

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VERONICA JAZMIN CASTILLO, AN
INDIVIDUAL,
Appellant,
vs.
ARMANDO PONS-DIAZ, AN
INDIVIDUAL,
Respondent.

No. 82267-COA

FILED

AUG 17 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Yoreng
DEPUTY CLERK

ORDER OF AFFIRMANCE

Veronica Jazmin Castillo appeals from a district court judgment entered on an arbitration award following an order striking her request for a trial de novo in a tort matter. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

A traffic collision in Las Vegas in December 2017 gave rise to the litigation underlying this appeal.¹ Respondent Armando Pons-Diaz was in an intersection attempting to make a right-hand turn from Arville Street onto Spring Mountain Road when Castillo struck the left side of his vehicle as she attempted to make a left-hand turn onto Spring Mountain from the opposite direction. The light controlling traffic from Castillo's direction was flashing yellow when she turned. Castillo was cited by police at the scene for failing to yield the right-of-way.

The collision resulted in damage to both vehicles and Pons-Diaz developed spinal issues and missed 23 days of work. After the accident, Pons-Diaz filed a complaint asserting negligence against Castillo. Therein, Pons-Diaz alleged that Castillo's failure to control her vehicle and yield when turning directly and proximately caused Pons-Diaz to suffer personal

¹We recount the facts only as necessary for our disposition.

injuries, lost wages, and damage to his vehicle. Castillo timely answered, summarily asserting several defenses.²

Thereafter, the case was assigned to the court-annexed arbitration program. Castillo served Pons-Diaz with an Early Arbitration Conference disclosure, requests for admissions and production of documents, interrogatories, and an offer of judgment. Castillo also responded to Pons-Diaz's requests for admissions. However, Castillo failed to respond to Pons-Diaz's interrogatories and requests for production that were served a few months later, and she failed to appear for her video deposition after it was properly noticed twice. The day before Pons-Diaz's second attempt at deposing Castillo, which was also the final day of discovery, Castillo's counsel emailed Pons-Diaz indicating that Castillo could not be reached, requesting that the deposition be canceled, and conceding liability.

The arbitrator originally scheduled a telephonic arbitration and ordered both parties to submit arbitration briefs due one week before the hearing. But due to the COVID-19 pandemic and Castillo's counsel's firm having technology issues, the arbitrator delayed the hearing approximately two months and made the arbitration briefs due one week before the new arbitration date. Pons-Diaz timely filed his arbitration brief. But Castillo untimely submitted her brief the day before the arbitration. Castillo also failed to attend the arbitration, purportedly because her counsel was unable to contact her. It is unclear whether Castillo's counsel attended and, if he did, whether he presented any evidence or cross-examined any witnesses.

²For example, Castillo argued that Pons-Diaz's alleged damages were attributed to pre-existing or intervening causes (disputing causation) and that all or a substantial part of his medical care was unnecessary or unreasonably expensive (disputing damages).

After the hearing, the arbitrator found for Pons-Diaz and awarded him \$15,000. The arbitrator also granted Pons-Diaz \$3,000 in attorney fees; \$1,741.95 in costs; \$949.11 in pre-judgment interest; and unspecified post-judgment interest. Castillo timely requested a trial de novo. Pons-Diaz filed a motion to strike the request, Castillo opposed the motion, and Pons-Diaz filed a reply. The district court issued an order striking Castillo's request for a trial de novo, concluding that she failed to meaningfully participate in the arbitration resulting in bad faith or lack of good faith participation pursuant to NAR 22(A).³ The court provided three pages of findings to support that conclusion.

Namely, the district court found that (1) Castillo failed to respond to interrogatories and requests for production, failed to attend her twice-noticed deposition, failed to present expert testimony at the arbitration, and submitted an untimely arbitration brief; (2) Castillo's brief mainly attacked Pons-Diaz's credibility, which Pons-Diaz could not address because Castillo failed to respond to interrogatories, be deposed, or attend arbitration and thus never gave a statement under oath; and (3) Castillo's failures to participate in discovery negatively impacted Pons-Diaz's ability to adequately prepare for the arbitration. The district court then directed the entry of judgment on the arbitration award.

Castillo now appeals, arguing that she arbitrated in good faith because she was not required to submit an arbitration brief and her

³For example, the district court found that Castillo's last-minute concession of liability caused "unnecessary burden and expense" to Pons-Diaz. Further, while Castillo's arbitration brief acknowledged that causation and damages were the only issues to be decided at the arbitration, after conceding liability, Castillo apparently failed to produce any evidence supporting a lack of causation between the accident and Pons-Diaz's injuries in order for Pons-Diaz to refute the same.

concession of liability excused both her failure to attend arbitration and her failure to respond to interrogatories. Pons-Diaz counters that conceding liability did not excuse Castillo's lack of good faith participation. And he argues that the district court properly concluded that Castillo failed to arbitrate in good faith, which was supported by specific factual findings describing the conduct that rose to the level of failed good faith participation.

We review a district court's order denying a request for a trial de novo for an abuse of discretion. *Gittings v. Hartz*, 116 Nev. 386, 391, 996 P.2d, 898, 901 (2000). However, "a somewhat heightened standard of review' applie[s] to sanctioning orders that terminate[] the legal proceedings." *Chamberland v. Labarbera*, 110 Nev. 701, 704, 877 P.2d 523, 525 (1994). Under this standard, the district court does not abuse its discretion in denying a trial de novo when the "[e]vidence shows that appellants failed to defend their case in good faith." *Casino Props., Inc. v. Andrews*, 112 Nev. 132, 135-36, 911 P.2d 1181, 1183 (1996).

