

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH L. HALVERSON,
Appellant,
vs.
ILEEN SPOOR,
Respondent.

No. 54819

FILED

SEP 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment order in a tort action. Eighth Judicial District Court, Clark County; David Wall, Judge.

Respondent filed a complaint against appellant, alleging, among other things, defamation. The district court sanctioned appellant for failing to appear at three noticed depositions by striking her answer and cross-claims. Respondent thereafter moved for summary judgment as to liability, which appellant did not oppose. The district court entered summary judgment in favor of respondent as to liability and awarded respondent damages in the amount of \$50,000. This appeal followed.

On appeal, appellant challenges the imposition of discovery sanctions against her by the district court. Discovery sanctions are generally reviewed for an abuse of discretion. Foster v. Dingwall, 126 Nev. ___, ___, 227 P.3d 1042, 1048 (2010). When the sanction results in the striking of an answer as to liability and damages, we employ “a somewhat heightened standard of review.” Bahena v. Goodyear Tire & Rubber Co., 126 Nev. ___, ___, 235 P.3d 592, 596 (2010), reh’g denied, 245 P.3d 1182 (2010). The record shows that appellant failed to appear for three properly noticed depositions and never moved the court for a

protective order or any other order staying discovery. A party's pleadings may be stricken as a sanction for failing to appear for deposition. NRCP 37(d); see Foster, 126 Nev. at ___, 227 P.3d at 1048-49 (upholding district court's order striking defendants' pleadings when they failed to attend multiple court-ordered depositions); Temora Trading Co. v. Perry, 98 Nev. 229, 231, 645 P.2d 436, 437 (1982) (upholding default judgment when corporate officers failed to show up for court-ordered depositions). As the record shows that appellant repeatedly failed to appear for noticed depositions and violated multiple district court orders requiring that she appear for the depositions or file a protective order, the district court did not abuse its discretion in granting discovery sanctions against appellant and striking her answer and cross-complaint. NRCP 37(d).

Appellant also challenges the amount of damages awarded to respondent, both as being excessive and on the basis that the district court awarded damages without requiring respondent to provide evidence of her damages at a prove-up hearing.¹ Having reviewed the record and the affidavit on which the damages award was based, however, we conclude that the district court did not abuse its discretion in granting respondent \$50,000 in damages. The record shows that the district court granted summary judgment in favor of respondent on her claim for slander per se because respondent alleged that appellant made statements to the media that respondent committed a crime. See Nevada Ind. Broadcasting v. Allen, 99 Nev. 404, 409, 664 P.2d 337, 341 (1983) (holding that alleged

¹Appellant also challenges the summary judgment as to her liability; however, the record shows that appellant failed to oppose the motion in the district court. Accordingly, we affirm the district court's order. EDCR 2.20(e).

defamatory statements that a plaintiff committed a crime constitutes slander per se). A plaintiff is entitled to presumed, general damages in a slander per se action. Bongiovi v. Sullivan, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006). General damages are damages awarded for “loss of reputation, shame, mortification and hurt feelings.” NRS 41.334. General damages are presumed upon proof of defamation alone because that proof establishes that there was an injury that damaged the plaintiff’s reputation and “because of the impossibility of affixing an exact monetary amount for present and future injury to the plaintiff’s reputation, wounded feelings and humiliation, loss of business, and any consequential physical illness or pain.” K-Mart Corporation v. Washington, 109 Nev. 1180, 1195, 866 P.2d 274, 284 (1993) (internal quotations omitted), receded from on other grounds by Pope v. Motel 6, 121 Nev. 307, 114 P.3d 277 (2005). As summary judgment was awarded in respondent’s favor on her slander per se claim, the district court did not err in awarding respondent general damages for the “loss of reputation, shame, mortification and hurt feelings” detailed in respondent’s affidavit. NRS 41.334; see also Bongiovi, 122 Nev. at 577, 138 P.3d at 448.

As to the amount of the damages awarded, this court will affirm an award of compensatory damages unless the award is “so excessive that it appears to have been given under the influence of passion or prejudice.” Bongiovi, 122 Nev. at 577, 138 P.3d at 448; see, e.g., Nevada Ind. Broadcasting, 99 Nev. at 419, 664 P.2d at 347 (upholding \$50,000 slander per se damage award as the “maximum amount that could be reasonably awarded under these circumstances”). Accordingly, as the record shows that appellant’s liability for slander per se had been determined, respondent’s affidavit detailed her loss of reputation and


mortification, and because it does not appear that the award was given under influence of passion or prejudice, we perceive no error in the amount of general damages awarded to respondent.


As to the district court's failure to hold a prove-up hearing, under NRCP 55(b)(2), regarding default procedures, if "it is necessary . . . to determine the amount of damages . . . , the court may conduct such hearings or order such references as it deems necessary and proper." This language suggests "an intent to give trial courts broad discretion in determining how prove-up hearings should be conducted." Hamlett v. Reynolds, 114 Nev. 863, 866, 963 P.2d 457, 459 (1998); see Transatlantic Marine Claims Agency v. Ace Shipping, 109 F.3d 105, 111 (2d Cir. 1997) (holding that under the federal counterpart to NRCP 55(b) "it [is] not necessary for the District Court to hold a hearing, as long as it ensured that there was a basis for the damages specified in the default judgment") (quoting Fustok v. Conticommodity Services, Inc., 873 F.2d 38, 40 (2d Cir. 1989)); La Barbera v. Federal Metal & Glass Corp., 666 F. Supp. 2d 341, 349 (E.D.N.Y. 2009) (holding that, while the court must ensure that there is a basis for the damages specified in a default judgment, it need not make the determination through a hearing, especially when the plaintiffs have filed reasonably detailed declarations and exhibits pertaining to the damages incurred). The record shows that the district court did hold a hearing on respondent's requested damages, which appellant did not attend. Given the district court's broad discretion in determining whether a prove-up hearing should be held, and the fact that the district court did hold a hearing that appellant could have attended to challenge the requested damages, and that respondent submitted a detailed affidavit in

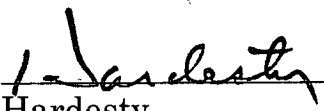
support of her requested damages, we conclude the district court did not err in awarding respondent damages without holding a prove-up hearing.

As we perceive no abuse of discretion or error by the district court that warrants reversal, we

ORDER the judgment of the district court AFFIRMED.²


Saitta _____, J.


Pickering _____, J.


Hardesty _____, J.

cc: Hon. David Wall, District Judge
Ara H. Shirinian, Settlement Judge
Elizabeth L. Halverson
Adams Law Group
Eighth District Court Clerk

²We conclude that all other arguments made in appellant's docketing statements lack merit, and therefore, do not warrant reversal.