

IN THE SUPREME COURT OF THE STATE OF NEVADA

GAYLE HOLDERER,
Appellant,
vs.
TRAVELERS PROPERTY CASUALTY
INSURANCE COMPANY, A
SUCCESSOR TO AETNA CASUALTY &
SURETY COMPANY,
Respondent.

No. 37356

FILED

JUN 03 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a bad faith action filed by an insured, Gayle Holderer (Holderer), against her insurance company, Travelers Property Casualty Insurance Company, as successor to Aetna Casualty & Surety Company (Travelers), and its attorneys, Hamilton & McMahon.

In Nevada, both the trial and the trial transcript are public.¹ Neither Holderer, Travelers, nor McMahon had the right to contract away that which it did not own or control – the public's right to know. "What transpires in the court room is public property."² Holderer, an attorney, had the opportunity to request that the court's records be sealed. She failed to make such a request until after McMahon had provided the transcript to attorney David Rankine. The district court granted the request, but did not sanction McMahon for any violation of the confidentiality order. For these reasons, the trial transcript should not be

¹Montesano v. Donrey Media Group, 99 Nev. 644, 649, 668 P.2d 1081, 1085 (1983).

²Craig v. Harney, 331 U.S. 367, 374 (1947).

considered under the aegis of the court's initial confidentiality order. Thus, neither Travelers nor McMahon violated any contract with Holderer by allowing Rankine to review the transcript.

Further, Holderer argues that providing the trial transcript to a third party despite a stipulated confidentiality agreement was a breach of the covenant of good faith and fair dealing and constituted bad faith on the part of Travelers. Here, Holderer's contention that McMahon's distribution of the trial transcript was unreasonable misconduct designed to create an advantage is unpersuasive. McMahon's acts were reasonable. McMahon did not initiate the contact with Rankine. He did not discuss the case with Rankine, nor did he provide Rankine with any medical or psychological records that were clearly covered by the court's order. McMahon complied with a reasonable interpretation of the court's order. Further, McMahon's conduct did not create any advantage over Holderer on behalf of Travelers. McMahon provided nothing to Rankine that Rankine could not have obtained on his own. Thus, the district court did not abuse its discretion in granting summary judgment based on a failure to show that McMahon's actions constituted bad faith on the part of Travelers.

Holderer argues that summary judgment was inappropriate because genuine issues of material fact remained with respect to whether Travelers acted in bad faith and whether sufficient facts were presented to support a claim for intentional infliction of emotional distress. Travelers provided the district court with considerable documentation that Holderer resisted repeated requests for medical records so that it could properly assess the claim and that it acted reasonably in providing the transcript to Rankine.

Here, Holderer bases her claim that summary judgment was improper on the premise that failure to tender an offer of settlement promptly after a claim has been established implies a question of fact that should survive a motion for summary judgment. Travelers has presented affidavits showing that it made numerous requests to collect information from Holderer in order to process the claim and that it was Holderer's reluctance to provide the requested information that delayed the tender offer. Further, the previous analysis regarding the distribution of the trial transcript merely augments the district court's assessment that Holderer failed to show that Travelers' conduct was reckless or extreme or that she suffered severe or extreme emotional distress as a result of its actions. Accordingly, the district court did not abuse its discretion when it held that no genuine issues of material fact remained and that summary judgment was proper.

A supplemental pleading may be filed “[u]pon motion of a party [and] upon reasonable notice and upon such terms as are just.”³ NRCP 15(d) further provides, “[u]pon motion of a party the court may . . . permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.”

Here, Holderer filed her motion for leave to file a supplemental complaint based solely on her contention that Travelers had continued to refuse to unconditionally tender any amount after her initial and amended complaints were filed. The provisions of NRCP 15(d) are designed to allow the court discretion to permit supplemental pleadings to

³NRCP 15(d).

aid in the administration of justice.⁴ This court has consistently affirmed the actions of district courts in exercising discretion in consideration of leave to file such pleadings.⁵ Because Holderer's request was not based on new events, but on a continuation of the events alleged in her initial and amended complaints, the district court did not abuse its discretion in denying her motion for leave to file a supplemental pleading.

Holderer also claims that the court improperly denied her request for additional discovery time when it granted Travelers' motion for summary judgment. This court has held that a district court can discretionarily deny a request for additional time "[s]hould it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition."⁶

Here, Holderer claims that the court denied her of her protections under NRCP 56(f) by depriving her of the opportunity to take discovery regarding the degree of control exercised by Travelers over Hamilton & McMahon. She offered no facts or affidavits to justify her opposition – instead, she alleges that Travelers ratified McMahon's conduct by continuing to retain him as counsel for over a year after allowing Rankine access to the transcript. Thus, Holderer requested additional time for discovery to learn more about the relationship between Travelers and McMahon. The district court did not abuse its discretion in

⁴Madsen Constr. Corp. v. Riverside County Mortgage & Loan Co., 71 Nev. 356, 358, 291 P.2d 1056, 1058 (1955).

⁵Diversified Capital v. City of North Las Vegas, 95 Nev. 15, 22, 590 P.2d 146, 150 (1979).


⁶Bakerink v. Orthopaedic Associates, Ltd., 94 Nev. 428, 431, 581 P.2d 9, 11 (1978); see also NRCP 56(f).

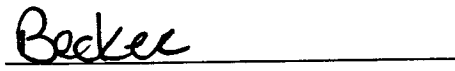
denying Holderer's motion, as she had supplied no facts or affidavits in support of her request except the continued representation by McMahon.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

 J.
Leavitt

 J.
Becker

cc: Hon. Brent T. Adams, District Judge
Robert H. Perry
Downey, Brand, Seymour & Rohwer, LLP
Washoe District Court Clerk