IN THE SUPREME COURT OF THE STATE OF NEVADA

CHOI YOUNG,

Appellant,

vs.

JUDY SNYDER,

Respondent.

No. 35608

FILED

SEP 11 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order striking a request for trial de novo. We conclude that the district court erred in striking the trial de novo request because appellant's conduct during the arbitration proceedings did not rise to the level of failed good faith participation. We therefore reverse the district court's order and remand this matter for further proceedings.

Respondent Judy Snyder filed a complaint for personal injuries arising from an automobile accident. The complaint alleged that appellant Choi Young was the driver of a vehicle that struck Snyder's vehicle and caused her injuries. Young answered the complaint, and the parties proceeded to the court-annexed arbitration program.

The arbitration hearing was conducted in September 1999. At the hearing, both Young and Snyder testified. The arbitrator concluded that Young was negligent and awarded Snyder $6,500.00 for medical specials and pain and suffering.

Following issuance of the written arbitration award, Young filed a timely request for trial de novo. Thereafter, Snyder filed a motion to strike the request for trial de novo. Snyder's motion to strike argued that Young failed to participate in the arbitration in good faith as required by NAR 22. Specifically, Snyder argued that: (1) Young failed to present any competent evidence disputing the reasonableness or necessity of Snyder's medical treatment; and (2) Young's insurance carrier had an institutional custom of requesting trials de novo following adverse arbitration awards.

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Young filed an opposition to Snyder's motion to strike. Young also filed a motion requesting that the district court dismiss Snyder's complaint as a sanction for intentional spoliation of evidence.

The district court granted Snyder's motion to strike the trial de novo request, and denied Young's motion to dismiss the complaint. Following the issuance of the district court's order striking the request for trial de novo, Young timely filed a notice of appeal.

In her answering brief, Snyder concedes that the resolution of this appeal from the order striking the trial de novo request is controlled by Gittings v. Hartz.[1] Snyder acknowledges that Gittings, which was decided more than three months after the district court entered the order at issue in this appeal, requires that we reverse that portion of the district court's order striking Young's request for trial de novo. We agree. Accordingly, we conclude that the district court erred in striking the request for trial de novo.

Young also challenges the district court's denial of her motion to dismiss the complaint. Young premises her argument on the fact that Snyder traded in her Nissan Sentra, which had been involved in the collision at issue, before Young's retained expert was able to physically inspect the vehicle. Young asserts that Snyder's conduct rises to the level of intentional spoliation of evidence, warranting the dismissal of her complaint. Snyder argues that the district court did not err in denying Young's motion to dismiss the complaint.

We review the district court's denial of the motion to dismiss for an abuse of discretion.[2] In this matter, Young contends that she is unable to have her accident reconstructionist disassemble and examine the bumper structure of the Nissan Sentra, as a result of Snyder's transfer of ownership of the car. However, we note that the record on appeal is devoid of any evidence that Young's representatives ever took reasonable steps to track down the Nissan Sentra after Snyder transferred ownership to a third-party. The record does not reveal that the Nissan Sentra at issue was in fact unavailable for physical inspection by Young's accident

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[1]116 Nev. 386, 996 P.2d 898 (2000).

[2]Stubli v. Big D International Trucks, 107 Nev. 309, 312, 810 P.2d 785, 787 (1991).

reconstructionist.[3] Hence, we do not discern any abuse of discretion by the district court in denying Young's motion to dismiss Snyder's complaint as a sanction for spoliation of evidence.[4]

Accordingly, we reverse that portion of the district court's order striking appellant's trial de novo request and remand this matter to the district court for further proceedings consistent with this order.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Allan R. Earl, District Judge
Mandelbaum Gentile & D'Olio
Henness & Haight
Clark County Clerk

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[3]See id. at 313, 810 P.2d at 787 (stating that a factor to be considered by a district court in a spoliation of evidence hearing is whether the evidence has been irreparably lost).

[4]See id. (specifying a non-exhaustive list of factors which a district court may properly consider in deciding what sanction, if any, is appropriate when spoliation of evidence has been alleged and dismissal of the complaint is sought).