The Nevada Constitution provides litigants with the right to a jury trial, which "may be waived by the parties in all civil cases in the manner to be prescribed by law." Nev. Const. art. 1, § 3. Nevada Arbitration Rule (NAR) 22(A) provides a method of waiver for a trial de novo following an arbitration award. Pursuant to NAR 22(A), "[t]he failure of a party or attorney to either prosecute or defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo." The Nevada Supreme Court has interpreted "good faith" for purposes of NAR 22(A) to mean "meaningful participation." *Casino Props.*, 112 Nev. at 135, 911 P.2d at 1182. And defendants who "impede[] the arbitration proceedings" do not meaningfully participate. *See id.* at 135, 911 P.2d at 1183.

As an initial matter, Castillo has not cogently argued which of her actions amounted to good faith participation. Instead, her briefing focuses on what she was allegedly not required to do. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that we need not consider an appellant's argument that is not cogent or lacks the support of relevant authority). And, though Castillo cites several authorities in her briefing, she does not apply them to the facts of this case. *See id.*

Regardless, Castillo's arguments fail on their merits. First, Castillo was required to serve an arbitration brief one week before arbitration because the district court found, and Castillo does not dispute, that the arbitrator specifically ordered the parties to do so in both the initial discovery order and the order rescheduling arbitration. *See Casino Props.*, 112 Nev. at 135, 911 P.2d at 1183 (noting that appellants failed to arbitrate in good faith where, among other things, they filed their arbitration brief on the eve of arbitration); *see also* NAR 2(C) ("The intent of these rules is to give considerable discretion to the arbitrator, the commissioner and the district judge."); NAR 11(A) ("The extent to which discovery is allowed, if at all, is in the discretion of the arbitrator . . .").

Second, Castillo was required to respond to Pons-Diaz's interrogatories because failing to do so impeded Pons-Diaz's ability to prepare for arbitration. *See Casino Props.*, 112 Nev. at 135, 911 P.2d at 1183 (holding that appellants "compromised" the opposing party's ability to "form an adequate arbitration strategy" by responding to discovery 10 days before arbitration); *see also Gittings*, 116 Nev. at 390-91, 996 P.2d at 901 (noting that a party's failure to "produce" discovery was a basis for finding a lack of good faith in *Casino Properties* whereas failing to "conduct" discovery was not a reason to find a lack of good faith in *Chamberland*).

Third, although Castillo was not required to personally attend arbitration, *see Gittings*, 116 Nev. at 392, 996 P.2d at 902, the district court never concluded that she was required to attend. Rather, the court found, and Castillo does not dispute, that her arbitration brief included specific arguments regarding Pons-Diaz's credibility, "citing contradictions in Plaintiff's discovery responses and deposition testimony." The court found that these arguments made eliciting her testimony necessary for Pons-Diaz's case, regardless of whether Castillo disputed liability. And the court found that because Castillo failed to respond to interrogatories, be deposed, or attend arbitration, Pons-Diaz never had an opportunity to question Castillo about these arguments. Therefore, Castillo's arguments do not show that the district court abused its discretion.

Furthermore, the record demonstrates that the district court did not abuse its discretion in concluding that Castillo failed to arbitrate in good faith. Indeed, the court provided three pages of specific factual findings describing Castillo's conduct that it determined rose to the level of failed good faith participation. *See Chamberland*, 110 Nev. at 705, 877 P.2d at 525 ("All forthcoming sanctioning orders under [NAR 22(A)] must be accompanied by specific written findings of fact and conclusions of law by the district court describing what type of conduct was at issue and how that conduct rose to the level of failed good faith participation.").

Specifically, the district court found, and Castillo does not dispute, that she never responded to Pons-Diaz's interrogatories and requests for production and failed to attend her twice-noticed deposition. *See Casino Props.*, 112 Nev. at 135, 911 P.2d at 1183. The court further found, and Castillo does not dispute, that she failed to present expert testimony at the arbitration hearing, *see Gittings*, 116 Nev. at 392, 996 P.2d at 902 (holding that expert testimony is not required for meaningful

participation *if* through “effective cross-examination,” she was able “to point out discrepancies in the person’s claim of injury without such testimony, or without presentation of ‘countervailing medical evidence’”), and Castillo does not argue on appeal that she cross-examined anyone at arbitration, *see Edwards*, 112 Nev. at 330 n.38, 130 P.3d at 1288 n.38.⁴ The district court also found, and Castillo does not dispute, that she submitted an untimely arbitration brief in violation of two arbitration orders, as noted above. *See Casino Props.*, 112 Nev. at 135, 911 P.2d at 1183; *see also* NAR 2(C); NAR 11(A). And the court found, also as noted above, that Pons-Diaz was unable to question Castillo about the accusations made against him therein because she failed to give any testimony under oath. *See Casino Props.*, 112 Nev. at 135, 911 P.2d at 1183 (holding that impeding the arbitration process amounts to a lack of meaningful participation).⁵

Therefore, in light of the foregoing, a reasonable judge under the circumstances could have concluded that Castillo failed to arbitrate in good faith. *See Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014) (“An abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances.”). As such, the district


⁴Castillo also did not provide us with a hearing transcript or an alternative if a transcript was unavailable, *see* NRAP 9(d), so that we could determine whether there was cross-examination, and it is not otherwise clear from the record whether her attorney attended the hearing because the arbitrator’s decision is not included in the record. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (“When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision.”).

⁵We decline to address the remaining factual findings in the order because Castillo has not cogently made arguments concerning them on appeal. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

court did not abuse its discretion by striking Castillo's request for a trial de novo. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kerry Louise Earley, District Judge
Desert Ridge Legal Group
Eric Blank Injury Attorneys
Eighth District Court Clerk

⁶Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.