

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALLA ZORIKOVA,
Appellant,
vs.
JULIE PYLE; TAMMY WILLET; AND
VEGAS SHEPHERD RESCUE,
Respondents.

No. 83478-COA

FILED

AUG 26 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Alla Zorikova appeals from a district court order granting a motion to dismiss in a tort action. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

In the proceedings below, Zorikova filed an action against respondent Vegas Shepherd Rescue and two of its founders, respondents Tammy Willet and Julie Pyle (collectively defendants), alleging that defendants were in possession of 25 German Shepherd dogs that were unlawfully removed from Zorikova's property in Southern California.¹ Zorikova sought return of the dogs and monetary damages related to business losses from her dog-breeding program. After filing the complaint, Zorikova allegedly served the defendants by providing legal documents to a central receptionist at a virtual office company in Las Vegas. And as relevant here, Zorikova later moved for default judgment as the defendants

¹We do not recount the facts except as necessary to our disposition.

never answered her complaint.² Shortly thereafter, the defendants moved to dismiss Zorikova's complaint under NRCP 12(b)(5) for failure to state a claim and NRCP 12(b)(4) for insufficient service of process.

After full briefing on the motions, the district court held an evidentiary hearing to determine whether Zorikova properly served the defendants. At the hearing, Zorikova maintained that, on October 5th and 9th of 2020, her daughter, Olivia Jeong, traveled from Barstow to Las Vegas and delivered the summons and complaint to the receptionist at the virtual office company. Zorikova also stated that she personally delivered litigation-related documents to that address on October 6 but contends that she did not serve the complaint.

The defendants argued that Zorikova's attempted service was improper under NRCP 4.2, as Zorikova allegedly served a receptionist that did not work for Vegas Shepherd Rescue or serve as an agent for the individual defendants. Additionally, the defendants argued that Zorikova failed to comply with NRCP 4(c)(3) and presented evidence (in the form of video security footage) purporting to demonstrate that it was Zorikova herself, and not her daughter, who delivered the documents to the receptionist on October 6, 2020.

²Around this time, Zorikova unilaterally added Casey Gish, counsel for the defendants, to the caption of the complaint in this matter. As Zorikova failed to name Gish in her notice of appeal or otherwise challenge the portion of the district court's order dismissing the complaint as to Gish, Zorikova has waived any argument regarding the same. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).

Following the hearing, the district court entered an order granting the defendants' motion to dismiss under NRCP 12(b)(4) on the basis that Zorikova failed to serve her complaint. Specifically, the district court found that the individual defendants, Pyle and Willet, and the corporate defendant, Vegas Shepherd Rescue, had not been served as required under NRCP 4.2(a) and (c). Moreover, the court also found that Zorikova and Jeong's testimonies was not credible and that, based on the evidence presented to the court, it appeared that Zorikova herself had attempted to serve the complaint, violating NRCP 4(c)(3) (stating that "[t]he summons and complaint may be served by the sheriff, or a deputy sheriff, of the county where the defendant is found or by any person who is at least 18 years old and not a party to the action"). Finally, the court found that Zorikova had also failed to timely file her affidavits of service as required by NRCP 4(d) (stating that "a plaintiff must file proof of service with the court stating the date, place, and manner of service no later than the time permitted for the defendant to respond to the summons"), and determined that the affidavits filed in this case in June 2021 (indicating that Jeong had served the receptionist on October 9, 2020) were falsified.³

³The court further noted in its order that both Jeong and Zorikova's demeanors during their testimony led it to believe that their testimony was not credible. As to Jeong, the court stated that she refused to answer basic questions and responded to questioning with "inconsistent and often evasive answers." As to Zorikova, the court noted that she also had "evasive and contradictory answers" in response to questioning and stated that Zorikova admitted to purposefully lying to the court regarding her current address due to safety concerns and ongoing litigation in other jurisdictions.

In addition to dismissing the complaint under NRCP 12(b)(4), the district court also sanctioned Zorikova by dismissing the complaint with prejudice for abusing the judicial process, presenting false and misleading testimony to the court, and preparing and filing false and misleading documents with the court. The court also indicated that it would award attorney fees and costs to the defendants after further briefing.⁴ Specifically, the court found that while Zorikova “may not have understood the procedure for proper service of process, she understood she was providing false testimony to dupe the Court and the parties into believing that she properly served the summons and complaint. [Zorikova] did not act negligently, but willfully and in bad faith.” Zorikova now appeals.

