

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLA DELL'ORO, AN INDIVIDUAL,
Appellant,
vs.
LYNETTE KEMP, AN INDIVIDUAL,
Respondent.

No. 78852-COA

FILED

JUN 05 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Carla Dell'Oro appeals a district court judgment pursuant to an arbitration award in favor of Lynette Kemp. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Dell'Oro was walking six of her dogs near her home when two of them—both American Staffordshire Terriers (commonly known as pit bulls)—broke loose from their leashes. Kemp and her dog, who were walking nearby, suffered bite wounds from Dell'Oro's dogs. Kemp sued Dell'Oro, and the case was assigned to arbitration. Dell'Oro, representing herself, refused to participate in discovery and did not attend the arbitration hearing. The arbitrator awarded Kemp \$50,000 and Dell'Oro requested a trial de novo. The district court ordered Dell'Oro to comply with NAR 18(A), which requires a party seeking a trial de novo to certify that all arbitration fees have been or will be paid. Dell'Oro filed a second request for trial de novo that still did not comply with NAR 18(A). Thus, the district court denied Dell'Oro's request for a trial de novo.¹

¹We do not recount the facts except as necessary for our disposition.

On appeal, Dell'Oro contends that she had no duty to comply with NAR 18(A) because the arbitrator never sent her an itemized bill pursuant to NAR 24(B), and therefore, the district court erred in denying her request for a trial de novo. Kemp contends that the district court properly denied Dell'Oro's request for a trial de novo because NAR 18(A) is a mandatory requirement and the arbitrator requested an advance fee of \$250 from Dell'Oro pursuant to NAR 24(A), and after the arbitration, the arbitrator required Dell'Oro to pay Kemp's advanced fee of \$250 as a sanction. Because Dell'Oro did not certify that arbitration fees were either paid or would be paid within 30 days, as required pursuant to NAR 18(A), her failure to certify and pay these fees resulted in the waiver of her de novo request. See NAR 18(C). Thus, we agree with Kemp that Dell'Oro was not entitled to a trial de novo.

The district court's decision to grant or deny a request for trial de novo is reviewed for an abuse of discretion. *Casino Prop., Inc. v. Andrews*, 112 Nev. 132, 135-36, 911 P.2d 1181, 1183 (1996). "An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or disregards controlling law." *LVMPD v. Blackjack Bonding*, 131 Nev. 80, 89, 343 P.3d 608, 614 (2015). However, legal conclusions involving court rules are reviewed de novo. *Casey v. Wells Fargo Bank, N.A.*, 128 Nev. 713, 715, 290 P.3d 265, 267 (2012).

NAR 18(A) provides:

[a]ny party requesting a trial de novo must certify that all arbitrator fees and costs for such party have been paid or shall be paid within 30 days, or that an objection is pending and any balance of fees or costs shall be paid in accordance with subsection (C) of this rule.

NAR 24(A) states that “[i]f required by the arbitrator, each party to the arbitration shall submit, within 30 days of request by the arbitrator, a sum of up to \$250 as an advance toward the arbitrator’s fees and costs.” Finally, under NAR 24(B), “to recover any fee, the arbitrator must submit to the parties an itemized bill reflecting the time spent on a case within 15 days of the date that the arbitrator serves an award in an action.”

NAR 18(A) specifies that “any party requesting a trial de novo must certify that all arbitrator fees and costs for such party have been paid or shall be paid,” without any exception for whether the arbitrator has sent a bill. Moreover, the term “must” means that this is a mandatory requirement. *See Washoe Cty. v. Otto*, 128 Nev. 424, 432, 282 P.3d 719, 725 (2012) (“The word ‘must’ generally imposes a mandatory requirement.”). By its plain terms, NAR 18(A) sets forth requirements that must be met at the outset of requesting a trial de novo or within 30 days after the request is made. NAR 24(B) relates to fees that must be paid after “the arbitrator serves an award in the action,” which means fees due at the conclusion of an arbitration. Thus, under NAR 18(A), Dell’Oro was required to certify that she had paid, or would pay within 30 days, any outstanding arbitration fees in her request for a trial de novo. This would include fees charged to the parties pursuant to NAR 24(A)-(B).

Although the record does not show an itemized bill from the arbitrator, it does show that (1) the arbitrator sent a notice of arbitration that required the parties to pay an advance fee of \$250 pursuant to NAR 24(A), and (2) Kemp was required to pay \$250 in fees, constituting Kemp’s share of arbitration fees, as a sanction for Dell’Oro’s refusal to participate in discovery. Because Dell’Oro was notified of at least \$500 of the arbitration fees, she cannot rely on the arbitrator’s alleged failure to send

an itemized bill to relieve her duty of certifying the payment of arbitration fees under NAR 18(A).² Specifically, Dell'Oro was not relieved from paying her share of the arbitration fees and costs as well as Kemp's share in order for her trial de novo to be considered by the district court, even though she may not have received an itemized bill from the arbitrator setting forth any additional fees requested pursuant to NAR 24(B).

After Dell'Oro submitted her first request for a trial de novo, the district court informed her that she had a duty to comply with NAR 18(A), and the record shows that she did not object to the fees or correct these deficiencies in her second request for a trial de novo. Thus, because Dell'Oro never made the required certification under NAR 18(A) and failed to pay the arbitrator's fees or file an objection, the district court did not err in its interpretation of the rules or abuse its discretion in denying her request for a trial de novo based on waiver under NAR 18(C).³

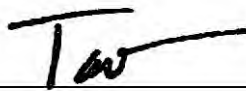
²We further note that the arbitrator's award is not included in the record on appeal, nor in the parties' appendices, and thus we presume that it supports the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision.").

³In Dell'Oro's brief, she also states that the arbitration award should be set aside. Our review on appeal, however, is limited to the district court's order denying Dell'Oro's request for a trial de novo. NAR 18(F). Thus, this court will not consider this argument on appeal.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Barry L. Breslow, District Judge
Law Offices of Eric K. Chen
McMahon Law Offices, Ltd.
Washoe District Court Clerk

⁴Insofar as Kemp argues that Dell'Oro's request for a trial de novo is barred under NAR 18(B), we conclude that this argument need not be reached given the disposition of this appeal.