

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES DAVIS,
Appellant,
vs.
MANSOUR TURUJMAN,
Respondent.

No. 34876

FILED

AUG 25 2004

ORDER OF REVERSAL AND REMAND

JANETTE W. BLOOM
CLERK OF SUPREME COURT
BY *J. Redmon*
CHIEF DEPUTY CLERK

Appeal from a district court judgment entered on an arbitration award. Eighth Judicial District Court, Clark County; Gary L. Redmon, Judge.

Mansour Turujman and James Davis were involved in an automobile accident, after which Turujman sued Davis for injuries allegedly resulting from the accident. Following an arbitration hearing, Turujman was awarded \$19,939.70 in damages. Subsequently, Davis filed a request for a trial de novo and also filed a demand for a jury trial. In response, Turujman filed a motion to strike Davis' request for a trial de novo and to reduce the arbitration award to judgment. Thereafter, the district court granted Turujman's motion on the basis that Davis failed to present competent evidence to contest Turujman's medical treatment and medical bills. The district court then entered a judgment on the arbitration award, ordering Davis to pay \$19,939.70 to Turujman.

On appeal, Davis argues that the district court erred by finding that Davis did not participate in the arbitration process in good faith and by failing to provide specific findings of fact and conclusions of law when it granted Turujman's motion to strike Davis' request for a trial de novo. We agree.

NAR 22(A) states: “The 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.” This court has equated “good faith” with “meaningful participation” in the arbitration process for purposes of requesting a trial de novo.¹ This court has recognized that the important constitutional right to a jury trial is not waived simply because individuals disagree over the most effective way to represent a client at an arbitration proceeding.²

In Gittings v. Hartz,³ this court concluded that the appellant’s decision not to seriously contest liability for an automobile accident at the arbitration hearing or to pursue an independent medical exam provided insufficient grounds for striking a request for a trial de novo. This court stated, “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.”⁴ This court rationalized that there may be many valid reasons why a party would not wish to expend money on medical experts at the arbitration stage of a case.⁵ This court observed that effective cross-examination of the plaintiff could be adequate to point out discrepancies in a claimed injury, without presenting “countervailing medical evidence.”⁶

¹Gittings v. Hartz, 116 Nev. 386, 390, 996 P.2d 898, 901 (2000).

²Id. at 391, 996 P.2d at 901.

³Id. at 392, 996 P.2d at 902.

⁴Id.

⁵Id.

⁶Id.

Here, although Davis did not present countervailing medical evidence to demonstrate that the car accident was not the proximate cause of Turujman's injury, he did present evidence that Turujman had prior problems with his shoulder and that the automobile accident was not that severe. Granted, Davis could have done more to support his defense in the arbitration process. However, we conclude that his filing of an arbitration brief, his appearance at the arbitration hearing, and his presentation of some evidence at the hearing amounted to good faith participation. Consequently, the district court erred in striking Davis' request for a trial de novo and in entering judgment on the arbitration award.

Also, Davis argues that the district court erred by failing to provide specific findings of fact and conclusions of law when it granted Turujman's motion to strike Davis' request for a trial de novo. In Chamberland v. Labarbera,⁷ this court clarified that all forthcoming sanctioning orders under NAR 22(A) "must be accompanied by specific written findings of fact and conclusions of law by the district court describing what type of conduct was at issue and how that conduct rose to the level of failed good faith participation."

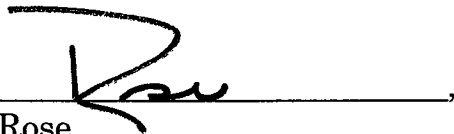
In this case, the district court's order granting Turujman's motion to strike Davis' request for a trial de novo merely stated that the basis for the court's ruling was Davis' failure to present competent evidence contesting Turujman's medical treatment and medical bills. Though not specifically stated, it can be inferred from the district court's ruling that the court struck Davis' request for a trial de novo because it found that Davis did not participate in good faith in the arbitration


⁷110 Nev. 701, 705, 877 P.2d 523, 525 (1994).

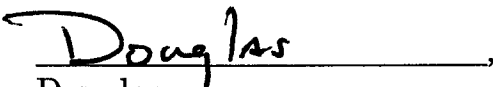
process. The district court should have provided more detailed findings of fact and conclusions of law related to what conduct rose to the level of failed good faith participation. Nevertheless, our review of the record reveals that Davis participated in good faith in the arbitration process and, thus, is entitled to a trial de novo.

Accordingly, we reverse the district court's judgment and remand this matter to the district court with instructions to vacate its order striking the trial de novo request and to proceed with Case No. A396081.

It is so ordered.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Eighth Judicial District Court Dept. 19, District Judge
Emerson & Manke, LLP
Leach & English
Robert M. Ebinger
Clark County Clerk