

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAUB & LAUB, LTD., A NEVADA  
CORPORATION; JOE M. LAUB AND  
MELVIN LAUB,

Appellants,

vs.

GLORIA KENDALL,

Respondent.

No. 42426

**FILED**

JUL 21 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

After the settlement judge filed a report indicating that the parties were unable to agree to a settlement of this appeal and this court entered an order reinstating briefing, the settlement judge filed a "Supplemental Settlement Conference Report and Recommendation for Sanctions." In that supplemental report, the settlement judge concludes that appellants failed to participate in good faith in the settlement conference program. See NRAP 16(f). Specifically, the settlement judge states that appellant Melvin Laub did not attend the first settlement conference, and that appellant Joe M. Laub, who did attend the conference, "explained that he had full authority to negotiate and to settle this matter for himself, for Appellant Melvin Laub and for Appellant Laub & Laub Ltd." At the conference, the parties appeared to reach a settlement with only a few details to be finalized.

Accordingly, a second conference was planned. Prior to commencement of the second conference, however, the settlement judge was "informed that [appellant] Melvin Laub had . . . rejected the settlement agreement." The settlement judge believes these actions show appellants failed to participate in good faith in the settlement conference,

and recommends that this court impose sanctions against appellants, including dismissal of this appeal.

After the due date for the opening brief passed without appellants having filed an opening brief, respondent filed a "Motion to Dismiss Appeal." In that motion, respondent also requests this court to impose monetary sanctions against appellants in the amount of \$50,000, payable to respondent. As cause for that motion, respondent notes the settlement judge's supplemental report and appellants' failure to file an opening brief.


Appellants subsequently filed a motion for an extension of time to respond to respondent's motion to dismiss. Cause appearing, we grant that motion and direct the clerk of this court to file appellants' "Non-Opposition to Motion to Dismiss Appeal, Opposition to Sanctions." In that response, appellants represent that they do not oppose the dismissal of this appeal. They aver, however, that monetary sanctions are not appropriate because "no final agreement was reached" during the first settlement conference. Rather, appellants represent that there was only an "offer" made by respondent at that session, which was later rejected by appellant Melvin Laub. Accordingly, appellants aver they did participate in good faith, but were simply unable to reach a settlement.


We note that, generally, as long as parties follow all procedural rules such as providing the settlement judge with a timely settlement statement and attending and participating in any scheduled settlement conferences, they will be found to have participated in good faith in this court's settlement conference program. See NRAP 16. Here, however, while it appears the parties did substantial work trying to reach a settlement, the process may have been compromised because appellant

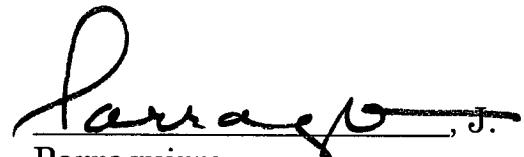
Melvin Laub was not personally present at the conference. Under NRAP 16(e), counsel for all clients and their clients must attend the settlement conference. A settlement judge may, however, for good cause shown, "excuse a client's attendance at the conference, provided that counsel has written authorization to resolve the case fully or has immediate telephone access to the client." NRAP 16(e). It appears that much of the confusion and delay associated with this matter could have been avoided had appellant Melvin Laub attended the conference as required, or had he been available by phone with the permission of the settlement judge.

Cause appearing we approve the recommendation of the settlement judge and grant respondent's motion, in part. Although we decline to impose monetary sanctions, we strongly admonish appellants and counsel for appellants for not fully complying with the requirements of NRAP 16(e). Accordingly, pursuant to the recommendation of the settlement judge, respondent's motion and appellants' non-opposition, this appeal is dismissed.

It is so ORDERED.

  
Maupin

  
Douglas

  
Parraguirre

cc: Hon. Peter I. Breen, District Judge  
Terry A. Simmons, Settlement Judge  
Jeffrey A. Dickerson  
Peter Chase Neumann  
Stephen H. Osborne  
Washoe District Court Clerk