

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANNON WILLIAMS, AN
INDIVIDUAL,
Appellant,
vs.
ANDERSON DAIRY INC.; AND JOE
WEBB KELLY, AN INDIVIDUAL,
Respondents.

No. 84993

FILED

AUG 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint in a torts action and a postjudgment order awarding attorney fees. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.¹

Respondents, collectively Anderson Dairy, moved to dismiss appellant Shannon Williams' torts complaint based in part on a failure to comply with EDCR 2.67. The district court granted the motion, dismissed the complaint with prejudice, and denied Williams' subsequent motion for rehearing and to amend the judgment. It also awarded Anderson Dairy attorney fees based on NRCP 68. Williams now appeals.

Pursuant to EDCR 2.67(a), "[t]he plaintiff must designate the time and place of [a] meeting" where the trial attorneys will "exchange their exhibits and list of witnesses, and arrive at stipulations and agreements . . . for the purpose of simplifying the issues to be tried." The rule further requires that the attorneys submit a joint pretrial memorandum to the court. If the parties cannot agree, each attorney must submit a separate pretrial memorandum that includes a list of all exhibits

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

and witnesses. EDCR 2.67(a). Where a party fails to comply with this rule, EDCR 2.67(c) gives the court the discretion to enter “a judgment of dismissal or default or other appropriate judgment” or to impose sanctions.

Applying “a somewhat heightened standard of review” to the district court’s discretionary imposition of a case-concluding sanction, we affirm. *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (reviewing the district court’s case-concluding sanction under a somewhat heightened abuse of discretion standard); *see also Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 615 n.6, 245 P.3d 1182, 1188 n.6 (2010) (defining case-concluding sanctions to include “cases in which the complaint is dismissed”). When imposing case-concluding sanctions, we generally require the district court to support its decision with “an express, careful and preferably written explanation of the court’s analysis of the pertinent factors.” *Young*, 106 Nev. at 93, 787 P.2d at 780; *see also Chamberland v. Labarbera*, 110 Nev. 701, 704-05, 877 P.2d 523, 525 (1994) (holding that district court must consider the *Young* factors when issuing case-concluding sanctions despite the sanctions in that case not arising from discovery abuses as occurred in *Young*).

Although the district court did not explicitly mention *Young*, we affirm because its dismissal order demonstrates the court considered factors that *Young* held to be pertinent and shows no abuse of discretion. Indeed, in its dismissal order, the district court (1) insinuated that Williams’ counsel acted willfully by casting doubt on the credibility of counsel’s excuses for not complying with EDCR 2.67; (2) deemed counsel’s failures to be particularly

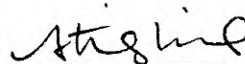
egregious²; (3) found that Anderson Dairy would be prejudiced by the trial going forward as it would not be able to respond to any presentation of evidence by Williams; (4) stated that a jury trial was untenable due to the failure to prepare any exhibits or streamline the issues for trial; and (5) found that anything but dismissal would be a “miscarriage of justice.” See *Young*, 106 Nev. at 93, 787 P.2d at 780 (listing pertinent factors to include “the degree of willfulness of the offending party,” whether lesser sanctions would be fair, prejudice to the other party, and the policy favoring adjudication on the merits). Moreover, EDCR 2.67(c) explicitly authorizes the district court to dismiss an action when a party does not comply with the rule, demonstrating that dismissal is a sanction commensurate with Williams’ misconduct. See *id.* (providing that a factor to be considered is the severity of the sanction as compared to that of the party’s misconduct). As we find no abuse of discretion in the dismissal, we also find no abuse of discretion in the district court’s denial of Williams’ postjudgment motion for rehearing and/or to amend the dismissal order. See *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (reviewing a motion to alter or amend a judgment for an abuse of discretion).


The district court also did not abuse its discretion in awarding Anderson Dairy attorney fees under NRCP 68. See *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014) (recognizing that a decision to award attorney fees is generally reviewed for an abuse of discretion). Although Williams is correct that the district court did not

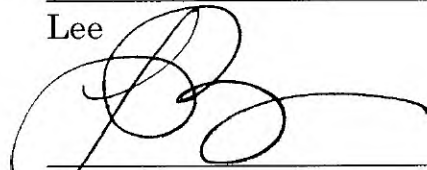
²The court noted that Williams did not even try to schedule the meeting and never provided the court with trial exhibits despite multiple trial continuances. Indeed, even after Anderson Dairy moved to dismiss based on Williams’ failure to comply with EDCR 2.67, Williams still did not attempt to comply with the rule.

make written findings on the *Beattie* factors as this court has encouraged, here the record demonstrates that the district court considered the factors as both parties addressed them in their briefs on the fees motion and the district court noted its consideration of those briefs in its order.³ *See Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (holding that written findings on the *Beattie* factors are not required, but rather “the district court need only demonstrate that it considered the required factors, and the award must be supported by substantial evidence”). And Williams makes no argument that the *Beattie* factors did not weigh in favor of awarding Anderson Dairy attorney fees. Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Stiglich


_____, J.
Lee


_____, J.
Bell

cc: Hon. Crystal Eller, District Judge
Persi J. Mishel, Settlement Judge
Law Office of Alda A. Anderson, P.C.
Winner Booze & Zarcone
Eighth District Court Clerk

³The district court held a hearing on the fees motion as well, but neither Williams nor his counsel appeared.