

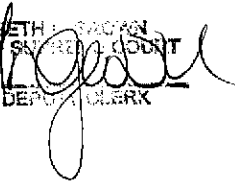
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON L. LOPEZ,
Appellant,
vs.
LANCE MANINGO, AN INDIVIDUAL;
AND BELLON AND MANINGO LLP, A
LIMITED PARTNERSHIP,¹
Respondents.

No. 73418

FILED

JUN 21 2018

ELIZABETH H. SACKIN
CLERK OF SUPERIOR COURT
BY 
CHIEF DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Jason L. Lopez appeals from a district court order granting summary judgment in a civil action. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In the proceedings below, appellant Jason Lopez filed suit against respondents and additional defendants below Cameron Gonzales, Dana McClanahan, and Robert Nelson, after a similar complaint filed against the additional defendants was dismissed. In the instant complaint, Lopez added respondents Lance Maningo, and his law firm, Bellon and Maningo, along with additional claims for relief. Maningo and the firm Bellon and Maningo (hereinafter collectively referred to as Maningo) filed a motion to dismiss, or in the alternative, for summary judgment and for an order declaring Lopez a vexatious litigant. After a hearing on the motion, and over Lopez's objection, the district court granted the motion, declaring

¹We direct the clerk of the court to change the caption on this court's docket to conform to the caption on this order.

Lopez a vexatious litigant and granting summary judgment in favor of Maningo. This appeal followed.

Vexatious litigants are those “who repeatedly file[] frivolous lawsuits.” *Peck v. Crouser*, 129 Nev. 120, 122; 295 P.3d 586, 587 (2013) (internal quotation marks omitted). And the Nevada Supreme Court has approved the use of orders to limit vexatious litigant’s access to the courts as a sanction to deter such conduct. *Id.* This court reviews restrictive orders limiting vexatious litigants from accessing the courts for an abuse of discretion. *Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 62, 110 P.3d 30, 44 (2005), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6 181 P.3d 670, 672 n.6 (2008).

Because vexatious litigant orders limit a litigant’s right to access the courts, the orders must meet four factors: (1) the litigant must first receive notice and an opportunity to oppose such a sanction, to protect the litigant’s due process rights; (2) the district court must create an adequate record for review to explain the reason a restrictive order was needed to stop repetitive or abusive conduct; (3) the district court must make substantive findings as to the frivolous or harassing nature of the conduct; and (4) the order must be narrowly drawn to address the specific problem. *Jordan*, 121 Nev. at 60–62, 110 P.3d at 42–44. The restrictions imposed by a vexatious litigant order may include prohibiting the litigant from filing future actions against a particular party or from filing new actions without first demonstrating to the court that the proposed case is not frivolous. *Peck*, 129 Nev. at 123, 295 P.3d at 587.

On appeal, Lopez contends that the district court violated his due process rights and abused its discretion in issuing the vexatious litigant

order because he was not provided an opportunity to oppose, there was an insufficient record, there are no findings as to the frivolousness or harassing nature of his conduct, and the order is overbroad. We disagree.

As to Lopez's first argument, that his due process rights were violated because he was not provided an opportunity to oppose the order, this contention is belied by the record. Lopez received notice of Maningo's motion seeking an order declaring Lopez a vexatious litigant and filed an opposition to the same. Moreover, Lopez attended the hearing on the motion where he made argument as to why the order should not be issued. We note that after the hearing the district court took the matter under advisement and issued its written order at a later date. To the extent Lopez contends he was entitled to again oppose the issuance of the order after the hearing, but before the district court entered the order, Lopez has failed to provide any authority supporting such a contention and our research has revealed no such authority. Thus, Lopez received notice and an opportunity to oppose the vexatious litigant determination.

Additionally, we disagree that the district court failed to make an adequate record, failed to make findings as to the frivolousness or harassing nature of Lopez's conduct, and that the order is overbroad. The district court order includes a list of other actions in which Lopez and respondents were parties. In addition to the numerous filings, the order notes that Lopez's conduct was deemed harassing in those other actions. *See Jordan*, 121 Nev. at 60-61, 110 P.3d at 43 (explaining that when issuing a restrictive order, the district court should rely on observations in the case to which he or she is assigned and rulings, rather than pending motions, in other cases).

Although the district court could have made more substantive findings, our review of the record demonstrates that Lopez repeatedly filed meritless and legally improper filings that showed a pattern of intent to harass. *See id.* at 65, 110 P.3d at 46. Similarly, the order indicates the repetitive nature of Lopez's filings; finds that, like the other actions, the instant action was intended to harass respondents; and ultimately concludes that the action is without merit. *See id.* at 61, 110 P.3d at 43 (explaining that, as to the third factor, the litigant's conduct must be repetitive or abusive, and without an arguable factual or legal basis or filed with intent to harass). Further, the order restricts Lopez from filing any papers in the Eighth Judicial District Court involving the named respondents (defendants below) without first obtaining leave of court to do so, which is narrowly tailored to address the specific problem—Lopez engaging in repetitive filings against respondents. *See id.* at 62, 66, 110 P.3d at 44, 46 (explaining that restrictive orders can prohibit a litigant from filing new actions against a specific defendant or from filing without first demonstrating to the court that the proposed action is not brought for an improper purpose, and that the order should be limited to the district court in which the order is entered). Thus, the district court's order included the required findings and is sufficiently limited to address the specific problem at hand.

However, in addition to the forgoing requirements, under *Jordan*, the district court's order "must explicitly set a standard against which the presiding judge should measure potential new filings." *Id.* at 66, 110 P.3d at 46. Accordingly, although the district court did not abuse its discretion in declaring Lopez a vexatious litigant and issuing a restrictive order, the order should be modified to include an appropriate standard for

measuring any potential new filings. *Id.* We also note that, on remand, the order should clarify that Lopez's right to appeal in the future should not be hindered by the restrictive order.


Lopez next argues that the district court erred in granting summary judgment in favor of Maningo. This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* However, to withstand summary judgment, the nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings. NRCP 56(e); *Wood*, 121 Nev. at 731, 121 P.3d at 1030-31. Instead, the nonmoving party must present specific facts demonstrating the existence of a genuine factual issue such that "a rational trier of fact could return a verdict for the nonmoving party." *Wood*, 121 Nev. at 731, 121 P.3d at 1026.

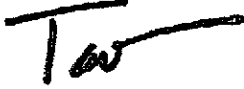
Turning to the grant of summary judgment against Lopez, the district court's order summarily concludes that Maningo established that there was "no legally sufficient evidentiary basis for a reasonable jury to find in favor of [Lopez] on any cause of action included in [Lopez's] complaint" and that there were no genuine issues of material fact. However, pursuant to NRCP 56(c), when granting summary judgment, the district court's order "shall set forth the undisputed material facts and legal determinations on which the court granted summary judgment." *See also ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 656-57, 173 P.3d 734,

746 (2007) (reversing and remanding a portion of a district court order granting summary judgment because the order failed to set forth the undisputed material facts and legal determinations supporting its decision). Here, the district court only summarily concluded that no genuine issues of material fact remained, but the order does not explicitly state which facts were undisputed or its conclusions of law. Thus, we necessarily must reverse and remand the order granting summary judgment for further proceedings consistent with this order. *See id.*

Accordingly, we

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Jason L. Lopez
Maningo Law
Eighth District Court Clerk