IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS MONTOYA-PALMA, AN INDIVIDUAL; PERLA LEYVA-VAZQUEZ, AN INDIVIDUAL; ALVARO ARMENTA-VALENZUELA, AN INDIVIDUAL; AND CARLOS MONTOYA-PALMA ON BEHALF OF DANIELA ARMENTA, A MINOR CHILD, INDIVIDUAL,
Appellants,
vs.
MARIA NATALY LOPEZ-MELLADO, AN INDIVIDUAL,
Respondent.

No. 80647-COA

FILED

JUL 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Carlos Montoya-Palma, Perla Leyva-Vazquez, Alvaro Armenta-Valenzuela, and Carlos Montoya-Palma, on behalf of Daniel Armenta, appeal from a district court order dismissing a complaint in a tort action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

In September 2016, respondent Maria Lopez-Mellado rear-ended Carlos Montoya-Palma's vehicle at an intersection in Las Vegas, allegedly causing injuries to Montoya-Palma and his passengers (collectively appellants).[1] Appellants filed their complaint almost two years later, but within the applicable statute of limitations. Lopez-Mellado timely filed an answer, and the case was assigned to the mandatory arbitration program. An arbitrator was appointed, a discovery plan created, and the arbitration hearing scheduled. However, issues regarding appellants' compliance with discovery soon arose.

[1]We do not recount the facts except as necessary to our disposition.

Although Lopez-Mellado made repeated attempts to contact the appellants regarding their outstanding answers to her discovery requests, they were nonresponsive, and also failed to provide initial disclosures as required. Lopez-Mellado notified the arbitrator about the appellants' lack of participation in discovery on at least two occasions. The arbitrator attempted to schedule telephonic conferences with the parties regarding the discovery disputes, but appellants could not be reached until just before the discovery deadline. Soon after, appellants' counsel notified the arbitrator and Lopez-Mellado that he had recently been suspended from the practice of law, and therefore could not participate in a conference. Ultimately, appellants obtained new counsel and the arbitration hearing was rescheduled. Nevertheless, appellants' lack of participation in discovery, including failing to provide answers to outstanding discovery requests, continued.

Approximately two weeks later, Lopez-Mellado moved the district court to dismiss the case for want of prosecution, or in the alternative, to grant summary judgment on the merits. During the hearing on Lopez-Mellado's motion to dismiss, the district court deferred ruling on the motion and instead ordered appellants to serve initial disclosures, respond to Lopez-Mellado's outstanding discovery requests, and provide HIPAA compliant authorization forms within 30 days. The court also continued the hearing on the motion to dismiss for a month to allow appellants time to comply with its order. At the next hearing, one month later, and more than nine months since the arbitrator was appointed, appellants had not fully complied with the district court order compelling their outstanding discovery. Thus, at the return hearing on Lopez-Mellado's motion to dismiss for want of prosecution, the district court did in

fact dismiss the case; however, the court based the dismissal on NRCP 37(b) as a discovery sanction for appellants' failure to comply with the court's order requiring appellants to produce discovery.[2] This appeal followed.

Appellants argue that the district court's order of dismissal should be reversed for two reasons: (1) pursuant to EDCR 2.34(a), any motion to compel discovery should have first been heard by the discovery commissioner; and (2) the district court abused its discretion by dismissing the case pursuant to NRCP 37(b) as a discovery sanction because the court failed to properly analyze the controlling factors set forth in *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990). We disagree and therefore affirm.

Appellants first argue that because Lopez-Mellado's motion to dismiss for want of prosecution was "at its heart" a discovery motion, the district court lacked jurisdiction to hear it pursuant to Rule 2.34(a) of the Eighth Judicial District Court Rules (EDCR) because the discovery commissioner should have heard it first.

As a threshold matter, because the underlying case was in the court annexed arbitration program, EDCR 2.34(a) does not apply. *See* Nevada Arbitration Rule (NAR) 4(C). Accordingly, appellants' claim that

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[2]The district court did not address Lopez-Mellado's motion to dismiss for want of prosecution or for summary judgment at either hearing. The district court incorporated by reference Lopez-Mellado's motion to dismiss in its order of dismissal, but it is clear from the record that the district court dismissed the case as a discovery sanction pursuant to NRCP 37(b), rather than for want of prosecution under NRCP 41(e). Thus, we need not address whether dismissing the case for want of prosecution would have been appropriate. *See Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193, 199 (2005) ("The district court did not address this issue. Therefore we need not reach the issue.").

any discovery motion should have first been heard by the discovery commissioner is without merit.[3] Instead, because the case was in arbitration, NAR 4 and 11 governed discovery.

