IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRAIG SCHREIBER, AN INDIVIDUAL,
Appellant,
vs.
G. PETERS ENTERPRISES, LTD., A BRITISH COLUMBIA LIMITED LIABILITY COMPANY,
Respondent.

No. 66856

FILED

OCT 19 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 order striking a request for trial de novo following a mandatory court-annexed arbitration. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Following mandatory non-binding arbitration, appellant, the defendant below, filed a request for trial de novo, and the underlying case was then assigned to Nevada's short trial program. As discovery moved forward, appellant was monetarily sanctioned for abusive discovery practices and ordered to supplement what the court found to be deficient discovery responses. Thereafter, at the pre-trial conference hearing, respondent informed the court that appellant had not complied with this prior discovery order and orally moved to strike appellant's request for trial de novo. At the same hearing, appellant requested a continuance of the upcoming trial date. Following this hearing, the court granted respondent's motion to strike, denied appellant's request for a continuance, and entered a final judgment confirming the arbitration award in respondent's favor. This appeal followed.

On appeal, appellant first argues that the district court abused its discretion when it refused to grant him a continuance of the trial date to

find new counsel.[1] We review a district court decision denying a motion for continuance for an abuse of discretion. *Bongiovi v. Sullivan*, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006). It appears that appellant requested the continuance orally at the pre-trial hearing. Appellant failed, however, to request preparation of the transcript from the pre-trial conference hearing at which this oral motion was made,[2] and, without this transcript, we cannot determine what arguments were made in support of and in opposition to the motion for a continuance.

Appellant has the burden of ensuring that this court has before it all documents necessary for our review of his appeal, and when necessary documents such as the pre-trial conference hearing transcript are not provided for our review, we presume that they support the decision or order being challenged on appeal. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (presuming that documents not provided on appeal support the district court's decision). Thus, in light of appellant's failure to request and provide a copy of this transcript, we presume that it supports the district court's denial of the requested continuance. *See id.* Accordingly, we must conclude the district court did

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[1]Appellant also attempts to make arguments on behalf of HDAV Corp., a co-defendant below. But "no rule or statute permits a [nonlawyer] to represent . . . a company . . . or any other entity in the district courts or in [the appellate courts]." *Salman v. Newell*, 110 Nev. 1333, 1336, 885 P.2d 607, 608 (1994). A company or entity may likewise not proceed on appeal in pro se. *See id.* As a result, to the extent that appellant purported to appeal on behalf of HDAV, that appeal is not properly before us, and we thus do not consider appellant's arguments on HDAV's behalf.

[2]Although it is not clear that a court reporter was present for the pre-trial conference hearing, NSTR 20 authorizes parties to request that short trial program proceedings be reported at the requesting parties' expense.

not abuse its discretion in denying the motion for a continuance. *See Bongiovi*, 122 Nev. at 570, 138 P.3d at 444.

Appellant next argues that the district court erred in granting respondent's motion to strike the request for trial de novo based on NAR 22(B), because appellant did not engage in any conduct that would warrant a sanction under that rule.[3] Respondent argues that appellant's dilatory and deficient actions in responding to discovery warranted the sanction entered by the district court. While the sanctioning of a party is normally reviewed for an abuse of discretion, "'a somewhat heightened standard of review'" applies where the sanction results in the termination of the case.[4] *Chamberland v. Labarbera*, 110 Nev. 701, 704, 877 P.2d 523, 525 (1994)

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[3]Although the transcript regarding the motion to strike is not included in the record, it is not needed for our disposition of this issue because the basis for reversal is apparent on the face of the district court's order.

Appellant also argues that the motion to strike was improper because it was not brought within 30 days of the request for trial de novo as required by NAR 18(A). The order granting the motion to strike, however, only cites NAR 22(B), and, therefore, we will limit our discussion to the propriety of the order under that rule.

[4]While *Chamberland v. Labarbera*, 110 Nev. 701, 877 P.2d 523 (1994), applied the *Young* standard to an order entered pursuant to NAR 22(A), which provides that "[t]he failure of a party . . . to . . . defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo," the court also stated that "[t]he magnitude of the sanction" is what brought the case within the purview of *Young*. *See Chamberland*, 110 Nev. at 705, 877 P.2d at 525. Although the order at issue here was entered pursuant to NAR 22(B), because the sanction—prohibiting a trial de novo—is of the same magnitude as the one discussed in *Chamberland*, we conclude that this case is also brought within the purview of *Young*, such that the somewhat heightened standard of review articulated in *Young* applies here.

(quoting *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990)) (applying the heightened *Young* standard of review to an order finding that the party waived his right to trial de novo under NAR 22(A) after participating in mandatory arbitration). Under that heightened standard, the district court must make specific written findings of fact and conclusions of law describing the conduct at issue and why that conduct necessitated the severe sanction of the dismissal of the case. *Id.* at 705, 877 P.2d at 525.

Pursuant to NAR 22(B), "[i]f, during the proceedings in the trial de novo, the district court determines that a party or attorney engaged in conduct designed to obstruct, delay or otherwise adversely affect the arbitration proceedings, it may impose, in its discretion, any sanction authorized by NRCP 11 or NRCP 37." While the district court's order below made findings regarding appellant's failure to defend the case resulting in two default judgments prior to the case going to mandatory arbitration,[5] and also made findings regarding appellant's dilatory discovery practices and refusal to comply with a court order compelling discovery during the short trial program, there are no findings that any of appellant's actions were designed to, or, in fact, did, "obstruct, delay or otherwise adversely affect *the arbitration proceedings*."[6] *See* NAR 22(B) (emphasis added). With the order making no connection between appellant's actions and the arbitration proceedings, we conclude that the district court abused its

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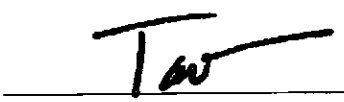
[5]Appellant was successful in setting aside both of the default judgments.

[6]Furthermore, our review of the record on appeal and the appendices submitted by respondent did not reveal any issues in relation to the arbitration.

discretion in granting respondent's motion to strike appellant's request for trial de novo under NAR 22(B). *See Chamberland*, 110 Nev. at 704, 877 P.2d at 525. Because the district court's order striking the trial de novo request cited only NAR 22(B) for support and that rule authorizes the imposition of sanctions only in specific circumstances, none of which were found by the district court to be present in this case, we must reverse the district court's decision and remand this case to the district court for further proceedings in light of this order.[7]

It is so ORDERED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Craig Schreiber
Hofland & Tomsheck
Eighth District Court Clerk

[7]As we reverse the underlying decision solely because NAR 22(B) does not authorize the imposition of sanctions under the circumstances presented here, we do not address whether appellant's conduct, in and of itself, was otherwise sanctionable.