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Summary of Bahena v. Goodyear Tire & Rubber Co., 126 Nev. Adv. Op. No. 57

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CIVIL PROCEDURE – DISCOVERY SANCTIONS

Summary

The Nevada Supreme Court denied Goodyear’s request for a rehearing regarding the Court’s ruling in *Bahena I*.² Additionally, the Court clarified that evidentiary hearings are not mandatory for non-case concluding sanctions.

Disposition/Outcome

The Court denied Goodyear’s rehearing request because the Court did not overlook or misapprehend material facts or law or controlling legal authority.³ Additionally, Nevada case law does not require an evidentiary hearing for non-case concluding sanctions and due process did not require an evidentiary hearing here.

Factual and Procedural History

Two discovery disputes led to the district court’s discovery sanctions against Goodyear. First, the discovery commissioner found that Goodyear was not acting in good faith when it failed to adequately respond to interrogatories and production requests.⁴ Second, Goodyear failed to present a Goodyear representative for a deposition after the discovery commissioner denied its motion for a protective order.⁵

Initially, the district court struck Goodyear’s answer as to both liability and damages.⁶ Goodyear moved for reconsideration and the district court heard the matter on January 18, 2007.⁷ At that hearing the attorneys for Bahena and Goodyear made factual representations and answered the district court’s questions.⁸ The district court ruled that Goodyear’s conduct was prejudicial but reduced the sanctions, striking Goodyear’s answer as to liability but not as to damages.⁹

A jury awarded Bahena a judgment in excess of \$30 million¹⁰ and Goodyear appealed the discovery sanctions. In *Bahena I* the Court held that the district court did not abuse its discretion when sanctioning Goodyear because it exercised proper authority under NRCP 37(b)(d).¹¹ *Bahena I* also ruled that the nature of a hearing for non-case concluding sanctions is left to the district court’s discretion.¹²

Goodyear sought a rehearing, arguing that the Court 1) misapplied Nevada law; 2) deprived Goodyear of due process; 3) created a double standard between plaintiffs and defendants; and 4) contradicted other jurisdictions.

¹ By Michael Gianelloni

² *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. ____, 235 P.3d 592.

³ NEV. R. APP. P. 40(c)(2).

⁴ *Bahena*, 235 P.3d at 594.

⁵ *Id.*

⁶ *Id.* at 595.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 596.

¹¹ *Id.* at 597.

¹² *Id.* at 601.

Discussion

A. *Nevada Case Law*

The Court explained it followed Nevada precedent for sanctions discussed in *Young v. Johnny Ribeiro Building*.¹³ In *Young*, the Court stated it would not substitute its judgment for the district court's judgment in an abuse of discretion review,¹⁴ and that a dismissal sanction need not be preceded by less severe sanctions.¹⁵

The Court explained it also considered *Foster v. Dingwall*¹⁶ before ruling in *Bahena I. Dingwall* held that NRCP 37(b)(2)(C) and 37(d) give the district court the authority to strike pleadings for failure to obey discovery orders or attend its own deposition.¹⁷ Additionally, the Court stated that Nevada does not follow the federal model, which requires progressive sanctions for failure to comply with discovery orders. The Court then held that district courts have discretion in deciding what factors it considers when determining discovery sanctions.

B. *Due Process and the Sufficiency of the January 18, 2007 Hearing*

The Court next stated that the January 18, 2007 hearing afforded Goodyear sufficient due process. This dispute did not require a full evidentiary hearing because the witnesses were attorneys, who are bound to act with candor before tribunals by the Nevada Rules of Professional Conduct (RPC).¹⁸ RPC 3.3 allowed the district court to receive factual representations from the attorneys without the need for cross-examination.

The majority then agreed with the dissent that evidentiary hearings should be encouraged when there are disputed issues of material fact, and that witnesses can assist district courts in making findings of fact. However, the Court noted that Goodyear requested an evidentiary hearing, but did not describe what evidence the district court should consider other than the attorney's statements at the January 18, 2007 hearing.

