IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RASAKI A. OKOYA; AND FOLASHADE OKOYA,
Appellants,
vs.
NEVADA STATE BANK, F.A., A NEVADA CORPORATION,
Respondent.

No. 68279

FILED

MAR 06 2017

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

ORDER OF AFFIRMANCE

This is an appeal from district court orders striking a request for a trial de novo and entering judgment on an arbitration award. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Appellants Rasaki A. Okoya and Folashade Okoya sued respondent Nevada State Bank (NSB), alleging violations of Nevada's Uniform Commercial Code. The matter proceeded to mandatory, non-binding arbitration, and ultimately, an arbitration award was entered in favor of NSB. The Okoyas then requested a trial de novo, and NSB moved to strike that request, arguing that the Okoyas waived their right to a trial de novo by failing to prosecute their claims in good faith. *See* NAR 22(A) ("The failure of a party . . . 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."). Over the Okoyas' objection, the district court granted NSB's motion based on its summary finding that the Okoyas

failed to participate in the arbitration proceedings in good faith. This appeal followed.

On appeal, the Okoyas challenge the district court's determination that they failed to participate in the arbitration in good faith.[1] In this regard, the court found that the Okoyas did not meaningfully participate in the arbitration proceedings because they did not attend their depositions or the arbitration hearing, which had been continued to accommodate their schedules. *See Gittings v. Hartz*, 116 Nev. 386, 390, 996 P.2d 898, 901 (2000) (equating "good faith" with "meaningful participation" in the arbitration context). Having reviewed the record and the parties' appellate arguments, we cannot conclude that the district court abused its discretion in striking the Okoyas' request on this basis. *See id.* at 391, 996 P.2d at 901 (reviewing a district court order striking a

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[1]The Okoyas also assert that the district court failed to include the necessary findings in its written order as required by *Chamberland v. Labarbera*, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994) (requiring the district court to support an order striking a request for a trial de novo under NAR 22(A) with "specific written findings of fact and conclusions of law . . . describing what type of conduct was at issue and how that conduct rose to the level of failed good faith participation"). Because the district court made oral findings that were not included in its written order, we entered an order of limited remand on December 29, 2016, directing the district court to enter an amended order setting forth the court's findings of fact and conclusions of law. On February 22, 2017, the clerk of the district court transmitted to this court an amended order entered by the district court which contained findings of fact and conclusions of law consistent with *Chamberland*. Accordingly, the Okoyas' argument in this regard is now moot.

request for a trial de novo for an abuse of discretion); *see also Campbell v. Maestro*, 116 Nev. 380, 383, 996 P.2d 412, 414 (2000) (explaining that the district court's findings of fact will not be disturbed on appeal unless they are clearly erroneous and unsupported by substantial evidence).

While the Okoyas suggest that, under *Chamberland v. Labarbera*, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994), and *Gittings*, 116 Nev. at 392, 996 P.2d at 902, their failure to attend the arbitration hearing is not a proper basis to strike a request for a trial de novo, those cases are distinguishable, as the Okoyas were the plaintiffs, rather than the defendants, in the underlying proceeding. Thus, they bore the burden of proving that they were entitled to relief on each of their claims. *See Stickler v. Quilici*, 98 Nev. 595, 597, 655 P.2d 527, 528 (1982) (explaining that the burden is on the plaintiff to prove every fact essential to establishing a cause of action). But the Okoyas did not attend their depositions or the arbitration hearing and, although their counsel attended the hearing on their behalf, no evidence was introduced to support their claims.

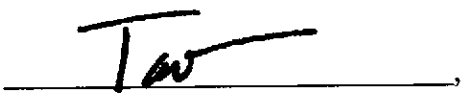
Thus, despite any actions the Okoyas initially took in furtherance of their case, they ultimately failed to prosecute their claims, and the district court properly concluded that they did not meaningfully participate in the arbitration proceedings. *See Gittings*, 116 Nev. at 390, 996 P.2d at 901. As a result, we affirm the district court's order striking the Okoyas' request for a trial de novo based on their failure to arbitrate in

good faith, *see* NAR 22(A), and the resulting order entering judgment on the arbitration award.[2]

It is so ORDERED.



_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Jerry A. Wiese, District Judge
Lansford W. Levitt, Settlement Judge
Kurth Law Office
Jolley Urga Wirth Woodbury & Little
Eighth District Court Clerk

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[2]To the extent the Okoyas now challenge issues determined by the arbitration and the district court's confirmation of the arbitration award, the Nevada Supreme Court already concluded that this appeal is properly limited to challenges to the district court's order striking the trial de novo request, *see Okoya v. Nev. State Bank, F.A.*, Docket No. 68279 (Order Reinstating Briefing, January 26, 2016), and we are bound by that decision. *See Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010) (providing that lower courts are bound by decisions made by higher courts in subsequent proceedings of the same case).