Gittings 116 Nev. at 389, 392-93, 996 P.2d at 899, 901-02; Chamberland v. Labarbera, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994).

[7]See NAR 22(B); Campbell 116 Nev. at 384-85, 996 P.2d at 415.

with respect to his unfair business practices and breach of contract claims, or any negligence claim against Sierra Truck & Transport or, moreover, support the striking of Blanchard's trial de novo request for a lack of meaningful participation in the arbitration proceedings.

Further, to the extent that the district court determined that Blanchard's claims were "not grounded in fact or law" and were brought for improper purposes, the district court's order striking the trial de novo request was akin to an NRCP 11 sanction dismissing a complaint for frivolity.[8] But, while Sierra Truck & Transport argues that the district court's sanction is appropriate under NRCP 11, the district court did not comply with that rule's terms, which require the district court to "describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed."[9]

Here, the district court's findings in support of its order merely state, summarily, that Blanchard's claims are "not well grounded in fact or law." This summary language is insufficient to meet the terms of NRCP 11, and thus, as it is not clear that Blanchard's claims are completely baseless, the district court abused its discretion in granting the motion to strike Blanchard's trial de novo request.

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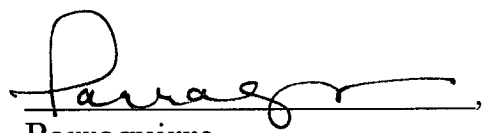
[8]See NRCP 11(b); Jordan v. State, Dep't of Motor Vehicles, 121 Nev. 44, 58, 110 P.3d 30, 41 (2005) (noting that NRCP 11 dismissal sanctions are appropriate when the court determines that a complaint is frivolous, meaning it lacks "an arguable basis either in law or in fact'" (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989))).

[9]See also Jordan, 121 Nev. at 58, 110 P.3d at 41 (noting that NRCP 11 dismissals must comply with NRCP 11's terms); NAR 18(F) (providing that the district court, when striking a trial de novo request, "shall explain its reasons in writing").

Accordingly, the district court's December 18 order striking the trial de novo request and entering judgment on the arbitration award is reversed, and we remand this matter for further proceedings in a trial de novo. Upon remand, the district court is free to consider any motions to dismiss under NRCP 11 or any other rule. We note, however, that a dismissal under NRCP 11 is an "extreme action, and if the complaint can be amended to cure any apparent defects, [Blanchard] should be permitted to do so."[10]

It is so ORDERED.

_____, C. J.
Maupin



_____, J.
Parraguirre

_____, J.
Saitta

cc: Second Judicial District Court Dept. 7, District Judge
John W. Hawkins, Arbitrator
Alan Blanchard
Bader & Ryan
Washoe District Court Clerk

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[10]Jordan, 121 Nev. at 58, 110 P.3d at 41.