

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BERTHINIA S. WILLIAMS,
Appellant,
vs.
KEVIN M. DAVIS,
Respondent.

No. 88205-COA

FILED

MAR 04 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Berthinia S. Williams appeals from an order of dismissal following a bench trial. Eighth Judicial District Court, Clark County; Michael Villani, Senior Judge.

Williams and respondent Kevin M. Davis were involved in a vehicular accident on July 15, 2015. Williams filed a civil complaint alleging Davis struck her vehicle from behind and injured her shoulder. Davis denied liability and alleged the parties were stopped on an incline and Williams' vehicle rolled backwards into his vehicle. This matter was assigned to the Court Annexed Arbitration Program and the parties proceeded to an arbitration hearing. Following the hearing, the arbitrator entered an award finding Williams was liable for the accident. Williams filed a request for a trial de novo and ultimately, following a lengthy procedural history not relevant to this appeal, Williams filed a motion requesting removal from the short trial program.

The district court then set a trial for January 29, 2024. Prior to trial, Williams submitted a pre-trial memorandum identifying her witnesses and stating she had exhibits on a CD. However, the pre-trial

memorandum did not specifically identify any documents or exhibits. Trial was scheduled to begin at 9:30 a.m. The district court called the case at 9:41 a.m. and stated that staff had contacted Williams, who stated she was attempting to park and would arrive shortly. The district court then recessed until 10:02 a.m., when Williams arrived. The district court inquired into Williams' reason for her late arrival, and she explained she was late due to traffic and difficulty parking. The district court stated that while it understood her reasons, and would not sanction her this time, she could not be late again because the jury and staff were waiting for her. The district court further stated it would have warned Davis if he was late and that it expected both parties to appear on time.

The district court then asked if the parties were ready to proceed and Williams stated she did not have her exhibits prepared and "[didn't] have a reason" for her lack of preparation. The district court indicated that it would address any issues regarding her attempt to introduce documents as they arose during trial. The district court next explained how it intended to conduct voir dire. Following this explanation, Davis indicated he was willing to waive his demand for a jury trial if Williams agreed to a bench trial. The district court then explained what a bench trial was to Williams and asked if she wished to proceed with a jury trial or bench trial. Williams asked if she could first make a telephone call. While the district court indicated it was initially not inclined to allow a further delay, it nevertheless stated Williams could make a short telephone call. The record reflects that following this break, Williams returned and consented to a bench trial.

During trial, Williams testified that the accident occurred while she was stopped at a red light and her vehicle was in a middle lane on a slight decline. Williams testified she felt a "boom" when Davis struck her vehicle from behind. She further indicated that, based on the damage to both vehicles, she believed Davis attempted to avoid the accident by swerving into the left turn lane, which caused his right front bumper to impact the left rear of her vehicle. Williams stated that, as a result of the accident, she suffered an injury to her shoulder which left her unable to work and further caused her to suffer extreme mental distress. On cross-examination, Davis impeached Williams' testimony by introducing a transcript of her deposition, in which she claimed she was stopped in the left-hand lane waiting to enter the freeway when the accident occurred. Williams admitted to changing her testimony and stated that she was untruthful during her deposition because her prior counsel told her that her description of the accident did not make sense.

Following her testimony, Williams called Davis, and he testified that the parties were stopped at a red light waiting to enter the freeway entrance ramp. Davis claimed the parties were on an incline and that, after the light turned green, Williams' vehicle rolled back into his vehicle. Williams' final witness was her daughter, who did not witness the accident but testified as to some of the difficulties Williams faced following the accident. Williams then rested her case.

Following the conclusion of Williams' case, Davis orally moved to dismiss Williams' case pursuant to NRCP 52. Davis argued Williams failed to introduce any medical records or present expert testimony regarding causation for her alleged injuries. Further, Davis noted that

Williams did not call a medical expert. Williams opposed the request and stated she had medical documents she wished to present, but following questioning from the court, confirmed she lacked a custodian affidavit demonstrating her documents were true and accurate. Williams further stated she wished to call a medical expert but could not afford to do so.

