IN THE SUPREME COURT OF THE STATE OF NEVADA

HARTFORD FIRE INSURANCE COMPANY,
Appellant,
vs.
CONTRACT MANUFACTURING INDUSTRIES, INC.,
Respondent.

No. 35845



HARTFORD FIRE INSURANCE COMPANY,
Appellant,
vs.
CONTRACT MANUFACTURING INDUSTRIES, INC.,
Respondent.

No. 36383

ORDER OF REVERSAL AND REMAND FOR DOCKET NO. 35845 AND ORDER DISMISSING APPEAL FOR DOCKET NO. 36383

This is an appeal from a default judgment and an order denying a motion to set aside the default judgment. Contract Manufacturing Industries, Inc. (CMI) filed a complaint for damages against Rocky Mountain Erectors, Inc. (Rocky) and Rocky's bonding companies, Star Insurance Company and Hartford Fire Insurance Company (Hartford). Because none of the defendants appeared for the calendar call hearing, the district court, pursuant to EDCR 7.60, struck all their answers and entered a default judgment in favor of CMI. On appeal, Hartford contends that the district court erred when it entered default judgment as a sanction for Hartford's failure to appear at the calendar call

hearing. We conclude that the district court's sanction resulting in default judgment was unduly harsh under the circumstances.

The district court has the discretion to sanction a party for failure to comply with rules or orders of the court.[1] The district court may impose dismissal as a sanction if, after holding a hearing on the matter, the district court finds among other pertinent factors that the offending party acted willfully, and a lesser sanction is inadequate in relation to the offending behavior.[2]

In Young v. Johnny Ribeiro Building,[3] we set out a nonexhaustive list of eight factors that a court should consider before imposing a sanction of dismissal:

> (1) the degree of willfulness of the offending party;
>
> (2) the extent to which the non-offending party would be prejudiced by a lesser sanction;
>
> (3) the severity of dismissal relative to the severity of the abusive conduct;
>
> (4) whether evidence has been irreparably lost;
>
> (5) the feasibility and fairness of alternative and less severe sanctions . . .;
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> (6) the policy favoring adjudication on the merits;
>
> (7) whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney; and

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[1]See Nevada Power v. Flour Illinois, 108 Nev. 638, 644, 837 P.2d 1354, 1358 (1992); Esworthy v. Williams, 100 Nev. 212, 213, 678 P.2d 1149, 1150 (1984).

[2]See GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869-70, 900 P.2d 323, 325 (1995).

[3]106 Nev. 88, 787 P.2d 777 (1990).

> (8) the need to deter both the parties and future litigants from similar abuses.[4]

Before a district court may impose the dismissal sanction, it must hold a hearing on the Young factors[5] and set forth "an express, careful and preferably written explanation of the court's analysis of the pertinent factors."[6]

CMI contends that the Young factors are only applicable when a discovery sanction is at issue, rather than a sanction for disobeying a district court's clear order to attend calendar call. We disagree. Our case law provides that the Young factors and other pertinent requirements are applicable when the district court imposes dismissal as a sanction for failure to comply with rules or orders of the court.[7] Also, although EDCR 7.60 permits the district court to strike the answer and enter default judgment when a party fails to attend the court ordered calendar call, this is not an automatic sanction, as there are other sanctions available.[8]

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[4]GNLV Corp., 111 Nev. at 870, 900 P.2d at 325-26 (placed in list format) (citing Young, 106 Nev. at 93, 787 P.2d at 780).

[5]Nevada Power, 108 Nev. at 645, 837 P.2d at 1359.

[6]Young, 106 Nev. at 93, 787 P.2d at 780.

[7]See Nevada Power, 108 Nev. at 641-44, 837 P.2d at 1356-58.

[8]Under EDCR 7.60(a), the district court may impose the following sanctions when a party fails to attend calendar call without just excuse:

> (1) Payment by the delinquent attorney or party of costs, in such amount as the court may fix, to the clerk or to the adverse party.
>
> (2) Payment by the delinquent attorney or party of the reasonable expenses, including attorney's fees, to any aggrieved party.

*continued on next page . . .*

Furthermore, because EDCR 7.60(a) provides that the district court may impose sanctions when there is no just excuse for failing to attend calendar call, and because EDCR 7.60(b) requires the court to hold a hearing before imposing sanctions for failure to comply with the court rules, we conclude that the policy underlying the Young factors and procedural requirements is applicable to the present case.

Hartford contends that the district court's sanction of dismissal was an abuse of discretion because it was denied a hearing. CMI disputes that a hearing was required because there were no questions of fact to resolve. We disagree. The district court failed to engage in a "thoughtful consideration" of the Young factors, as it did not provide a written analysis of the factors.[9] And, the district court did not provide Hartford an opportunity to establish just excuse for failing to attend calendar call.[10] We conclude that the district court's failure to hold a hearing before striking Hartford's answer and entering a default judgment, and its failure to provide an "express" analysis of the pertinent

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*. . . continued*

> (3) Dismissal of the complaint, cross-claim, counter-claim or motion or the striking of the answer and entry of judgment by default, or the granting of the motion.
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> (4) Any other action it deems appropriate, including, without limitation, imposition of fines.

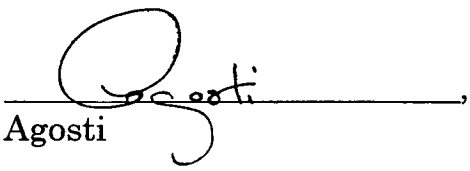
[9]See GNLV Corp., 111 Nev. at 870, 900 P.2d at 325.

[10]See EDCR 7.60.

Young factors, together demonstrate an abuse of discretion warranting reversal.[11]

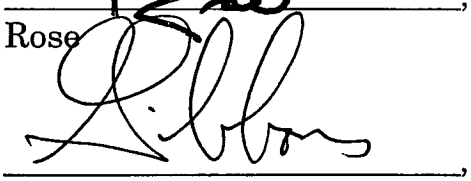
Therefore, we reverse the district court's default judgment in favor of CMI.[12] We remand the case to the district court with instructions to vacate its order striking Hartford's answer and to consider a lesser sanction.

It is so ORDERED.



_____, C.J.
Agosti

_____, J.
Rose



_____, J.
Gibbons

cc: Hon. Gene T. Porter, District Judge
Beckley Singleton, Chtd./Las Vegas
Parker Nelson & Arin, Chtd.
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk

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[11]See Nevada Power, 108 Nev. at 644, 837 P.2d at 1358-59 (noting that this court will not reverse a particular sanction imposed unless there has been an abuse of discretion).

[12]We dismiss Hartford's appeal from the order denying the motion to set aside the default because the arguments raised in that appeal are different from the arguments raised in the appeal from the default judgment, and because that appeal is moot in light of our decision regarding the default judgment.