

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARY SCAIFE,  
Appellant,  
vs.  
REGIONAL TRANSPORTATION  
COMMISSION OF SOUTHERN  
NEVADA; VEOLIA TRANSPORTATION  
SERVICES, INC., A MARYLAND  
CORPORATION; AND NEVADA  
TRANSPORTATION AUTHORITY,  
Respondents.

No. 56530

FILED

APR 24 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a tort action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

In the proceedings below, the district court dismissed appellant's action based on her failure to timely respond to discovery requests and to appear for three scheduled early arbitration conferences. Upon consideration of the parties' arguments and the record before us, we conclude that the district court abused its discretion by dismissing the complaint in the absence of any evidence that respondents attempted to resolve the issues underlying the dismissal motion prior to requesting court action directly with appellant. See GNLV Corp. v. Service Control Corp., 111 Nev. 866, 870, 900 P.2d 323, 325 (1995) (providing that dismissal of an action as a discovery sanction is only appropriate in "extreme situations"); cf. NRCPC 37(a)(2)(A) (requiring a party moving to compel cooperation with discovery matters to certify that he or she has made an effort to obtain compliance without court action). On this record,

we cannot uphold the imposition of case-terminating sanctions. Clark Cty. Sch. Dist. v. Richardson Constr., 123 Nev. 382, 168 P.3d 87 (2007).

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry, J.  
Cherry

Pickering, J.  
Pickering

HARDESTY, J. dissenting:

In light of appellant's failure to timely comply with discovery or appear for the arbitration conferences, I discern no abuse of discretion in the district court's decision to dismiss the complaint. For this reason, I would affirm the district court's dismissal of this action. See Esworthy v. Williams, 100 Nev. 212, 213, 678 P.2d 1149, 1150 (1984) (explaining that the district court has the inherent power to dismiss a case for failure to prosecute and that the decision to exercise this power lies within the court's discretion).

J. Hardesty, J.  
Hardesty

cc: Hon. Linda Marie Bell, District Judge  
M. Nelson Segel, Settlement Judge  
Gazda & Tadayon  
Ranalli & Zaniel, LLC  
Eighth District Court Clerk