The district court subsequently granted the motion, finding that Davis failed to comply with NRS 52.015, which requires documents to be properly authenticated prior to admissibility. The district court further found Davis failed to establish a prima facie case of negligence or negligence per se because she failed to establish causation for her claimed injuries. Williams now appeals.

On appeal, Williams does not directly challenge the granting of Davis's motion to dismiss pursuant to NRCP 52 or address the grounds on which this motion was granted.¹ Instead, Williams alleges the district court was biased against her based on its chastisement when she arrived late to trial. She further asserts the district court engaged in ex-parte communications with Davis when Williams was running late and reached an agreement to convince Williams to proceed with a bench trial, knowing the district court would rule in Davis's favor.

Starting with Williams' allegations of bias against the district court, we conclude relief is unwarranted based on this argument because Williams has not demonstrated the district court's decisions in the underlying case were based on knowledge acquired outside of the

¹Williams does not challenge the propriety of granting a motion to dismiss pursuant to NRCP 52; thus, we do not address it.

proceedings and its decisions did not otherwise reflect “a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); see *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); see also *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022).

On this point, Williams argues the district court’s chastisement for her late arrival at trial demonstrates it was biased against her and suggests that this incident somehow shows that the court must have colluded with Davis to trick her into a bench trial. However, the record belies these allegations. Here, Williams acknowledges that she was approximately 30 minutes late to the start of her trial. And while the district court did chastise her for her tardiness, the court stated it would accept her explanation for the tardy arrival, but indicated that if she was late again, it would consider imposing sanctions for keeping staff and the jury waiting. The district court further stated it would treat Davis similarly if he was late following any recess. This sequence of events, where the


district court simply cautioned Williams against being late for trial and expressly stated that it would consider sanctioning either party if they were late in the future does not reflect the deep-seated favoritism or antagonism necessary to demonstrate bias. *See Canarelli*, 138 Nev. at 107, 506 P.3d at 337.

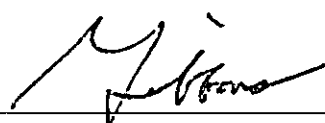
Turning to Williams' allegation of ex-parte communications resulting in an agreement to convince Williams to proceed with a bench trial, this assertion is likewise belied by the record. The transcript of the proceedings does not contain any ex-parte communications and instead demonstrates the district court called the case, informed Davis that Williams was on her way, and then recessed until her arrival. Further, the record does not support Williams' claim that the district court "tricked" or misled her into agreeing to a bench trial. Indeed, the record reflects the district court explained what a bench trial was and gave Williams time to make a phone call to determine whether she wanted to proceed with a bench trial. And following these events, Williams knowingly and freely agreed to have her case decided by a bench trial. This argument does not provide a basis for relief.

Finally, we conclude that, because Williams has otherwise failed to provide any argument challenging the grounds for and reasoning behind the granting of the NRCP 52 motion, she has waived any such arguments. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3 (providing that "[i]ssues not raised in an appellant's opening brief are deemed waived").

Accordingly, for the reasons set forth above, we affirm the district court's order.²

It is so ORDERED.³


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 27
Hon. Michael Villani, Senior Judge
Berthinia S. Williams
Hansen & Hansen, LLC
Eighth District Court Clerk

²Insofar as Williams raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

³In addition to challenging the final judgment in the underlying case, Williams' informal opening brief also purports to challenge the district court's post-judgment award of attorney fees and costs to Davis. However, the attorney fees and costs issue is not properly before us as part of this appeal because the order making that award was entered after Williams filed her notice of appeal from the final judgment. Thus, Williams was required to file a separate notice of appeal challenging the attorney fees and cost order because such orders are independently appealable as special orders after final judgment. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). Accordingly, we do not consider Williams' arguments in this regard.