

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARVIN LEROY ALEXANDER, JR.,

No. 34608

Appellant,

vs.

KERRIE LEE SARVEY,

Respondent.

FILED

AUG 9 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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 examine 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.¹ The standard of review on appeal is abuse of discretion.²

Appellant Marvin Leroy Alexander Jr. (Alexander) contends that the district court abused its discretion by striking his request for a trial de novo because he filed a timely request for a trial de novo and paid the arbitrator's bill within the statutory period. Alexander argues that striking his request for a trial de novo is a disproportionately severe sanction for his inadvertent failure to include the proper certification of payment in his request.

¹Chamberland v. LaBarbera, 110 Nev. 701, 704, 877 P.2d 523, 524 (1994); see also NAR 19; NRAP 3A(b)(1).

²Casino Properties, Inc. v. Andrews, 112 Nev. 132, 135-36, 911 P.2d 1182-83 (1996); Chamberland, 110 Nev. at 705, 877 P.2d at 525.

The Nevada Constitution provides a litigant with the right to a jury trial in civil proceedings.³ However, this right can be waived by various means prescribed by law. One of those means is Nevada Arbitration Rule 18 (NAR 18). NAR 18 permits the district court to sanction an arbitration participant by striking a request for a trial de novo if that participant has failed to timely pay the arbitrator's bill. Specifically, "[a]ny party who has failed to pay the arbitrator's bill in accordance with this rule shall be deemed to have waived the right to a trial de novo."⁴

In this case, the district court granted the motion to strike Alexander's request for a trial de novo because Alexander failed to include the certification of payment required by NAR 18(a) in his request. The district court determined that the certification requirement was jurisdictional. Pursuant to NAR 18(b), the thirty-day filing requirement for a request for a trial de novo is jurisdictional.⁵ However, the certification requirement is not jurisdictional and thus, the district court's determination was erroneous. Although the failure to include the certification of payment required by NAR 18(a) in a request for a trial de novo may be the result of a clerical oversight, it may also be that the arbitrator's bill was not timely paid. In this case, the record submitted to this court by Alexander does not indicate that Alexander timely paid the arbitrator's bill. Thus, it can be reasonably inferred that the district court determined that Alexander did not include the proper certification in his request because he did not

³Nev. Const. art. 1, § 3.

⁴NAR 18(c).


⁵NAR 18(b).

timely pay the arbitrator's bill. Failure to pay the arbitrator's bill in a timely fashion constitutes sufficient grounds for striking a request for a trial de novo. Accordingly, we conclude that the district court did not abuse its discretion by striking Alexander's request for a trial de novo.


AFFIRMED.



Young J.



Leavitt J.



Becker J.

cc: Lee Gates, Chief District Judge
Edwards, Hale, Sturman, Atkins & Cushing, Ltd.
Benson, Bertoldo & Baker
Clark County Clerk