On appeal, Zorikova argues that the district court improperly dismissed her complaint for insufficient service of process. Specifically, Zorikova challenges the district court’s determination that she personally served the complaint in violation of NRCP 4(c)(3). However, Zorikova fails to challenge the district court’s alternative reasons for dismissal, namely that service was improper under NRCP 4.2, which provides an independent basis for affirming the order. This “failure to properly challenge each of the district court’s independent alternative grounds leaves them unchallenged

For these reasons, the district court determined that Jeong and Zorikova’s testimony at the hearing was not credible.

⁴In her informal brief, Zorikova attempts to challenge the district court’s subsequent award of attorney fees. However, the attorney-fee award is the subject of a separate appeal currently pending in the supreme court in Case No. 84186, and therefore this court will not address these issues here.

and therefore intact, which results in a waiver of any assignment of error as to any of the independent alternative grounds.” *Hung v. Berhad*, 138 Nev., Adv. Op. 50, ___ P.3d ___, ___ (Ct. App. 2022). We therefore affirm the district court’s dismissal of Zorikova’s complaint for insufficient service of process. *Id.* (summarily affirming the district court’s order where appellant failed to challenge the district court’s alternative grounds for dismissal).

We now turn to whether the district court abused its discretion when it dismissed Zorikova’s complaint with prejudice as a sanction for her conduct in the litigation. Courts have inherent equitable powers to dismiss actions for abusive litigation practices or failure to comply with court rules. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987); *Moore v. Cherry*, 90 Nev. 390, 393, 528 P.2d 1018, 1020 (1974) (stating that “[i]nherent in courts is the power to dismiss a case for failure to . . . comply with its orders”). This court will not reverse a particular sanction imposed absent a showing of abuse of discretion. *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

“[D]ismissal with prejudice is the most severe sanction that a court may apply [and] its use must be tempered by a careful exercise of judicial discretion.” *Hunter v. Gang*, 132 Nev. 249, 260, 377 P.3d 448, 455 (Ct. App. 2016) (emphasis and internal quotation marks omitted). Accordingly, our appellate courts have recognized that where the drastic sanction of dismissal with prejudice is imposed, a somewhat heightened standard of review will apply. *Young*, 106 Nev. at 92, 787 P.2d at 779.

A district court can meet this heightened standard of review through an “express, careful and preferably written explanation of the

court's analysis of the pertinent factors," which include (1) the degree of willfulness of the offending party; (2) the extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of dismissal relative to the severity of the misconduct; (4) the feasibility and fairness of alternative, less severe sanctions; (5) the policy favoring adjudication on the merits; and (6) the need to deter both the parties and future litigants from similar abuses. *Id.* at 92-93, 787 P.2d at 779-80.


Having considered Zorikova's opening brief and the record on appeal, we conclude that the district court did not abuse its discretion when it sanctioned Zorikova by dismissing her complaint with prejudice. Although NRCP 12(b)(4) dismissals for insufficient service of process are usually without prejudice, *see* NRCP 4(e)(2), the district court here conducted a separate analysis and utilized its inherent authority to dismiss Zorikova's complaint with prejudice for false testimony and abusive litigation practices. *See TeleVideo*, 826 F.2d at 916. The district court entered a nine-page order that substantially complied with the requirements of *Young* wherein it determined that Zorikova "abused the judicial process, . . . presented false and misleading testimony to the Court, and . . . prepared and filed false and misleading documents with the court." *See N. Am. Props. v. McCarran Int'l Airport*, No 61997, 2016 WL 699864 (Nev. Feb. 19, 2016) (Order of Affirmance) (affirming the imposition of case concluding sanctions after determining that the district court's analysis complied with the requirements of *Young* even though the challenged order did not directly discuss the *Young* case, where the court entered a detailed 13-page order that touched on the majority of the non-exhaustive *Young*

factors). Thus, because the district court's sanction order resulted from a written, careful, and thorough examination of the relevant factors, as required by *Young*, we conclude it did not abuse its discretion by using its inherent powers to sanction Zorikova, even under the heightened standard of review for case-ending sanctions. *Young*, 106 Nev. at 92-93, 787 P.2d at 779-80.

For these reasons, we affirm the order of the district court dismissing Zorikova's complaint with prejudice.

It is so ORDERED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

⁵Insofar as Zorikova raises 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.

cc: Hon. Eric Johnson, District Judge
Alla Zorikova
The Law Office of Casey D. Gish
Eighth District Court Clerk