C. *Double Standard*

The Court noted that plaintiffs and defendants receive similar treatment for discovery abuses under Nevada law. It then explained that Goodyear incorrectly relied upon *Nevada Power v. Fluor Illinois*¹⁹ to support its argument that answers dismissed as to liability require full evidentiary hearings. In *Nevada Power*, the district court dismissed the complaint with prejudice,²⁰ ending the case. Here, Goodyear still had the right to contest damages. The Court declined to extend *Nevada Power's* holding to non-case concluding discovery sanctions.

D. *Authority from Other States*

¹³ *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 787 P.2d 777 (1990).

¹⁴ *Id.* at 92, 787 P.2d at 779.

¹⁵ *Id.* at 92, 787 P.2d at 780.

¹⁶ *Foster v. Dingwall*, 126 Nev. ___, 227 P.3d 1042 (2010).

¹⁷ *Foster*, 227 P.3d at 1048.

¹⁸ NEV. R. PROF. CONDUCT 3.3.

¹⁹ *Nevada Power v. Fluor Ill.*, 108 Nev. 638, 837 P.2d 1354 (1992).

²⁰ *Id.* at 643, 837 P.2d at 1358.

The Court reiterated that case law from other jurisdictions is not controlling. It then noted that none of the cases *Goodyear* cited from other jurisdictions require evidentiary hearings in all cases before a trial court can strike a defendant's answer as to liability only. The Court pointed out that the appellate court affirmed the striking of an answer without an evidentiary hearing in some of the cases.²¹ In other cases the appellate court reversed the striking because of the specific facts in those cases, but because of a blanket rule.²² The Court also noted that some of the cases *Goodyear* cited emphasized the trial court's authority to impose severe sanctions when necessary.²³

The Court then addressed a case where the Colorado Supreme Court reversed a discovery sanction because the sanction was not commensurate with the harm.²⁴ The Court stressed that though Colorado requires a proportionate sanction, it does not require an evidentiary hearing for all sanctions striking an answer as to liability only.

Dissenting Opinion

The dissent argued that due process required a rehearing. It stated that disputed issues of fact existed concerning what discovery violations occurred, whether they were willful, whose fault created the delay, and whether there was prejudice. The dissent pointed out that the issue was whether *this* non-case concluding discovery sanction required an evidentiary hearing, not whether *all* non-case concluding discovery sanctions require an evidentiary hearing.

The dissent then noted that the discovery violations were relatively minor, unlike those in *Young* and *Nevada Power*. *Goodyear's* violations concerned how it organized documents it produced, not the destruction or fabrication of evidence. Additionally, the experts for whom the documents were produced admitted they had previously read the documents and did not need them for their opinions. This raised questions for the dissent of whether there was actual evidentiary prejudice.

The dissent concluded that the majority moved away from the clear Nevada precedent that disputed questions of fact concerning willfulness, prejudice or proportionality require an evidentiary hearing. The majority replaced this with an unclear discretionary standard.

Conclusion

The Court stated that the district court was within its power to administer this sanction through NRC 37(d) and the court's inherent equitable power. The Court denied the rehearing because it did not overlook or misapprehend material facts or law or controlling legal authority in *Bahena I* when it affirmed the district court's ruling. Additionally, evidentiary hearings are not mandatory for non-case concluding sanctions. The dissent argued the controlling authority the majority overlooked, misapplied or failed to consider was that of due process.

²¹ See e.g., *Sims v. Fitzpatrick*, 288 S.W.3d 93 (Tex. Ct. App. 2009)

²² See e.g., *Roberts v. Roberts*, 629 A.2d 1160 (Conn. App. Ct. 1993).

²³ See e.g., *State Farm v. Health Horizons*, 590 S.E.2d 798 (Ga. Ct. App. 2003).

²⁴ *Pinkstaff v. Black & Decker (U.S.) Inc.*, 211 P.3d 698, 704 (Colo. 2009).