

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRIS RICHARDS,
Appellant,

vs.

KEYS OF LAS VEGAS, A NEVADA
CORPORATION; STEVE MURPHY;
SHIRLEY HELTON; GEORGE
MORENO; TROY MECHECK; AND
MARC GARCIA,
Respondents.

No. 42697

FILED

NOV 09 2006

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

ORDER AFFIRMING IN PART, REVERSING IN PART
AND REMANDING

This is a proper person appeal from a district court order dismissing appellant's complaint for failure to post security costs under NRS 18.130.¹ Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant sued respondents for damages arising out of respondents' conduct in the Keys of Las Vegas bar, where appellant alleged he was pushed by one of the bartenders. In his complaint, appellant gave his Minnesota address, while his complaint certification was notarized by a Nevada notary.

Respondents Steve Murphy, Shirley Helton, Troy Mecheck, and Marc Garcia demanded security costs under NRS 18.130(1), which

¹The district court entered two dismissal orders, one as to respondent George Moreno and another as to all of the other respondents; the former constitutes the final judgment since it resolved the last remaining claims as to the last remaining defendant. See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

permits a defendant, within the time allowed to answer, to demand that a non-resident plaintiff post a security bond. Appellant did not post security or otherwise respond. Respondent Keys of Las Vegas, although represented by the same counsel as the other four respondents, and respondent George Moreno, who was unrepresented, did not demand security costs. Counsel for Keys, Murphy, Helton, Mecheck and Garcia filed a motion to dismiss the complaint as to these defendants based on appellant's failure to post a bond or otherwise respond to the demand for security. Appellant did not oppose the motion to dismiss, but he instead filed a motion to "default" all defendants; this motion included a Las Vegas post office box as appellant's address, and appellant asserted that he was a Nevada resident.

The district court entered an order dismissing appellant's complaint for failure to post security under NRS 18.130 as to respondents Keys of Las Vegas, Murphy, Helton, Mecheck, and Garcia.

Respondent Moreno then filed a demand for security and served appellant both at his Minnesota address as well as the Las Vegas post office box address. Appellant opposed the motion, arguing that he was a Nevada resident. Subsequently, Moreno filed a motion to dismiss for failure to post security and served appellant only at his Minnesota address. The district court conducted a hearing and orally granted Moreno's motion. After the hearing, appellant filed an opposition to the motion to dismiss, alleging that Moreno's service to appellant's Minnesota address delayed appellant's opposition and further was inappropriate, as appellant was a Nevada resident. The district court ultimately entered a written order granting Moreno's motion to dismiss appellant's complaint. This appeal followed.

The district court may dismiss action if a cost bond is not posted within 30 days from the date of the demand.² This court has held that, if such a dismissal is granted, the district court's decision will not be overturned absent an abuse of discretion.³

Respondents Murphy, Helton, Mecheck, and Garcia timely demanded security; appellant did not oppose the demand and did not post security. Accordingly, the district court properly granted these respondents' motion to dismiss.⁴

Respondent Keys of Las Vegas never filed a demand for security. Under this court's ruling in Brion v. Union Plaza, dismissal because of plaintiff's failure to post a nonresident cost bond may only be ordered as to defendants that demanded the bond.⁵ The district court therefore abused its discretion when it dismissed appellant's claims against Keys of Las Vegas.

Appellant opposed respondent Moreno's demand for costs and his motion to dismiss, alleging, among other things, Nevada residency. If appellant was indeed a Nevada resident, Moreno's demand for costs would have been inappropriate. The record on appeal, however, is silent as to any inquiry made by the district court into the issue of appellant's alleged Nevada residency. We therefore conclude that the district court abused its

²NRS 18.130(4).

³Brion v. Union Plaza, 104 Nev. 553, 555, 763 P.2d 64, 64 (1988).


⁴See NRS 18.130(4).

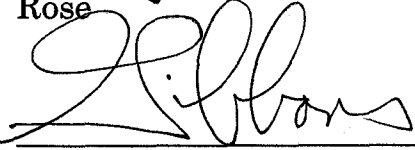
⁵104 Nev. 553, 555, 763 P.2d 64, 65 (1988).

discretion when it dismissed appellant's complaint against respondent Moreno without considering appellant's Nevada residency claims.

Accordingly, although the district court properly dismissed appellant's complaint against respondents Murphy, Helton, Mecheck, and Garcia, the court improperly dismissed Keys of Las Vegas and Moreno. We therefore reverse the district court's order dismissing appellant's complaint against Moreno, and we remand this matter to the district court. On remand, the district court shall vacate that portion of its previous order dismissing the complaint as to Keys of Las Vegas.

It is so ORDERED.⁶


_____, C.J.
Rose


_____, J.
Gibbons


_____, J.
Maupin

cc: Hon. Jessie Elizabeth Walsh, District Judge
Chris Richards
Emerson & Manke, LLP
Clark County Clerk

⁶Although appellant was not directed to file a reply, this court nevertheless considered his July 19, 2006 "Answer to Respondent's Response."