IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TROY MOORE, AN INDIVIDUAL,
Appellant,
vs.
DOUGLAS WILLIAMS, AN INDIVIDUAL; AND VIVA LAS VEGAS AUTOS, INC., A NEVADA CORPORATION,
Respondents.

No. 82170-COA

ORDER OF AFFIRMANCE

Troy Moore appeals from a district court order striking his request for trial de novo. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Moore filed a complaint in district court against Douglas Williams and Viva Las Vegas Autos, Inc. (collectively Williams), alleging numerous claims stemming from a breach of contract dispute.[1] The case was assigned to the court annexed arbitration program.

Thereafter, the arbitrator issued a discovery scheduling order and set a date for the arbitration hearing, which was held approximately one year later. Williams timely submitted a prearbitration statement, but Moore failed to timely submit one, instead waiting until the day of arbitration to fax his statement to the arbitrator. At no point prior to the arbitration hearing did Moore disclose any witnesses, documents, or other evidence he intended to rely on to support his claims at arbitration. Moore also failed to respond to Williams' informal requests to obtain discovery from him. Thus, on the day of the arbitration hearing, the arbitrator barred Moore from admitting

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

witness testimony or exhibits due to his failure to timely submit a prearbitration statement advising the arbitrator and Williams of the testimony and evidence he intended to rely upon at the arbitration. Ultimately, the arbitrator entered a decision in favor of Williams based on Moore's failure to meet his burden of proof on any of his eight claims.

Subsequently, Moore moved the district court for a trial de novo and, in response, Williams moved to strike Moore's request. The district court granted Williams' motion to strike and entered judgment on the arbitration award. Moore timely appealed, and this court reversed the district court's order for failing to make specific findings and remanded the matter. On remand, the district court ordered supplemental briefing from the parties and heard oral argument on the motion. The court again granted Williams' motion to strike the request for a trial de novo, but issued a more detailed order.

Moore's primary argument on appeal is that the district court's order granting the motion to strike pursuant to Nevada Arbitration Rule (NAR) 22 should be reversed because he meaningfully participated in the arbitration process, where he (1) received Williams' prearbitration statement, which allegedly contained discovery that Moore could have used to prosecute his case, (2) appeared at the arbitration hearing, (3) never refused to appear at a deposition or expressly refused Williams' requests for discovery, and (4) produced witnesses at the arbitration hearing. Even if Moore's points are true, he still failed to timely produce his prearbitration statement as required and to meet the requisite burden of proof on his claims at the time of the arbitration. We conclude the district court acted within its discretion and therefore affirm.

"The Nevada Constitution provides a litigant with the right to a jury trial in civil proceedings." *Gittings v. Hartz*, 116 Nev. 386, 390, 996 P.2d 898, 900-01 (2000) (citing Nev. Const. art. 1, § 3). "However, this right can be waived by various means prescribed by law," including NAR 22(A). *Id.* NAR 22(A) provides that "[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." "For purposes of requesting a trial de novo, this court has equated good faith with meaningful participation in the arbitration proceedings." *Gittings*, 116 Nev. at 390, 996 P.2d at 901 (internal quotation marks omitted); *see Casino Props., Inc. v. Andrews*, 112 Nev. 132, 135, 911 P.2d 1181, 1182 (1996) (determining that "if the parties did not participate in a meaningful manner, the purposes of mandatory arbitration would be compromised"). "When a district court strikes a request for a trial de novo, the decision is treated for purposes of jurisdiction as a final order, subject to appellate review." *Gittings*, 116 Nev. at 391, 996 P.2d at 901. "The standard of review on appeal is abuse of discretion." *Id.*

