IN THE SUPREME COURT OF THE STATE OF NEVADA

HOA FLOYD,
Appellant,
vs.
NICOLE S. ROUNDY,
Respondent.

No. 62700

FILED

MAR 1 3 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Through counsel, appellant filed a complaint seeking damages for respondent's alleged negligence in a rear-end collision with appellant's stopped vehicle. Respondent served appellant as a pro se plaintiff at her home address by mail on October 9, 2012, with requests that appellant admit certain facts concerning the car accident, including that appellant caused the accident by stopping before a railroad crossing. Appellant did not respond to the requests within the 30-day deadline under NRCP 36(a), and respondent moved for summary judgment on that basis. Appellant, through newly retained counsel, opposed the motion and ultimately submitted her response to the requests for admission. The district court granted summary judgment, finding that the requests were deemed admitted due to appellant not timely responding. *See* NRCP 36(a) and (b) (providing that a party has 30 days to respond to an opposing party's requests for admission and failure to do so may result in the requests being deemed conclusively established); *Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1390 (1993); *see Wagner v. Carex Investigations & Sec.*, 93 Nev. 627, 631, 572 P.2d 921, 923 (1977) (providing that failure to answer requests for admission may provide the basis for summary judgment).

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In this case, however, appellant was represented by counsel when respondent served the requests for admission on her as a pro se litigant, and although appellant's attorney of record had filed a motion to withdraw her representation on September 4, 2012, that motion was still pending when respondent served the requests for admission directly on appellant on October 9, 2012. A written order granting the motion to withdraw was not entered until October 18, 2012. Since appellant was proceeding in a represented capacity on October 9, 2012, and respondent failed to properly serve appellant's attorney of record with the requests for admission, those requests should not have been deemed admitted and summary judgment was therefore not appropriate. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); NRCP 5(b) (providing that service of pleadings and other papers "shall be made upon the attorney unless the court orders that service be made upon the party"); EDCR 7.26(a) ("If service of an order or other paper is to be made on a party represented by an attorney, the service must be made on the attorney unless service on the party is ordered by the court."); *see* EDCR 7.40(b)(2) (when an attorney has not been retained to replace a withdrawing attorney, counsel may be changed only "by order of the court, granted upon written motion"); SCR 46(2) (while an action is pending, an attorney may withdraw on application to and order of the court). Accordingly, we

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

Parraguirre, J.

Douglas, J.

Cherry, J.

cc: Hon. Susan Johnson, District Judge
Craig A. Hoppe, Settlement Judge
Stovall & Associates
Prince & Keating, LLP
Eighth District Court Clerk