

IN THE SUPREME COURT OF THE STATE OF NEVADA

IDA MCALLISTER, AN INDIVIDUAL,
Appellant,
vs.
MAYCLIFF CAMPERLAND AND MINI
STORAGE,
Respondent.

No. 37856

FILED

FEB 04 2003

ORDER OF REVERSAL AND REMAND

JANETTED BLOOM,
CLERK OF SUPREME COURT
BY *J. R. R. R.*
DEPUTY CLERK

This is an appeal from a final amended judgment on a jury verdict in favor of Maycliff; from an order denying a new trial; and from an order awarding attorney fees. McAllister claims the district court abused its discretion and denied her due process by excluding all of her witnesses at trial. We agree.

If a party fails to comply with an order regarding discovery, NRCP 37 gives the court discretion to “make such orders in regard to the failure as are just.”¹ This court reviews any such discovery sanctions under an abuse of discretion standard.² Further, “[t]he question is not whether this court would as an original matter have entered [this] sanction for violating a discovery rule; it is whether the trial court abused its discretion in so doing.”³

¹NRCP 37(b)(2).

²Young v. Johnny Ribeiro Building, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (citing Kelly Broadcasting Co., Inc. v. Sovereign Broadcast, Inc., 96 Nev. 188, 192, 606 P.2d 1089, 1092 (1980)).

³Kelly Broadcasting v. Sovereign Broadcast, 96 Nev. 188, 192, 606 P.2d 1089, 1092 (1980) (citing Affanto v. Merrill Bros, 547 F.2d 138, 140-

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Although NRCP 37 grants broad discretion to the district courts in imposing discovery sanctions, this discretion is not unfettered.⁴ Due process requires that sanctions not only be just, but must also relate to the specific discovery abuse.⁵

The United States Supreme Court previously explained that the power to impose a valid discovery sanction stems from a presumption that refusal to produce evidence indicates a lack of merit in the evidence in question.⁶ A valid discovery sanction, based on such a presumption, is distinguishable from mere punishment, where, in addition to refusing to allow evidence that is not properly produced through discovery, the court also excludes evidence that is produced.⁷ If sanctions are not directly related to the specific discovery abuse, sanctions become mere punishment, which denies due process through the court's refusal to hear all properly produced evidence.⁸

Here, where McAllister repeatedly and continually failed to provide contact information for two of her witnesses, it is a fair application

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41 (1st Cir. 1977)); see also National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 642 (1976).

⁴See id. at 195 (Manoukian, J., dissenting in part).

⁵Young, 106 Nev. at 92 (citing Wylie v. R.J. Reynolds Industries, Inc., 709 F.2d 585, 591 (9th Cir. 1983)).

⁶See Hammond Packing Co. v. State of Arkansas, 212 U.S. 322, 351 (1909).

⁷See id.

⁸See id.

of discovery sanctions to preclude these two witnesses from testifying on her behalf at trial. This court previously upheld the district court's exclusion of a witness, in a similar case, where the appellant failed to provide either the name or address of a particular witness in response to interrogatories and during a pretrial hearing.⁹ However, the exclusion of other witnesses, who were properly identified prior to the deadline imposed by the court, is not just and does not relate to the specific discovery abuse.

“[W]e must be mindful of the underlying rights of a party to due process and a trial by jury, as well as the judicial policy favoring the disposition of cases on their merits.”¹⁰ Here, where the district court gave McAllister a new deadline, it is contrary to notions of fair play and due process to impose sanctions despite her substantial compliance with that deadline.

Maycliff argues that the trial court, in the order setting the civil jury trial,¹¹ established November 24, 2000, as the last day to supplement witness lists and that no witnesses could be provided after this date. In Hansen v. Universal Health Services,¹² the plaintiff was precluded from adding three additional expert witnesses after the

⁹Southern Pacific Company v. Watkins, 83 Nev. 471, 493, 435 P.2d 498, 512 (1968).

¹⁰Havas v. Bank of Nevada, 96 Nev. 567, 570, 613 P.2d 706, 708 (1980) (citing Societe Internationale v. Rogers, 357 U.S. 197, 209 (1958); Affanto v. Merrill Bros., 547 F.2d 138, 140 (1st Cir. 1977)).

¹¹The order setting civil jury trial was signed on June 14, 2000.

¹²115 Nev. 24, 974 P.2d 1158 (1999).

discovery cutoff date, but before the expiration of the time limits provided by NRCP 26(b)(5)(B). In Hansen, we held that the timing orders of the trial court supersede timing provided in NRCP 26(b)(5)(B).¹³

In contrast to Hansen, where the court never revised the discovery deadline, here, the trial court ordered McAllister to comply with all outstanding discovery requests by December 29, 2000. Further, McAllister substantially complied with this deadline. This new deadline superseded the discovery deadline set in any earlier orders.

This court has previously noted the importance of the Nevada Rules of Civil Procedure and the “judicial commitment to the proposition that ‘justice delayed is justice denied.’”¹⁴ Thus, the district courts are given broad discretion to impose discovery sanctions “as are just.”¹⁵ “However, we are mindful that occasionally an overly strict application of a rule—especially when coupled with ultimate sanctions—will defeat the very ends of justice that the rules are designed to promote.”¹⁶

¹³Id. at 28.

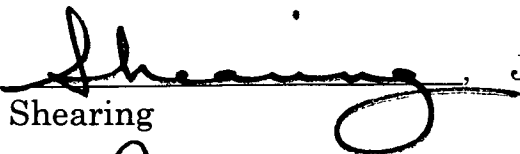
¹⁴Dougan v. Gustaveson, 108 Nev. 517, 523, 835 P.2d 795, 799 (1992) (abrogated, in part, on other grounds by Scrimmer v. Eighth Judicial Dist. Court, 116 Nev. 507, 998 P.2d 1190 (2000)).


¹⁵NRCP 37(b)(2).


¹⁶Dougan, 108 Nev. at 523.

We conclude that the district court abused its discretion in imposing discovery sanctions that were unjust, excluding all of McAllister's witnesses, rather than just those who were not properly identified in response to discovery requests. This conclusion eliminates the need to address McAllister's other arguments on appeal. Accordingly, we

ORDER the judgment and order of the district court REVERSED AND REMAND this matter to the district court for a new trial.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Ronald D. Parraguirre, District Judge
James A. Simmons
Ryan, Marks, Johnson & Todd
Clark County Clerk
Ida McAllister