

IN THE SUPREME COURT OF THE STATE OF NEVADA

HELEN FRANCES MAYKUT,

Appellant,

vs.

CARRIE TRENNER,

Respondent.

No. 34582

**FILED**

DEC 11 2000

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

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court granting a motion to strike a request for a trial de novo.

This court has jurisdiction to review the decision of the district court to strike a request for a trial de novo, made by a participant in mandatory arbitration, as an appeal from a final judgment of the district court. See Chamberland v. Labarbera, 110 Nev. 701, 704, 877 P.2d 523, 524 (1994); see also NRAP 3A(b). The standard of review on appeal is abuse of discretion. See Casino Properties, Inc. v. Andrews, 112 Nev. 132, 135-36, 911 P.2d 1181, 1182-83 (1996); Chamberland at 705, 877 P.2d at 525.

Appellant Helen Maykut contends that it was an abuse of discretion for the district court to strike her request for a trial de novo based upon her failure to seek an independent medical examination or to contest liability and procure the testimony of a medical expert at the arbitration hearing. Maykut argues that she participated in good faith in pre-arbitration discovery as well as at the arbitration hearing itself.

Pursuant to NAR 22, the district court may sanction an arbitration participant by striking a request for a trial de novo if the participant has not acted in good faith.

Specifically, "[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." NAR 22(A); see also Chamberland, 110 Nev. at 704, 877 P.2d at 524.

We conclude that the district court erroneously determined that Maykut's failure to seek an independent medical examination or to procure the testimony of a medical expert at the arbitration hearing amounted to bad faith. "Mere failure of a party to attend or call witnesses in an arbitration hearing does not amount to bad faith or a lack of meaningful participation." Gittings v. Hartz, 116 Nev. \_\_\_\_, \_\_\_\_, 996 P.2d 898, 902 (2000) (citing Chamberland, 110 Nev. at 705, 877 P.2d at 525).

In this case, Maykut propounded written discovery and took Trenner's deposition. She also conducted custodian-of-records depositions of Trenner's medical providers and prepared an arbitration brief. Although the discovery order did permit Maykut to schedule an independent medical examination of Trenner, it stated that "[Maykut] may schedule an independent medical examination in the discretion of defense counsel." Additionally, all parties concede that defense counsel cross-examined Trenner, and this court has stated that effective cross-examination may be sufficient to point out discrepancies in a person's claim of injury without expert medical testimony, or without presentation of "countervailing medical evidence." See id. The record in this case does not support a finding that cross-examination was not an appropriate method of contesting damages nor that an IME was necessary to effectively present Maykut's position on the pre-existing injuries.

Accordingly, we reverse the order of the district court striking Maykut's request for a trial de novo and remand this matter to the district court for further proceedings.

Rose, C.J.

Young, J.

Becker, J.

cc: Hon. A. Lee Gates, Chief District Judge  
Eglet & Prince  
Law Offices of Robert A. Weaver  
Clark County Clerk

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O R D E R

Cause appearing, oral argument will not be scheduled and this appeal shall stand submitted for decision to the Southern Nevada Panel as of the date of this order on the briefs filed herein. See NRAP 34(f)(1).

It is so ORDERED.

*Rau*

\_\_\_\_\_, C.J.

cc: Eglet Prince  
Law Offices of Robert A. Weaver