

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

QUY TRAN; CHRIS TRAN; AND TINH PHAN,
Appellants,
vs.
JONATHAN VARGAS; AND MARTIN VARGAS,
Respondents.

No. 78226-COA

FILED

AUG 28 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Appellants Quy Tran, Chris Tran, and Tinh Phan appeal from a district court order dismissing a tort action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Appellants filed a complaint against respondents Jonathan Vargas and Martin Vargas for injuries they sustained in a car accident. At the pretrial hearing, counsel for both sides sought a continuance due to the matter being close to settlement. The court vacated the trial and set the matter for a status check. And after neither counsel appeared at the status check the court dismissed the matter. Thereafter, appellants' counsel moved for reconsideration, which was granted by way of a minute order on April 30, 2018, with appellants' counsel being directed to submit an order.

When an order granting reconsideration and reinstating the case was not timely submitted, the court issued an order to show cause why the matter should not be dismissed based on the failure to submit the required order as well as a failure to prosecute, and a hearing was held on October 17. At that hearing, the court apparently accepted the explanations for why the order was not timely submitted and for any delay in prosecuting

the matter, as it signed the order reinstating appellants' case, which was submitted at the hearing, and set the matter for trial. The court also inquired as to whether an early case conference (ECC) had been held and appellants' counsel told the court it had not. The court then ordered that an ECC be held within two weeks and that a joint case conference report (JCCR) be submitted. During an in chambers status check on November 14 the court noted that a JCCR had not been submitted and set a status hearing for December 3. At the December 3 hearing, appellants' counsel represented that a JCCR had been submitted subsequent to November 14 and requested the matter be continued for a week in order to produce a file-stamped copy of it. The court advised the parties that if a JCCR file-stamped in November was not produced, the court would be inclined to dismiss the matter.

At the continued status check, appellants' counsel provided the court with a copy of a JCCR file-stamped in July 2016. He informed the court that he had faxed that JCCR to the court, copying respondents' counsel. He further apologized if he misspoke at the prior hearing but stated that what he was trying to convey to the court was that the parties had previously had an ECC and filed a JCCR in July 2016. Counsel also stated that he did not think he was required to hold another ECC and provide a supplemental JCCR, just that he needed to inform the court that the ECC had already been held and that the JCCR had been filed. The court took the matter under advisement and ultimately dismissed the matter, citing, among other things, its inherent authority and EDCR 1.90(b)(2). In dismissing the case, the court specifically found that appellants did not show good cause for failing to obey the court's October 17 order, which the court concluded had directed the parties to hold another ECC and file a

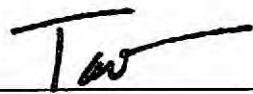
supplemental JCCR. After the court denied reconsideration of this decision, appellants filed the instant appeal.

Appellate courts “may, in [their] discretion, treat the failure of a respondent to file his brief as a confession of error, and reverse the judgment without consideration of the merits of the appeal.” *Rhode Island v. Prins*, 96 Nev. 565, 566, 613 P.2d 408, 409 (1980); *see also* NRAP 31(d)(2). Here, respondents have failed to file an answering brief, and we elect to treat this failure as a confession of error. As a result, we necessarily conclude that the district court abused its discretion in dismissing this matter. *See Moore v. Cherry*, 90 Nev. 390, 393-94, 528 P.2d 1018, 1020-21 (1974) (noting that courts have the inherent power to dismiss a case for failure to prosecute or comply with its orders but that such power must be exercised within the bounds of sound judicial discretion).¹ Accordingly, we

¹Although we need not reach the issue of whether reversal was warranted on the merits, we nonetheless note that the dismissal order was problematic in several respects. First, the record does not demonstrate that there was a facially clear order directing appellants to hold “another” ECC and file a “supplemental” JCCR. *See, e.g., Nev. Power Co. v. Fluor Ill.*, 108 Nev. 638, 645, 837 P.2d 1354, 1359 (1992) (providing that dismissal for failure to obey a discovery order should only be used in extreme situations and that factors affecting the discretionary decision to dismiss should be considered if the court determines that a *facially clear* order was disobeyed). Second, while the order cited both EDCR 1.90(b)(2) and cases acknowledging a court’s inherent authority to dismiss for lack of prosecution in support of its decision to dismiss this matter, it failed to provide any reasoning to support a dismissal on this basis, and instead only addressed its reasoning and findings regarding the ECC and JCCR issue. *See Jitnan v. Oliver*, 127 Nev. 424, 433, 254 p.3d 623, 629 (2011) (stating that “[w]ithout an explanation of the reasons or bases for a district court’s decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation”).

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Gazda & Tadayon
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk