

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Craig Otis Gibson, Jr.,

Plaintiff

v.

Sheriff Kevin McMahon, et al.,

Defendants

Case No. 2:23-cv-00851-CDS-DJA

Order Denying Plaintiff's Appeal and
Affirming Magistrate Judge's Order

[ECF No. 79, 81]

Plaintiff Craig Otis Gibson, Jr. moved for an order compelling responses to his written discovery requests (Mot., ECF No. 51), but United States Magistrate Judge Daniel Albregts denied the motion finding that Gibson did not comply with the meet and confer mandate (Order, ECF No. 79). Gibson appealed Judge Albregts's order by filing a written objection, and the defendants responded. Obj., ECF No. 81; Resp., ECF No. 82. Because I find that Judge Albregts's order is neither clearly erroneous nor contrary to law, Gibson's appeal is denied.

I. Legal standard

Magistrate judges are authorized to resolve non-dispositive pretrial matters subject to district court review under a "clearly erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a); LR IB 3-1(a) ("A district judge may reconsider any pretrial matter referred to a magistrate judge in a civil or criminal case pursuant to LR IB 1-3, where it has been shown that the magistrate judge's ruling is clearly erroneous or contrary to law."). The "clearly erroneous" standard applies to a magistrate judge's factual findings, whereas the "contrary to law" standard applies to a magistrate judge's legal conclusions. *See, e.g., Grimes v. City & Cnty. of San Francisco*, 951 F.2d 236, 240 (9th Cir. 1991). A magistrate judge's finding is "clearly erroneous" if the district judge has a "definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). "An order is contrary to law

1 when it fails to apply or misapplies relevant statutes, case law, or rules of procedure.” *United States*
2 *v. Desage*, 229 F. Supp. 3d 1209 (D. Nev. 2017) (quotation omitted). Further, a magistrate judge’s
3 pretrial order issued pursuant to 28 U.S.C. § 636(b)(1)(A) is not subject to de novo review, and
4 the reviewing court “may not simply substitute its judgment for that of the deciding court.”
5 *Grimes*, 951 F.2d at 241 (internal citation omitted).

6 **II. Discussion**

7 In his objection, Gibson argues that he did seek to confer, or attempted to confer, before
8 filing the motion. ECF No. 81 at 3–4. Gibson further asserts that his motion was accompanied by a
9 certification that he, in good faith, attempted to confer with the defendants. *Id.* at 4. The defendants
10 contend that because Gibson has not demonstrated that the parties met and conferred before he
11 moved to compel discovery, Judge Albregts’s order is not clearly erroneous. ECF No. 82 at 2–3.

12 Rule 37(a)(1) of the Federal Rules of Civil Procedure provides that a motion compelling
13 disclosure or discovery “must include a certification that the movant has in good faith conferred or
14 attempted to confer with the person or party failing to make disclosure or discovery in an effort to
15 obtain it without court action.” Similarly, under Local Rule 26-6(c), discovery motions will not be
16 considered unless the movant has made a good-faith effort to meet and confer as defined in LR IA 1-
17 3(f)¹ before filing the motion. As a prisoner, Gibson is exempt from the “face-to-face” requirement of
18 LR IA 1-3(f) and can satisfy the requirement through written communication. LR IA 1-3(f)(1).

19 Gibson’s motion to compel does include a “certificate of conference” certifying that he
20 “confer[r]ed and/or attempted to confer” with the defendants “through correspondence. . .” ECF No.
21 51 at 12. To support his certification, Gibson provides as exhibits (1) his first request of production
22 of documents, (2) his request for defendants to amend or supplement their disclosure and
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24 ¹ Under this rule, meet and confer is defined to mean “to communicate directly and discuss in good faith
25 the issues required under the particular rule or court order. This requirement is reciprocal and applies to
26 all participants. Unless these rules or a court order provide otherwise, this requirement may only be
satisfied through direct dialogue and discussion in a face-to-face meeting, telephone conference, or video
conference. The exchange of written, electronic, or voice-mail communications does not satisfy this
requirement.” LR IA 1-3(f).

1 documents, (3) his response to defendants' request for extension of time, and (4) his second request
2 to meet and confer. ECF Nos. 50, 52–54. In Gibson's second request to meet and confer, he states:
3 "Plaintiffs correspondence constitutes as a meet and confer although Plaintiff advised Defendant he
4 may set a video meet and confer conference through CCDC, or visit [CCDC]." ECF No. 54 at 1.
5 Although the meet-and-confer requirement applies to both parties,² I find these documents
6 insufficient to constitute a good-faith effort to meet and confer. Neither Gibson's certification nor
7 his supporting documents reflect a meeting of the parties or any fruitful attempts to resolve the
8 discovery dispute—mainly because it appears that Gibson's communications consisted of one-sided
9 demands. Moreover, Gibson denied the defendants' request for more time to respond to his first
10 request for production of documents. ECF No. 53 at 1. And "[a] threshold issue in the review of any
11 motion to compel is whether the movant made adequate efforts to resolve the dispute without
12 court intervention." *Cardoza v. Bloomin' Brands*, 141 F. Supp. 3d 1137, 1145 (D. Nev. 2015).

13 Gibson also objects that Judge Albregts did not address his request to extend the discovery
14 deadline. ECF No. 81 at 4. The defendants argue that the issue is moot because the discovery
15 deadline was subsequently extended. ECF No. 82 at 4–5. There is no evidence this made Judge
16 Albregts's order clearly erroneous or contrary to law.

17 I agree with Judge Albregts's conclusion that Gibson has not complied with the procedural
18 requirements governing motions to compel disclosure or discovery and there has not been a
19 sufficient meet-and-confer regarding this discovery dispute. Therefore, because I find that Judge
20 Albregts's order as to the denial of the motion to compel is neither clearly erroneous nor contrary to
21 law, it is affirmed.

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² *Las Vegas Skydiving Adventures LLC v. Groupon, Inc.*, 2020 U.S. Dist. LEXIS 191754, *4 (D. Nev. Oct. 16, 2020).

1 **III. Conclusion**

2 IT IS THEREFORE ORDERED that Gibson's appeal [ECF No. 81] is denied. Judge
3 Albregts's order [ECF No. 79] is affirmed in full, as it relates to the motion to compel discovery.

4 Dated: March 3, 2025

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7 Cristina D. Silva
8 United States District Judge
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