

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELIA RIVERA, INDIVIDUALLY,  
Appellant,

vs.

INTERNATIONAL MARKET PLACE;  
KWONG YET LUNG CO., INC.; AND  
OASIS FOOD DISTRIBUTOR,  
Respondents.

No. 55740

FILED

DEC 27 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingraham*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment on a short-trial jury verdict in a tort action. Eighth Judicial District Court, Clark County; Ara H. Shirinian.<sup>1</sup> The parties are familiar with the facts and we do not recount them further except as necessary to our disposition.

Appellant Delia Rivera was allegedly struck on the head by a forklift operated by an employee, Greg Kim, while shopping at International Market Place. International Market Place is owned and operated by respondents International Market Place, Kwong Yet Lung Co., Inc., and Oasis Food Distributor (collectively "Respondents"). Rivera commenced an action in the Eighth Judicial District Court and the case

<sup>1</sup>Ara H. Shirinian was appointed as the judge pro tempore for the short trial. Under the Nevada Short Trial Rules (NSTRs) in effect the day this action commenced, the judgment of a judge pro tempore was an appealable order. The amended NSTRs requiring the approval and signature of a district judge to finalize a judge pro tempore's decision became effective two days after the complaint was filed in this case. See In the Matter of NRS 38.258 and Short Jury Trials in the Supreme Court of Nevada, ADKT 409 (Order Amending the Nevada Short Trial Rules, March 6, 2008) (noting that the amendment would be effective 30 days from the date of the order).

was diverted to Nevada's mandatory arbitration program. After discovery, the court appointed arbitrator found for Rivera and entered an arbitration award of \$14,025. Respondents filed a request for trial de novo with the district court and the case was assigned to the short trial program. After trial, the jury returned a verdict for respondents.

This appeal follows.

### Discussion

At the outset, we note that neither the arbitration nor the short trial proceedings were recorded; thus, no transcripts were available for inclusion in the record on appeal.

Respondents argue that this appeal should be dismissed because Rivera failed to submit a "statement of the evidence or proceedings" in accordance with rule 9(c) of the Nevada Rules of Appellate Procedure (NRAP). We agree that Rivera's failure to submit such a statement precludes appellate review and affirm the district court's judgment.

NRAP 28 requires that all briefs submitted by the parties on appeal are to contain citations to the record and we generally cannot consider matters not contained in the record on appeal. NRAP 28(a)(6); Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). The NRAP provide parties with a means to create a record for appeal where a hearing or trial was not recorded. NRAP 9(c)<sup>2</sup>

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<sup>2</sup>NRAP 9(c) states

[i]f a hearing or trial was not recorded, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings

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allows the appellant to “prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection.” NRAP 9(c). Although submission of a statement of the evidence or proceedings is not mandatory, appellant has a duty to ensure that an adequate appellate record exists. NRAP 9(c); Cuzze, 123 Nev. at 603, 172 P.3d at 135. “When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision.” Cuzze, 123 Nev. at 603, 172 P.3d at 135.

Although over 1,000 pages were submitted for the record on appeal, Rivera nevertheless failed to include necessary documentation and repeatedly refers to facts not within the submitted record. While the submitted record contains the motion papers for each of the challenged rulings, those motion papers make bare assertions that are supported solely by counsel’s affidavit, if at all. Rivera made no effort to preserve a record of the statements made during the arbitration proceeding or the

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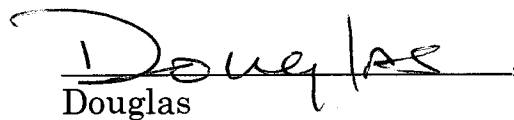
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from the best available means, including the appellant's recollection. The statement shall be served on the respondent, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments shall then be submitted to the district court for settlement and approval. As settled and approved, the statement shall be included by the district court clerk in the trial court record, and the appellant shall include a file-stamped copy of the statement in an appendix filed in the Supreme Court.

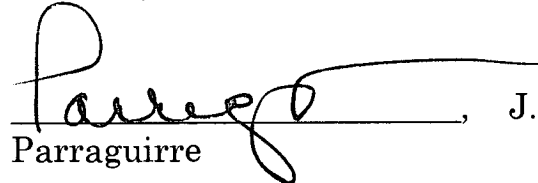
short jury trial. For example, Rivera did not seek to have Kim's testimony recorded and transcribed during the arbitration hearing, nor did she obtain an affidavit from Kim, who Rivera claims is an important witness. Rivera also claims that she made discovery requests during the arbitration discovery period and that respondents engaged in discovery abuse, but none of the requests or responses were submitted as part of the record.

Thus, because Rivera omits a substantial portion of the record necessary for determination of the issues on appeal, and based on our holding in Cuzze, we presume that the missing portion of the record supports the trial court's decision. We affirm the district court's judgment based on that presumption. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Douglas

 J.  
Hardesty

 J.  
Parraguirre

cc: Hon. Linda Bell, District Judge  
Hon. Ara H. Shirinian, Short Trial Judge  
William F. Buchanan, Settlement Judge  
Richard Harris Law Firm  
Hall Jaffe & Clayton, LLP  
Eighth District Court Clerk