IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MORENO P. DELA ROSA, JR., AN INDIVIDUAL,
Appellant,
vs.
DR. TIMOTHY TRAINOR, AN INDIVIDUAL,
Respondent.

No. 68022

FILED

FEB 18 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a final judgment on an arbitration award in an intentional torts action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Appellant Moreno P. Dela Rosa, Jr. sued respondent Dr. Timothy Trainor asserting various intentional torts claims. The matter proceeded to court-annexed arbitration and the parties participated in an early arbitration conference. Following the early arbitration conference, Dela Rosa's former law firm withdrew as counsel and Dela Rosa took no action in furtherance of his case. Shortly before the arbitration hearing, the arbitrator's office attempted to contact Dela Rosa on three occasions to determine whether Dela Rosa would submit an arbitration brief or participate in the December 2014 arbitration hearing. Dela Rosa neither responded to the arbitrator's office nor attended the arbitration hearing, either personally or through counsel. The arbitrator subsequently found in favor of Trainor on all of Dela Rosa's claims.

After retaining new counsel, Dela Rosa filed a timely request for trial de novo. Trainor moved to strike the request arguing that Dela

Rosa did not prosecute his case in good faith during the arbitration proceedings, and, therefore, he waived his right to trial de novo, citing NAR 22(A) ("The failure of a party . . . to either prosecute or defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo."). Finding that Dela Rosa did not conduct discovery, identify witnesses, produce documents, submit an arbitration brief, respond to inquiries from the arbitrator's office, or attend the arbitration hearing, the district court concluded that Dela Rosa did not prosecute his case in good faith and granted Trainor's motion to strike Dela Rosa's request for trial de novo. This appeal followed.

As a preliminary matter, to the extent that Dela Rosa asserts that any deficiencies in his participation during the arbitration proceedings should be excused because he was proceeding pro se at the time, his argument lacks merits. A party's pro se status does not excuse the party's failure to comply with applicable court rules. *See Lombardi v. Citizens Nat'l Tr. & Sav. Bank of L.A.*, 289 P.2d 823, 824 (Cal. Dist. Ct. App. 1955) (explaining that litigants proceeding pro se must be restricted to the same procedural rules as parties proceeding through attorneys). Accordingly, this is not a basis upon which to reverse the district court's judgment.

Furthermore, Dela Rosa was the plaintiff in this matter, and, therefore, bore the burden of establishing that he was entitled to relief for each of his claims. *See Stickler v. Quilici*, 98 Nev. 595, 597, 655 P.2d 527, 528 (1982) (explaining that the burden is on the plaintiff to prove every fact essential to establishing a cause of action). Yet Dela Rosa did not conduct discovery, identify witnesses, produce documents, submit an arbitration brief, or attend the arbitration hearing. Instead, Dela Rosa

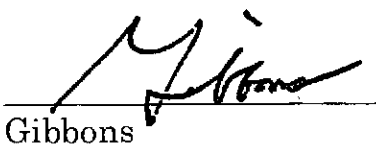
took no action to prosecute his case following the early arbitration conference, demonstrating a lack of good faith participation in the arbitration proceedings. *See Casino Props., Inc. v. Andrews*, 112 Nev. 132, 135, 911 P.2d 1181, 1182-83 (1996) (holding that NAR 22(A)'s good faith mandate requires parties to meaningfully participate in the arbitration proceedings to retain their right to request trial de novo).

Dela Rosa attempts to lessen the impact of his deficient participation by relying on *Chamberland v. Labarbera*, 110 Nev. 701, 877 P.2d 523 (1994), for the proposition that, where a party fails to conduct discovery or to attend the arbitration hearing, waiver of trial de novo under NAR 22(A) is too severe of a sanction. But in *Chamberland*, it was the defendant, rather than the plaintiff, whose participation was at issue. 110 Nev. at 703, 877 P.2d at 524. And there, extended discovery was unwarranted because the defendant did not seriously contest liability and damages were modest. *Id.* at 705, 877 P.2d at 525. Moreover, although the defendant in *Chamberland* did not personally attend the arbitration hearing, counsel attended the hearing on his behalf. *Id.* Thus, the present matter is distinguishable from *Chamberland*, both because Dela Rosa bore the burden of establishing that he was entitled to relief on each of his claims, *see Stickler*, 98 Nev. at 597, 655 P.2d at 528, yet failed to conduct discovery, and because Dela Rosa did not retain counsel to attend the arbitration hearing on his behalf. Dela Rosa's additional case citations in support of this argument are similarly distinguishable.

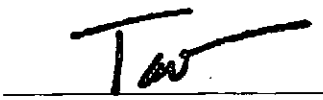
Given the foregoing, we necessarily conclude that the district court did not abuse its discretion by striking Dela Rosa's request for trial de novo based on his failure to prosecute the action in good faith during the arbitration proceedings. *See* NAR 22(A); *see also Gittings v. Hartz*, 116

Nev. 386, 391, 996 P.2d 898, 901 (2000) (reviewing a district court's order striking a request for trial de novo for an abuse of discretion). Accordingly, we affirm the district court's order striking Dela Rosa's request for trial de novo and the resulting judgment entered on the arbitration award.

It is so ORDERED.



_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Nancy L. Allf, District Judge
Stephen E. Haberfeld, Settlement Judge
Kirk T. Kennedy
Hutchison & Steffen, LLC
Eighth District Court Clerk