

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCE MICHAEL BARTELLO, F/K/A
FRANK BARTELLO, INDIVIDUALLY;
AND CERTIFIED MALE OF LAS
VEGAS, INC., A NEVADA
CORPORATION,

Appellants,

vs.

JAMES BELMONT, INDIVIDUALLY;
AND CAROL BELMONT,
INDIVIDUALLY,

Respondents.

No. 34903

FILED

JAN 02 2002

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

ORDER OF AFFIRMANCE

This is an appeal from an order striking Bartello's answer and entering a default judgment against Bartello and Certified Male of Las Vegas, Inc. for failing to comply with several orders of the discovery.

On appeal, Bartello contends that his failure to produce discovery does not warrant striking his answer and entering a default judgment against him. Furthermore, Bartello argues that the district court failed to consider factors enumerated in Young v. Johnny Ribeiro Building¹ when imposing such harsh sanctions. Having considered all of the appellant's contentions, we conclude that this appeal lacks merit.

NRCP 37(b)(2) provides that "[i]f a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just" Moreover, it is within the district court's power to "strick[e] out pleadings or parts thereof" and "render[] a judgment by default against the disobedient party."²

Where the district court has authority to impose discovery sanctions, "this court will not reverse the particular sanctions imposed

¹106 Nev. 88, 93, 787 P.2d 777, 780 (1990).

²NRCP 37(b)(2)(C).

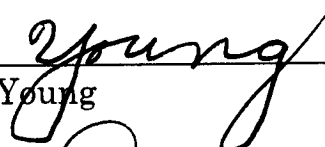
absent a showing of abuse of discretion.”³ But “[w]here the sanction is one of dismissal with prejudice . . . a somewhat heightened standard of review should apply.”⁴ Nonetheless, this court “will uphold default judgments where ‘the normal adversary process has been halted due to an unresponsive party.’”⁵


Young requires a thorough analysis of the pertinent factors before discovery sanctions are imposed, particularly the ultimate sanction of a default judgment. But while an evidentiary hearing was held in Young, a separate evidentiary hearing is not required in all cases. Here, the discovery commissioner and three different district court judges gave Bartello several opportunities to comply with discovery orders, but he willfully failed to provide the ordered discovery.


After reviewing the record, we are convinced that the district court, in striking Bartello’s answer and entering a default judgment against him, did so after “thoughtful consideration of all the factors involved” in the case.⁶

Having considered appellants’ arguments, we conclude that the district court did not abuse its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Michael A. Cherry, District Judge
Randall J. Roske
Dowling, Myers & Helm, LLP
Clark County Clerk

³See GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869, 900 P.2d 323, 325 (1995).

⁴Young, 106 Nev. at 92, 787 P.2d at 779; see also Hamlett v. Reynolds, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998).

⁵Hamlett, 114 Nev. at 865, 963 P.2d at 458 (quoting Skeen v. Valley Bank of Nevada, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973)).

⁶Young, 106 Nev. at 92, 787 P.2d at 780.