

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYREEK CARTER, INDIVIDUALLY,
Appellant,
vs.
ANDRES ENRIQUEZ, INDIVIDUALLY;
AND JORGE BENCOMO-SALGADO,
INDIVIDUALLY,
Respondents.

No. 81597-COA

FILED

JUL 21 2021

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

ORDER OF REVERSAL AND REMAND

Tyreek Carter appeals from a district court order striking his request for trial de novo after arbitration in a tort matter. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Tyreek Carter was involved in a car accident in which he rear-ended a van driven by Andre Enriquez.¹ Jorge Bencomo-Salgado was in the front passenger seat of the van. Enriquez and Bencomo-Salgado (collectively Respondents) underwent medical treatment related to the accident. They filed a complaint against Carter, and the case was transferred to Nevada's mandatory court-annexed arbitration program.

Pursuant to the arbitrator's discovery order, Carter produced initial disclosures, deposed Respondents, and requested written discovery. Respondents did not depose Carter but requested written discovery. After Respondents stipulated to two extensions to respond to discovery, Carter served his answers to interrogatories and responded to requests for admission. He did not respond to requests for production of documents. Carter's interrogatory responses did not include his signed verification, which was required pursuant to NRCP 33(b). Respondents sent a letter to

¹We recount the facts only as necessary for our disposition.

Carter's counsel regarding the missing discovery. Carter's counsel did not reply. However, Respondents did not request a conference with the arbitrator pursuant to the discovery order.

Carter was not present at arbitration; his attorney attended arbitration on his behalf. Carter did not contest liability and only disputed the amount of damages, although his arbitration brief stated that he contested the severity of the collision and the extent of Respondents' injuries. Both Respondents attended the arbitration hearing, where they each testified and Carter's attorney cross-examined them. The arbitrator found for Respondents and later awarded Respondents attorney fees and costs, which Carter did not oppose.

Carter timely requested a trial de novo and Respondents filed a motion to strike the request. The district court, without a hearing, granted the motion to strike. The court found that Carter did not meaningfully participate in the arbitration process for the following reasons: (1) despite Carter not contesting liability, his testimony was necessary because he contested the severity of the collision, but he did not attend the arbitration hearing; (2) Carter did not retain an expert to opine on the severity of the collision; and (3) Carter did not provide verified responses to interrogatories and did not respond to the request for production of documents. The district court entered judgment on the arbitration award.

Carter now appeals. He argues the district court abused its discretion and ignored controlling law when it found he did not participate in the arbitration process in good faith. Respondents contend that Carter did not meaningfully participate in arbitration because he did not attend the hearing despite disputing the severity of the collision, failed to comply with discovery obligations, did not retain experts, did not subpoena medical

records, and did not oppose Respondents' request for attorney fees. We agree with Carter.

The Nevada Constitution guarantees the right to a jury trial in civil proceedings. Nev. Const. art. 1, § 3. This right may be waived pursuant to NAR 22(A), which provides “[t]he failure of a party or an attorney to either prosecute or defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo.” We review a district court’s decision to strike a request for trial de novo for an abuse of discretion, but “a somewhat heightened standard of review” is applied to sanctioning orders that terminate legal proceedings. *Chamberland v. Labarbera*, 110 Nev. 701, 704, 877 P.2d 523, 525 (1994) (quoting *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990)). “An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law.” *MB Am., Inc. v. Alaska Pac. Leasing Co.*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016).

For purposes of a trial de novo request, the term “good faith” is equated with “meaningful participation” in the arbitration process. *Casino Props., Inc. v. Andrews*, 112 Nev. 132, 135, 911 P.2d 1181, 1182-83 (1996). When liability is not at issue, a defendant’s failure to attend the arbitration hearing does not amount to bad faith. *Chamberland*, 110 Nev. at 705, 877 P.2d at 525. Further, the failure to call witnesses or retain experts similarly does not amount to bad faith. *See Gittings v. Hartz*, 116 Nev. 386, 392, 996 P.2d 898, 902 (2000). A district court does not abuse its discretion when granting a motion to strike a request for trial de novo if the party seeking trial de novo somehow impeded the arbitration process. *See Casino Props.*, 112 Nev. at 134-35, 911 P.2d at 1182-83 (concluding that a defendant did

not participate in the arbitration process in good faith because he refused to produce documents during discovery, failed to timely deliver a pre-arbitration statement, and failed to produce a key witness during the arbitration hearing).

Here, the district court abused its discretion when it found Carter acted in bad faith by failing to attend the arbitration hearing because, pursuant to *Chamberland*, a party who does not dispute liability and does not attend the arbitration hearing does not act in bad faith. 110 Nev. at 705, 877 P.2d at 525; *see also* NAR 15. Respondents argue, however, that while Carter did not dispute liability, he presented a “low-impact” defense and contested the severity of the collision, so it was crucial for him to testify at the arbitration.² Yet, Respondents do not demonstrate how Carter’s testimony was crucial to their case, how the arbitration process was impeded, or how Carter’s absence prejudiced them when he only contested the extent of damages. Here, Carter’s counsel attended the hearing and cross-examined Respondents about their injuries, which is sufficient participation in the arbitration process. *See Gittings*, 116 Nev. at 392, 996 P.2d at 902.

The district court further abused its discretion by concluding that Carter acted in bad faith because he did not retain expert witnesses. There is no rule requiring retention of expert witnesses in arbitration. In *Gittings*, the court concluded that a defendant’s strategic arbitration decisions, such as not retaining medical experts, were insufficient grounds to strike a trial de novo request. *Id.* at 392, 996 P.2d at 902 (“Effective cross-examination may be sufficient to point out discrepancies in a person’s claim

²Respondents did not depose Carter to obtain his testimony in advance of the arbitration.

of injury without such testimony, or without presentation of 'countervailing medical evidence.'"). While Respondents contend Carter should have retained experts, this merely constitutes criticism of his strategic decisions.³ Therefore, Carter did not act in bad faith when he did not retain experts.

The district court also abused its discretion when it found that Carter did not meaningfully participate in discovery. Carter timely provided NRCP 16.1 disclosures and responded to requests for admission and interrogatories. While his interrogatory responses did not include a signed verification, Respondents do not argue that they could not or did not rely on the responses at arbitration. Further, the interrogatories largely related to questions about the collision and the undisputed issue of liability. Additionally, even though Carter did not respond to the requests for production of documents, Respondents do not argue how they were prejudiced by this failure, or what documents Carter would have produced that were necessary for the arbitration. The requests mostly concerned documents related to the collision, and were not relevant to the issue of damages. From this, we cannot discern how Carter impeded the arbitration.⁴

Carter meaningfully participated in discovery when he served initial disclosures, requested written discovery, deposed Respondents, and answered Respondents' discovery requests, although not in full.

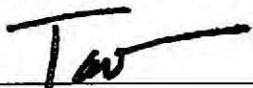
³Respondents' other arguments that Carter did not meaningfully participate because he did not subpoena medical records and did not oppose the request for attorney fees are similarly unpersuasive.

⁴We do not condone Carter's failure to properly respond to the discovery requests; however, in this case, his failure is not sufficient to warrant striking his request for trial de novo.

Accordingly, Carter did not act in bad faith during discovery. Therefore, the district court abused its discretion when it granted Respondents' motion to strike Carter's request for trial de novo. Accordingly, we

ORDER the judgment of the district court REVERSED and REMAND for further proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kenneth C. Cory, District Judge
Paul M. Haire, Settlement Judge
Law Office of Jason M. Peck
Brock K. Ohlson PLLC
Eighth District Court Clerk