

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFFORD B. CORDY,
Appellant,
vs.
ELSIE JOYCE CREACY,
Respondent.

No. 41962

FILED

FEB 16 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a district court order dismissing an action for failure to comply with NRCP 16.1 and an order awarding costs. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

The matter involves a personal injury action wherein appellant Clifford Cordy was struck by Elsie Creacy's vehicle while riding a bicycle. Cordy was represented by attorney Jeffrey Morrison, who was dilatory in completing many pretrial procedures. In particular, no NRCP 16.1 conference was held and no post-conference report was filed despite the completion of much of the discovery process.

Approximately three weeks prior to trial, Creacy filed a motion to dismiss based on the fact that NRCP 16.1 procedural requirements had not been met. Morrison filed a late opposition on behalf of Cordy, to which Creacy replied. The district court denied the motion to dismiss, but ordered \$1,000 in sanctions be awarded to Creacy for expenses incurred in bringing the motion and gave ten days from entry of the order for Cordy to comply with NRCP 16.1. Morrison made no effort to comply with NRCP 16.1 or the district court order. Creacy filed a second motion to dismiss based on the same rationale, which the district court granted as unopposed pursuant to DCR 13(3). Although the order

granting dismissal makes no determination as to prejudice, the order effectively operated as a dismissal with prejudice because the statute of limitations had expired.

DCR 13(3) states in part that failure to oppose a motion “may be construed as an admission that the motion is meritorious and a consent to granting the same.” We have previously affirmed a dismissal based on DCR 13(3).¹ Moreover, a panel of this court recently affirmed a summary judgment order that was granted under DCR 13(3) for failure to file a timely opposition.² Contrary to Cordy’s assertions, this is not an issue dealing with dismissal of case; rather, it is an issue dealing with dismissal based on an admission pursuant to DCR 13(3).

As an unfortunate consequence of Morrison’s conduct, Cordy now suffers the result. A party is bound by the acts of his counsel.³ “It is a general rule that the negligence of an attorney is imputable to his client, and that the latter cannot be relieved from a judgment taken against him, in consequence of the neglect, carelessness, forgetfulness, or inattention of the former.”⁴ A client who voluntarily chooses an attorney cannot avoid the consequences, acts or omissions committed by his agent, because he is deemed bound by the acts of his agent.⁵

¹Walls v. Brewster, 112 Nev. 175, 178, 912 P.2d 261, 263 (1996).

²King v. Cartlidge, 121 Nev. ____, ____ P.3d ____ (Adv. Op. No. 87, December 29, 2005).


³Wehrheim v. State, 84 Nev. 477, 480, 443 P.2d 607, 608 (1968).

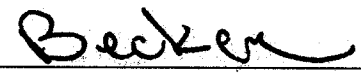
⁴Guardia v. Guardia, 48 Nev. 230, 233-34, 229 P. 386, 386 (1924).

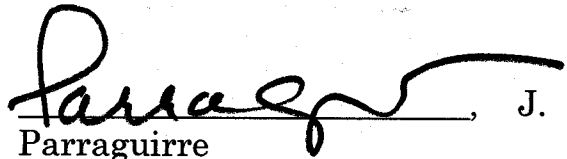
⁵Moore v. Cherry, 90 Nev. 390, 395, 528 P.2d 1018, 1022 (1974).

This court has carefully reviewed the ongoing history of this case. We are convinced that the district court afforded Cordy and his attorney ample opportunity to cure any failure to comply with pretrial procedures. They failed to do so, and as a result failed to conform to the rules. As a result, we conclude that the district court acted properly and well within its discretion in dismissing this action.

Accordingly, we conclude that Cordy's arguments are without merit and ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Beesley, Peck & Matteoni, Ltd.
Lemons Grundy & Eisenberg
Jeffrey D. Morrison
Law Offices of Robert F. Enzenberger
Washoe District Court Clerk
State Bar of Nevada