

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCINE C. FERRERO,

No. 37235

Appellant,

vs.

CONNIE MCCALL AND C.N.A.
INSURANCE,

Respondents.

FILED

AUG 08 2001

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing the complaint for failure to state a claim upon which relief can be granted. Because appellant Francine Ferrero failed to oppose the motion to dismiss or to appear at the hearing on the motion, we conclude that the district court did not abuse its discretion by dismissing the case.

On June 30, 2000, Ferrero, appearing in proper person, filed a civil complaint against respondent Connie McCall for medical malpractice. Process was served on October 26, 2000. On November 1, 2000, McCall filed a motion to dismiss and/or motion for judgment on the pleadings. She asserted that Ferrero's factual allegations in the complaint failed to state a claim upon which relief could be granted.¹ The motion to dismiss, and notice of the scheduled November 27, 2000 hearing date, was mailed to Ferrero on November 1, 2000, to the address she wrote on her complaint.

Ferrero, however, had at some point moved to Pennsylvania. She did not file an opposition to the motion to

¹See NRCP 12(b)(5).

dismiss, and did not appear at the hearing on the motion. Therefore, on November 27, 2000, the district court entered an order dismissing her complaint, with prejudice. The order specifically recites Ferrero's failure to oppose and failure to appear at the hearing. On December 27, 2000, Ferrero filed her notice of appeal.

If Ferrero believes that she did not receive adequate notice of the motion and the scheduled hearing as a result of her address change, it appears she could have moved for reconsideration of the dismissal order under Eighth Judicial District Court Rule ("EDCR") 2.24, or relief from judgment under NRCP 60. Ferrero, however, pursued neither form of relief. On appeal, she also has not requested leave to proceed in proper person to possibly challenge the adequacy of notice. Moreover, the record contains no evidence that she, as the plaintiff below, timely notified the court of her change of address. Accordingly, as the matter stands, the record lacks substantial evidence that notice of the motion and hearing was deficient.

Under District Court Rule ("DCR") 13(3) and EDCR 2.20, a party has ten (10) days after the service of a motion in which to serve and file a written opposition showing why the motion should be denied. "Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same."² Based upon the record before us, we conclude the district court did not abuse its discretion in

²EDCR 2.20; see also DCR 13(3).

construing Ferrero's failure to oppose as an admission that the motion was meritorious and as a consent to grant the motion.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young J.
Young
Leavitt J.
Leavitt
Becker J.
Becker

cc: Hon. Mark R. Denton, District Judge
Markoff & Boyers
Francine C. Ferrero
Clark County Clerk

³See Walls v. Brewster, 112 Nev. 175, 178, 912 P.2d 261, 263 (1996).