NAR 4(C) states that the NAR govern during the time a case is in the arbitration program, and NAR 11 gives the appointed arbitrator discretion over discovery disputes. Further, "NAR 4(E) prevents non-dispositive motions from being brought before the district court when arbitration is pending," but dispositive motions may still be heard by the district court. *U.S. Design & Constr. Corp. v. Int'l Brotherhood of Elec. Workers*, 118 Nev. 458, 464, 50 P.3d 170, 174 (2002) (holding that the district court was not prohibited from awarding attorney fees and costs after it disposed of a case by summary judgment because doing so removed it from arbitration). In addition, the district court retains jurisdiction over "all phases of the proceedings, including arbitration," NAR 4(A), and "has the authority to act on or interpret [the NAR]," NAR 4(B).

Here, Lopez-Mellado's motion to dismiss for want of prosecution or in the alternative for summary judgment was a dispositive

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[3]Even if EDCR 2.34(a) applied, the rule gives the district court and the discovery commissioner concurrent jurisdiction over discovery matters, stating that discovery disputes must first be heard by the discovery commissioner, "[u]nless otherwise ordered." Further, appellants' reliance on an unpublished disposition by this court and on *Valley Health System, LLC v. Eighth Judicial District Court*, 127 Nev. 167, 252 P.3d 676 (2011), is misplaced. Appellants' citation to the unpublished disposition is improper, *see* NRAP 36(c)(3), and *Valley Health* is distinguishable as it addresses whether a party, when objecting to the discovery commissioner's recommendations before the district court, waives an argument that it failed to present to the discovery commissioner in the first instance. Unlike the parties in *Valley Health*, Lopez-Mellado was not required to bring her motion before the discovery commissioner because she was in arbitration.

motion and properly filed with the district court pursuant to NAR (4)(E). Further, prior to filing her motion with the district court Lopez-Mellado attempted to bring her discovery disputes to the arbitrator's attention on two occasions pursuant to NAR 11. However, the arbitrator was unsuccessful in scheduling a conference to address appellants' dilatory participation in discovery. Even if some of the difficulty in scheduling a conference was due to the suspension of appellants' original counsel, appellants were nevertheless represented by new counsel at the time of the relevant events leading up to the dismissal of their case. Moreover, the record shows that appellants' pattern of noncompliance with the discovery plan predated the suspension of their original attorney.

At the initial hearing on Lopez-Mellado's motion to dismiss for want of prosecution, because the motion rested primarily on appellants' failure to participate in discovery, the district court deferred ruling on the motion and instead opted to first compel appellants to answer the outstanding discovery requests. The court ordered appellants to provide their outstanding answers within 30 days, and continued the motion to dismiss in order to allow respondents time to comply, which was well within the court's discretion. *See Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012) (recognizing that "[d]iscovery matters are within the district court's sound discretion"); *cf. MDB Trucking, LLC v. Versa Prod. Co., Inc.*, 136 Nev., Adv. Op. 72, 475 P.3d 397, 403 (2020) (providing that "courts have inherent authority to manage the judicial process so as to achieve the fair, orderly, and expeditious disposition of cases"). Accordingly, the district court had jurisdiction to hear Lopez-Mellado's dispositive motion, and did not abuse

its discretion in attempting to resolve the underlying discovery disputes before addressing the motion to dismiss.

Next, appellants argue that the district court abused its discretion because it did not properly consider all the *Young* factors in dismissing their case at the return hearing for their failure to fully comply with the court's discovery order. We disagree.

