

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUARDO LICON,
Appellant,
vs.
KELLEY RILEY,
Respondent.

No. 53211

FILED

SEP 09 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court default judgment in a tort action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

This case involves an action for damages based on appellant's sexual assault of respondent. Appellant failed to file an appearance in district court and a default was entered. At the prove-up hearing for damages, appellant participated by phone. The district court entered a default judgment in favor of respondent and awarded damages.

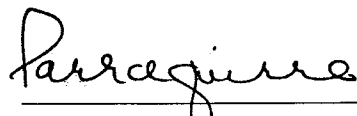
On appeal, appellant raises two arguments. First, appellant argues that the default judgment should be reversed because the University Medical Center (UMC), where appellant was an employee when the alleged sexual assault occurred, and Clark County had an obligation to represent him but failed to do so. Second, appellant argues that the judgment should be reversed because he was not the person who sexually assaulted respondent. We conclude that appellant's arguments lack merit, and accordingly we affirm the district court's judgment.

In regard to appellant's claim that the default judgment was improper because UMC and Clark County were obligated to represent him, to the extent that appellant relies on NRS 41.0339 to support this proposition, the record does not show that appellant met the requirements to receive representation. In addition, the record on appeal does not contain and appellant has not provided any documentation or other


evidence to support this claim outside NRS 41.0339. Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981) (stating that appellant bears the burden to make an adequate appellate record). Furthermore, the record does not demonstrate that the appellant raised this argument in the district court, even though he had an opportunity to do so when he appeared at the damages hearing by phone, and therefore we need not consider it on appeal. Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997); Carson Ready Mix, 97 Nev. 474, 635 P.2d 276. As a result, the district court did not err in entering a default judgment against appellant when he failed to file an appearance.

As to appellant's assertion that he did not sexually assault respondent, appellant is precluded from raising this argument based on the entry of default against him. Because of the default, identity and liability for the sexual assault were not at issue. Appellant was permitted to participate in the hearing to determine damages solely to contest the amount of damages that respondent was entitled to, not to contest whether he was liable for the sexual assault. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Kenneth C. Cory, District Judge
Eduardo Licon
Kenneth L. Hall
Eighth District Court Clerk