

IN THE SUPREME COURT OF THE STATE OF NEVADA

IMAD KATTAN AND MARIE KATTAN,
BOTH INDIVIDUALLY AND AS
HUSBAND AND WIFE, AND SOUBHI
KATTAN, INDIVIDUALLY,
Appellants,

vs.

HOWARD LEFF, INDIVIDUALLY;
CASADA VILLAS, LTD., A
CALIFORNIA LIMITED
PARTNERSHIP; AMERICAN
PROPERTY ACQUISITION, INC., A
CALIFORNIA CORPORATION, AS
GENERAL PARTNER OF CASADA
VILLAS, LTD.; WESTERN PACIFIC
INVESTMENT CORPORATION, A
CALIFORNIA CORPORATION AS
GENERAL PARTNER OF CASADA
VILLAS, LTD.; JOEL H. FREIS,
INDIVIDUALLY AS GENERAL
PARTNER OF CASADA VILLAS, LTD.,
AND AS A SHAREHOLDER,
DIRECTOR OR OFFICER OF
AMERICAN PROPERTY
ACQUISITIONS; TED SCHWARTZ,
INDIVIDUALLY, AND AS A
SHAREHOLDER, DIRECTOR OR
OFFICER OF AMERICAN PROPERTY
ACQUISITIONS, INC.; STANLEY B.
WEINER, INDIVIDUALLY, AS
GENERAL PARTNER OF CASADA
VILLAS, LTD.; AND WESTERN
PACIFIC INVESTMENT
CORPORATION,
Respondents.

No. 37031

FILED

APR 09 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order that dismissed appellants' tort lawsuit for failure to attend a pretrial conference and diligently prosecute their case. After reviewing the record and the response to this appeal, we conclude that the district court abused its discretion in dismissing appellants' lawsuit.

Appellants Imad, Marie and Soubhi Kattan, who were represented by counsel, sued respondents in 1997. The Kattans alleged that respondent Howard Leff, the manager of the Casada Villa Apartments, threatened Imad and Soubhi Kattan with a handgun when they complained of water damage in their apartment. The Kattans pleaded numerous claims for relief including assault, negligent hiring, training, and retention, and loss of consortium as to Marie Kattan.

The Kattans' counsel withdrew, but the Kattans continued to pursue their lawsuit. In October 1998, an arbitrator awarded Imad Kattan \$750 in damages and \$311 in costs. The Kattans requested a trial de novo, and in February 1999, filed a case conference report.

In July 1999, the district court scheduled a pretrial conference for August 21, 2000, and trial for September 12, 2000. On August 7, 2000, respondents moved to dismiss the Kattans' lawsuit for lack of prosecution. The Kattans opposed the motion.

After conducting a hearing, the district court dismissed the Kattans' lawsuit, citing EDCR 2.68(c) (failure to participate at pretrial conference) and 2.90 (failure to prosecute). The Kattans appealed.

EDCR 2.68(c) provides that if "designated trial counsel" fails to attend the pretrial conference, the district court may dismiss the case or impose another sanction. It is unclear from the record why the Kattans

failed to attend the August 2000 pretrial conference, which had been scheduled 13 months earlier. The district court's dismissal order does not address the reason the Kattans gave for not attending, nor does the order acknowledge the policy in this state that, whenever possible, cases be decided on their merits.¹ And under the local rule, a lesser sanction was available. Moreover, the rule's express language is directed only at "designated trial counsel." The Kattans, however, were not represented by counsel. Thus, we conclude that dismissal under EDCR 2.68(c) was an abuse of discretion.

EDCR 2.90(a) permits a district judge to dismiss without prejudice a case that has been pending for more than two years "in which no action has been taken for more than 6 months." Although the Kattans filed nothing in the district court between their February 1999 case conference report and their September 2000 opposition to the motion for dismissal, it appears they may have merely been awaiting trial, which had been scheduled in July 1999 for September 2000. Except for a pretrial memorandum, respondents have not indicated what the Kattans should have been filing in the district court while awaiting trial. And the Kattans' pretrial memorandum was not due until after respondents moved to dismiss.² Further, if, as EDCR 2.90(c) provides, the district court "will" reinstate a dismissed case upon a party's written request, then the

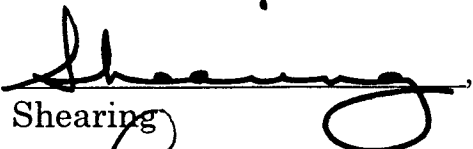
¹See Lesley v. Lesley, 113 Nev. 727, 734, 941 P.2d 451, 455 (1997), overruled on other grounds by Epstein v. Epstein, 113 Nev. 1401, 950 P.2d 771 (1997); Riley v. OPP IX L.P., 112 Nev. 826, 832, 919 P.2d 1071, 1075 (1996).


²EDCR 2.67(a) (providing that a pretrial memorandum must be served and filed at least eleven days before the date set for trial).


Kattans' written opposition to the motion for dismissal would appear sufficient to preclude dismissal altogether under EDCR 2.90(a). Thus, we conclude that dismissal under EDCR 2.90 was an abuse of discretion.

Accordingly, we

ORDER the judgment of the district court REVERSED, AND WE REMAND this matter to the district court for further proceedings.³


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Mark R. Denton, District Judge
Skaggs & Associates
Imad Kattan
Marie Kattan
Soubhi Kattan
Clark County Clerk

³We deny respondents' request for oral argument. NRAP 34(f)(3).