NRCP 37(b)(1) gives the district court discretion to impose case-concluding sanctions against a party for failure to obey a discovery order. When deciding whether a district court abused its discretion in imposing sanctions, we do not "substitute our judgment for that of the district court." *Young*, 106 Nev. at 92, 787 P.2d at 779. A district court's factual findings will be upheld unless clearly erroneous or unsupported by substantial evidence. *Weddell v. H20, Inc.*, 128 Nev. 94, 101, 271 P.3d 743, 748 (2012). Case-concluding sanctions are subject to "a somewhat heightened standard of review" requiring this court to determine (1) whether the sanctions are just and relate to the claims at issue in the violated discovery order, and (2) whether the court expressly and thoughtfully considered the pertinent factors before imposing case-concluding sanctions (although the district court need not first impose less severe sanctions). *Young*, 106 Nev. at 92-93, 787 P.2d at 779-80.

In *Young*, the Nevada Supreme Court set forth a non-exhaustive list of factors that may be considered. *Id.* at 93, 787 P.2d at 780. There, the court affirmed the district court's order of dismissal under NRCP 37(b), even though it only considered "most" of the factors. *Id.* at 93-94, 787 P.2d at 780. Thus, a district court need not consider every *Young* factor, as long as its analysis is thoughtfully performed. *See N. Am. Props. v. McCarran Int'l Airport*, Docket No. 61997 (Order of Affirmance, February

19, 2016); *see also Blanco v. Blanco*, 129 Nev. 723, 729, 311 P.3d 1170, 1174 (2014) (stating that the district court need only carefully consider "*certain* pertinent factors" (emphasis added)).

Additionally, a district court is not required to make written findings as to the *Young* factors, 106 Nev. at 93, 787 P.2d at 780, and this court may "rely on an examination of the record" to determine whether the district court abused its discretion in imposing sanctions, *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. 235, 242, 416 P.3d 249, 256-57 (2018). Thus, our review encompasses the complete record on appeal, as well as the district court's order of dismissal.

Initially, we note that although the title of the district court's dismissal order states that the case was dismissed for want of prosecution, or summary judgment in the alternative, the court actually dismissed the case as a discovery sanction pursuant to NRCP 37(b). This is clear from the substance of the district court's order. *See Brown v. MHC Stagecoach*, 129 Nev. 343, 354, 301 P.3d 850, 851 (2013) (holding that the finality of an order depends on what it does, not what it is called).

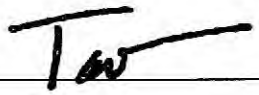
The district court also explicitly cited *Young*, and expressly addressed most of the *Young* factors in its order or at the hearing on the motion.[4] The district court's factual findings are also substantially supported by the record. For example, appellants argue that Lopez-Mellado already had "all relevant medical records" in her possession, and therefore the district court could have imposed a less severe sanction than dismissal

[4]We acknowledge that while the district court's order was perhaps not as detailed as it could have been, by expressly including the court's oral findings from the hearing on the motion to dismiss, it is clear from the record as a whole that the district court considered the pertinent *Young* factors. *See Peppermill*, 134 Nev. at 242, 416 P.3d at 256-57.

without prejudicing Lopez-Mellado. However, significant discovery remained outstanding and Lopez-Mellado was entitled to ensure that she had in fact received all of the relevant medical records, which is why the court ordered the HIPAA compliant authorizations to be provided. And the district court provided appellants with an additional month to produce their outstanding discovery before ultimately imposing case-concluding sanctions, even though it was not required to do so under *Young*.[5] The district court also expressly considered the fact that the one-year deadline to arbitrate under NAR 12(B) was fast approaching, leaving little time for Lopez-Mellado to complete discovery and formulate her defenses for arbitration. Accordingly, even under a heightened standard of review, we conclude the district court did not abuse its discretion in dismissing the case as a discovery sanction pursuant to NRCP 37(b). Therefore, we

ORDER the judgment of the district court AFFIRMED.[6]

_____, C.J.
Gibbons



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Tao

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[5]We recognize that appellants' counsel was suspended from the practice of law. However, appellants obtained new counsel well before the first hearing on Lopez-Mellado's motion to dismiss, at which time they were given an additional 30 days to produce the outstanding discovery. Thus, the record demonstrates that the case-concluding sanctions did not unfairly penalize appellants for the conduct of their counsel.

[6]Insofar as the parties raise arguments not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given this disposition.

cc: Hon. Susan Johnson, District Judge
Michael J. Harker
Randal R. Leonard
Messner Reeves LLP
Eighth District Court Clerk