In this case, Moore suggests that, pursuant to *Chamberland v. Labarbera*, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994), and *Gittings*, 116 Nev. at 392, 996 P.2d at 902, his failure to timely submit a prearbitration statement and participate in discovery does not support the district court's decision to strike his request for a trial de novo. However, *Chamberland* and *Gittings* are distinguishable, as Moore, unlike the defendants in those cases, was the plaintiff in the underlying proceeding. As the plaintiff, Moore had the burden to prosecute his case and prove his claims, and failed to do so. *See Stickler v. Quilici*, 98 Nev. 595, 597, 655 P.2d 527, 528 (1982) (explaining that the burden is on the plaintiff to prove every fact essential to establishing

a cause of action). He did not participate in discovery and failed to produce any documentary evidence to support his claims. Notably, he also failed to timely submit a prearbitration statement, instead producing it on the day of the arbitration. *See* NAR 13(A) (providing in part that "[a]t least 10 days prior to the date of the arbitration hearing, each party shall furnish the arbitrator and serve upon all other parties a statement containing a final list of witnesses whom the party intends to call at the arbitration hearing, and a list of exhibits and documentary evidence anticipated to be introduced").[2]

Additionally, Moore's claim that he was prepared to prosecute his case using only the exhibits contained in Williams' prearbitration statement is unsupported by the record.[3] Moore cites to a "certificate of service" contained in Exhibit 5 to Williams' motion to strike as proof that Williams provided Moore with discovery that would allow Moore to prosecute his contract claims. However, Exhibit 5 consists of two emails from Williams' attorney of record sent to Moore's attorney of record that informally requested discovery and inquired about the possibility of a joint prearbitration statement. We are unable to ascertain how Exhibit 5, and

---

[2]The arbitrator in this case modified and reduced the time required for the parties to submit their prearbitration statements to three days prior to the date of the arbitration hearing. Nevertheless, Moore failed to meet this modified deadline.

[3]Insofar that Moore claims he brought his own evidence to the arbitration hearing, the arbitrator appropriately barred Moore from presenting this evidence pursuant to NAR 13. Because Moore failed to submit a prearbitration statement or otherwise notice the arbitrator and Williams of the evidence he intended to use at arbitration, Moore could not then "present at the arbitration hearing a witness or exhibit not previously furnished." NAR 13(B).

Williams' prearbitration statement, somehow provides sufficient evidence for Moore to have prosecuted his claims at arbitration. In fact, the entire record is devoid of any such documentation to support Moore's assertion as Moore failed to include as part of the appellate record Williams' prearbitration statement or any alleged discovery attached thereto that would support his claims. *See McClendon v. Collins*, 132 Nev. 327, 333, 372 P.3d 492, 496 (2016) (concluding that "[a]ppellant [is] responsible for making an adequate appellate record, and when appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision" (second alteration in original) (internal quotation omitted)).

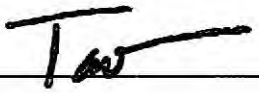
Finally, Moore's attendance at the arbitration hearing alone is insufficient to support that Moore meaningfully participated in the arbitration process. Mere attendance at an arbitration hearing is not dispositive of a party's meaningful participation pursuant to NAR 22(A). *See Casino Props.*, 112 Nev. at 135, 911 P.2d at 1182 (noting that participation must be in a *meaningful* manner). Thus, based on the record, the district court did not abuse its discretion in granting Williams' motion to strike the request for a trial de novo, as Moore did not meaningfully participate in the arbitration process when he failed to timely submit his prearbitration statement and prosecute his claims.[4] Therefore, we

---

[4]To the extent that Moore argues his bringing witnesses to the arbitration evidences his meaningful participation in the arbitration process, we find this argument unpersuasive. Here, the only witnesses Moore allegedly "produced" at the arbitration hearing were himself and Williams. Further, Moore's assertion that he never expressly refused to participate in depositions or submit specific discovery requests is also unpersuasive. Moore

ORDER the judgment of the district court AFFIRMED.[5]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 2
The Feldman Firm, P.C.
Shumway Van
Eighth District Court Clerk

---

was still required to timely submit his prearbitration statement and disclose evidence to support his claims in advance of the arbitration.

[5]Insofar as the parties raise arguments that are 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 the disposition of this appeal.