

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BERTHINIA S. WILLIAMS, AN  
INDIVIDUAL,  
Appellant,  
vs.  
LINDA LEMOINE, AN INDIVIDUAL;  
AND RONALD LEMOINE, AN  
INDIVIDUAL,  
Respondents.

No. 88235-COA

**FILED**

**APR 29 2025**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Berthinia S. Williams appeals from a district court order dismissing her complaint for failure to attend a pretrial conference. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Williams filed a personal injury action against respondents Linda and Ronald Lemoine in November 2021 as a result of an automobile accident occurring on January 8, 2021. As the case progressed through litigation, the district court entered a scheduling order, on June 29, 2023, which informed the parties that the jury trial in the case was scheduled for a five-week stack in March 2024, and that a pretrial conference would be held on February 20, 2024. As pertinent here, the order also contained a warning that “[f]ailure of the designated trial attorney or any party appearing in proper person to appear for any scheduled court hearing or conference or to comply with this Order will result in . . . dismissal of the action and/or claims” under EDCR 2.68(c) and EDCR 7.60.

In July 2023, Williams's counsel filed an unopposed motion to withdraw alleging that they had terminated the attorney-client relationship due to "a fundamental disagreement regarding [Williams's] case." Counsel alleged that a copy of the motion had been provided to Williams, and that trial was currently set on a five-week stack for March 2024. The record reflects that the district court orally granted the motion in August 2023, but did not enter the written order until February 9, 2024. Notably, the certificate of service for the notice of entry of order granting the motion to withdraw does not indicate that the order was served upon Williams.

Nonetheless, Williams subsequently appeared in this matter pro se and appeared in person before the court in January 2024. Despite otherwise participating in the case, Williams ultimately failed to appear for a hearing on certain of her own motions set for February 8, 2024, and the pretrial conference on February 20, 2024. Because of Williams's failure to attend the pretrial conference, respondents orally moved to dismiss the case under EDCR 2.68(c) and EDCR 7.60—the rules cited for sanctions in the scheduling order. The district court granted the motion to dismiss without prejudice, and Williams now appeals.

On appeal, Williams contends—among other things—that the district court abused its discretion by dismissing her complaint for her failure to attend the pretrial conference as she was unaware it had been scheduled. Respondents argue in their answering brief that the district court's order should be affirmed as Williams had sufficient time from the oral entry of the order granting the motion to withdraw to obtain counsel, if desired, and she represented herself up until her failure to attend the

February 8 hearing and the pretrial conference. Moreover, respondents assert that Williams failed to provide an explanation for why she did not appear at the pretrial conference on appeal or in the proceedings below.

This court reviews the dismissal of a complaint for failure to appear at a pretrial conference for an abuse of discretion. *See Moore v. Cherry*, 90 Nev. 390, 394-95, 528 P.2d 1018, 1021 (1974) (noting the abuse of discretion standard of review for failure to prosecute). The district court has the authority to dismiss a complaint for failure to appear at a pretrial conference. *See* EDCR 2.68(c) (stating that designated trial counsel's failure to appear at a pretrial conference may result in an ex parte hearing and dismissal of the complaint); EDCR 7.60(a)(3) (stating that the court may dismiss a complaint "[i]f without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party . . . at the time set for the hearing of any matter"). For the reasons set forth below, we conclude the district court abused its discretion in dismissing Williams's complaint without further proceedings under the circumstances presented here.

The record demonstrates that the district court issued the scheduling order setting the pretrial conference in June 2023, when Williams was represented by counsel. Shortly thereafter, it granted Williams's counsel's motion to withdraw via minute order in August 2023. But the court did not enter the written order granting the motion to withdraw—which contained the information regarding upcoming hearings, including the pretrial conference—until February 9, 2024, just eleven days before the pretrial conference. And there is nothing in the record to suggest

that either the minute order or the February 9 written order were served upon Williams.

Based on the contents of counsel's motion to withdraw and Williams's subsequent pro se appearances, Williams appeared to be aware that her counsel would no longer represent her. Nevertheless, there is nothing in the record demonstrating that Williams had been apprised of the pretrial conference. Indeed, the record reflects that Williams, acting in pro se, sought to schedule a pretrial conference through a motion filed in January 2024.

Because the record does not demonstrate that Williams was properly made aware of the February 20 pretrial conference, we conclude her due process rights were violated by the court's dismissal of her case for failure to attend the pretrial conference without further proceedings to determine whether there was "just excuse" or a reasonable basis for why Williams failed to attend. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) ("[P]rocedural due process requires notice and an opportunity to be heard." (internal quotation marks omitted)); *see also* EDCR 7.60(a)(3) (providing that a court may dismiss a complaint based on a party's failure to attend a hearing "without just excuse" or "because of failure to give reasonable attention to the matter"). As a result, the district court abused its discretion in dismissing Williams's complaint at this time.<sup>1</sup>

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<sup>1</sup>Our conclusion that the district court abused its discretion in this regard is further supported by the fact that, while the court purported to dismiss Williams's case without prejudice, this dismissal necessarily operates as a dismissal with prejudice as the statute of limitations had run

*Cf. Moore*, 90 Nev. at 394, 528 P.2d at 1021 ("Where a party has been accurately notified of the time and place of a hearing, his failure to appear amounts to failure to prosecute, and is a proper ground for dismissal.").

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Mark R. Denton, District Judge  
Berthinia S. Williams  
Curriden & Clayson  
Law Offices of Katherine M. Barker  
Eighth District Court Clerk

on all of Williams's personal injury claims at the time of the entry of the order. *See Domino v. Gaughan*, 103 Nev. 582, 583, 747 P.2d 236, 237 (1987) (stating that "[a]lthough the dismissal was without prejudice, it was, in effect, a dismissal with prejudice because the applicable statute of limitations had run").