

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY K. ADAMSON,
Appellant,
vs.
CHARLES A. MUSICH, D.C. D/B/A
CHARLES MUSICH CHIROPRACTIC,
Respondent.

No. 55008

FILED

DEC 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's medical negligence complaint as a discovery sanction. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

NRCP 37(d) authorizes the district court to dismiss a party's action if the party fails to respond to properly served written discovery requests. The court has discretion in deciding whether dismissal is a just sanction, and this court will not reverse a sanction finding absent a showing of an abuse of discretion. GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869-70, 900 P.2d 323, 325 (1995).

Having considered the record and appellant's proper person appeal statement, we conclude that the district court did not abuse its discretion by dismissing appellant's complaint as a discovery sanction. The court relied upon the discovery commissioner's report, which detailed appellant's complete failure to respond to written discovery requests.¹

¹Appellant asserts that the district court failed to consider his opposition to respondent's second motion to dismiss. We find no merit to
continued on next page . . .

Even after respondent first moved to dismiss and the district court granted respondent's motions to compel and imposed sanctions, appellant made no attempt to comply with the discovery requests.

Appellant further challenges various interlocutory orders—an order dismissing appellant's fourth cause of action for intentional interference with contractual relations and two sanctions orders. We find appellant's challenge to those orders to be without merit, as the orders were based on unopposed motions by the respondent. See EDCR 2.20(c) (providing that failure to file an opposition to a motion may be construed as an admission that the motion is meritorious). Additionally, appellant makes no substantive argument with respect to those orders, instead arguing that the district court should have appointed him a "next friend"

... continued

this assertion, as appellant's opposition was filed well after the five-day deadline and after the district court adopted the recommendations. See EDCR 2.34(f) (providing that an objection to the discovery commissioner's recommendations must be written and served no more than five days after receipt of those recommendations). Proper person litigants share the same basic duty as parties with counsel to comply with the EDCR and cannot escape the consequences of failure to comply with a mandatory rule based solely on their proper person status.

Appellant also maintains that the district court failed to consider his settlement conference brief and motion for stay. We find this assertion to be without merit as well. Specifically, with respect to appellant's settlement conference brief, the document was filed late and after the May 5, 2009, settlement conference, which appellant failed to attend. With regard to appellant's motion for stay, we conclude that the district court implicitly and properly denied appellant's stay request when the court dismissed appellant's complaint. Cf. Bd. of Gallery of History v. Datecs Corp., 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (noting that the district court's failure to rule on a request constitutes a denial of the request).

pursuant to NRCPC 17(c), to represent him in the underlying action because he was allegedly incompetent to represent himself due to a head injury. We find no merit to appellant's incompetency claim, as appellant failed to present any medical evidence to corroborate that assertion.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Gregory K. Adamson
Bonne, Bridges, Mueller, O'Keefe & Nichols/Las Vegas
Eighth District Court Clerk

²We find nothing in the record to support appellant's allegation that there was a conspiracy amongst district court personnel to provide appellant erroneous information.