

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARL E. JOHNSON AND RONALD R.
MOYES,

No. 34680

Appellants,

vs.

JOHN A. THOMPSON,

Respondent.

FILED

JUL 11 2001

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 striking a request for trial de novo. We conclude that the district court erred in striking the trial de novo request because appellants' conduct during the arbitration proceedings did not rise to the level of failed good faith participation. We therefore reverse the district court's order and remand this matter for further proceedings.

Respondent John A. Thompson filed a complaint for personal injuries arising from an automobile accident. The complaint alleged, inter alia, that appellant Carl E. Johnson was the driver of a vehicle, owned by appellant Ronald R. Moyes, which struck Thompson's vehicle and caused him injuries. Appellants answered the complaint, and the parties proceeded to the court-annexed arbitration program.

The court appointed an arbitrator. An early arbitration conference was held and attended by the parties' counsel. The case then proceeded through discovery, during which appellants took Thompson's deposition.

The arbitration hearing was conducted on July 1, 1997. At the hearing, appellants called an accident reconstructionist to testify as to the relative speeds of the vehicles. The arbitrator concluded that Johnson was negligent

and awarded Thompson \$7,595.00. The arbitrator did not find Moyes liable to Thompson.

Following issuance of the written arbitration award in the later part of July 1997, appellants filed a timely request for trial de novo on August 5, 1997. Thompson, in May of 1999, filed a motion to strike the request for trial de novo. Thompson's motion to strike argued that appellants failed to participate in the arbitration in good faith as required by NAR 22. Specifically, Thompson argued that appellants failed to present any competent evidence disputing liability or the necessity of Thompson's medical treatment.

Thompson also argued that appellants' insurer, Allstate Insurance Company, had an institutional practice of requesting trials de novo, thus evidencing their lack of "good faith" participation. In support of this claim, Thompson submitted a list of thirty-six cases in which Allstate allegedly sought trials de novo.

The district court granted Thompson's motion. The district court's June 29, 1999 order contains nine findings of fact and four conclusions of law. Included in the findings of fact were the following relevant statements: (1) "At said hearing, liability was not disputed by the Defendants"; (2) "At said hearing Defendants failed to present any reports, affidavits or statements to rebut the reasonableness and necessity of the medical treatment received by the Plaintiff"; and (3) "At said hearing, Defendants failed to present any witnesses to rebut the reasonableness and necessity of medical treatment received by the Plaintiff." The district court, in its conclusions of law, also stated in relevant part:

Defendants failed to participate in good faith and with meaningful participation at the arbitration hearing as required by

Casino Properties, Inc. v. Andrews, 112 Nev. 132, 911 P.2d 1181 (1996) [,] by their failure, at any time during the arbitration of this case, to present any exhibits, witnesses or other evidence to challenge liability or the medical treatment and care received by Plaintiff.

Following the issuance of the district court's order striking the request for trial de novo, appellants timely filed their notice of appeal.¹

The purpose of Nevada's mandatory, non-binding, court-annexed arbitration program "is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters."² Arbitration hearings are intended to be informal, expeditious, and consistent with the purposes and intent of the arbitration rules.³

A party to the court-annexed arbitration program has a right to a trial de novo if he or she requests it within thirty days after the arbitration award is served.⁴ The failure of the party, however, "to either prosecute or defend a case in good faith during the arbitration proceedings . . . constitute[s] a waiver of the right to a trial de novo."⁵ This court reviews an order granting a motion to strike a request for trial de novo for abuse of discretion.⁶

¹Whereas the arbitrator did not find Moyes liable to Thompson, the district court's June 29, 1999 order entered judgment in favor of Thompson against both Johnson and Moyes for \$7,595.00, together with costs of \$259.40 and prejudgment interest. It is not readily apparent why the district court's order imposed judgment against both appellants, when the written arbitration award did not.

²NAR 2 (A).

³NAR 2 (D).

⁴See NAR 18.

⁵NAR 22 (A).

⁶See Casino Properties, Inc. v. Andrews, 112 Nev. 132, 911 P.2d 1181 (1996).

This court has held that "good faith" participation is congruent with "meaningful participation."⁷ There is no single determinative factor when considering good faith; it is the totality of circumstances during the arbitration process that the district court must balance before granting a motion to strike a request for trial de novo.⁸

Additionally, not only must the district court consider the totality of circumstances, its order striking a trial de novo request must describe what type of conduct was at issue and, where necessary, how that conduct rose to the level of failed good faith participation.⁹

Here, the district court struck the request for trial de novo because Johnson and Moyes failed to contest liability and failed to present competent medical evidence to controvert Thompson's evidence. We conclude that the district court erred in striking the request for trial de novo.

First, as pointed out in Gittings v. Hartz, the failure to contest liability does not necessarily constitute a lack of good-faith participation by the defendant who requested a trial de novo.¹⁰ We note that Gittings was never intended to be read as a formulaic checklist of "do's and

⁷Id. at Nev. at 135, 911 P.2d at 1182-83.

⁸See Campbell v. Maestro, 116 Nev. 380, 385-86, 996 P.2d 412, 415 (2000) (listing a variety of factors which may be relevant to whether a party participated in good faith); Gittings v. Hartz, 116 Nev. 386, 390-93, 996 P.2d 898, 901-03 (2000) (suggesting that a number of factors, although not supportive of the district court's order striking a trial de novo request in that case, could be considered by a trial court in striking a trial de novo request).

⁹See Chamberland v. Labarbera, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994) (remarking that the record on appeal in arbitration cases is often scant, making review in this court extremely difficult).

¹⁰See Gittings, 116 Nev. at 392, 996 P.2d at 902.

don'ts." The district court is authorized to strike a request for trial de novo when such an action is warranted based on the totality of circumstances presented; this case does not present such an opportunity.

Second, a party's decision not to present countervailing medical evidence at the arbitration does not categorically support an order striking a request for trial de novo. As this court observed more generally in Gittings:¹¹

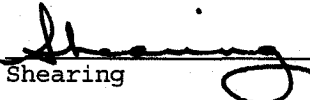
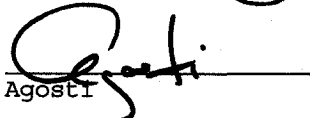

There may be many valid reasons why a party would not wish to expend money at the arbitration stage of a case on medical experts. Effective cross-examination may be sufficient to point out discrepancies in a person's claim of injury without such testimony, or without presentation of "countervailing medical evidence."

Johnson and Moyes, as defendants, were not under an affirmative obligation to produce evidence to overcome the initial burden of proof, as was Thompson. Johnson and Moyes' counsel was entitled to cross-examine Thompson and undermine his evidence, and the decision not to present "evidence to challenge liability or medical treatment" does not support the district court's order striking the request for trial de novo.

In addition, it appears from the record that Johnson and Moyes engaged in meaningful, albeit limited, discovery by deposing Thompson and propounding interrogatories. Moreover, they did attempt to contest the extent of Thompson's damages. Johnson and Moyes' theory of the case was that the vehicle speeds involved in the accident were such that Thompson could not have sustained the injuries of which he complained as a result of the underlying collision.

¹¹Id.

We therefore conclude that the district court erred in striking the request for trial de novo. Accordingly, we ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further proceedings consistent with this order.


Shearing J.

Agosti J.

Rose J.

cc: Hon. Allan R. Earl, District Judge
Laura M. Payne & Associates
George T. Bochanis, Ltd.
Clark County Clerk