

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN HARDEE AND SUSAN  
HARDEE,  
Appellants,  
vs.

EDWARD GILLIES RIGGS,  
INDIVIDUALLY AND D/B/A CRYSTAL  
CASCADES; CRYSTAL CASCADES,  
INC., A NEVADA CORPORATION;  
CRYSTAL CASCADES CIVIL, LLC, A  
NEVADA LIMITED LIABILITY; AND  
CRYSTAL CASCADES POOLS & SPAS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,  
Respondents.

No. 43584

**FILED**

FEB 13 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order setting aside a default judgment. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellants Brian and Susan Hardee argue that the district court abused its discretion when it set aside the default judgment against respondent Edward Gillies Riggs, d/b/a Crystal Cascades (CC), solely on the basis that this court prefers cases to be decided on their merits.

After approximately a year of negotiations by counsel for the parties, but prior to the filing of their lawsuit, the Hardees learned that counsel for CC had terminated representation. The Hardees then filed a complaint against CC and eventually moved for a default judgment without providing written notice to CC. CC moved to set aside the default judgment, but offered no explanation for its failure to respond to the complaint.

In Lindblom v. Prime Hospitality Corp.,<sup>1</sup> this court held that, where pre-suit negotiations evince a clear intent to appear and defend, an appearance has been made for purposes of notice pursuant to NRCP 55(b)(2). SCR 175 and our decisions in Lindblom, Christy v. Carlisle,<sup>2</sup> and Rowland v. Lepire,<sup>3</sup> are consistent with requiring communication with opposing counsel before initiation of a default judgment proceeding. The underlining principle in these authorities is that, where a party evinces a clear intent to defend a lawsuit, written notice must be provided in accordance with NRCP 55(b)(2) prior to seeking a default judgment.

By hiring an attorney and engaging in settlement negotiations for almost a year, CC clearly evinced its intent to appear and defend the action. Accordingly, CC made an appearance and, even though its representative was terminated, was entitled to written notice of the default judgment hearing under NRCP 55(b)(2). This court sees nothing onerous in requiring a party who has engaged in pre-suit settlement negotiations to give three days' written notice prior to seeking a default judgment.

We agree with the Hardees' contention that a default judgment cannot be set aside solely on the basis of a preference that cases be decided on their merits. Instead, the moving party must provide the

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<sup>1</sup>120 Nev. 372, 376, 90 P.3d 1283, 1285 (2004).

<sup>2</sup>94 Nev. 651, 654, 584 P.2d 687, 689 (1978).

<sup>3</sup>95 Nev. 639, 640, 600 P.2d 237, 237 (1979).

district court with an independent ground to set aside a default judgment.<sup>4</sup> Here, that ground is the Hardees' failure to provide three days' written notice to CC as required by NRCP 55(b)(2). Therefore, we affirm the district court's order setting aside the default judgment.<sup>5</sup>

The Hardees also contest the portion of the district court's order requiring them to return the \$23,816.76 collected under the default judgment. The Hardees argue that the district court's order granted relief in excess of the oral relief granted at the hearing. A written order supersedes an oral pronouncement from the bench.<sup>6</sup> Because we affirm the district court's order setting aside the default judgment, we conclude that the district court properly required the Hardees to return the sum collected pursuant to the default judgment. Accordingly, we

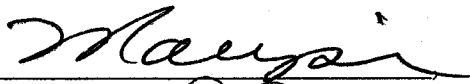
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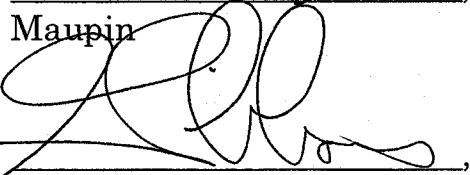
<sup>4</sup>Furthermore, the grounds for setting aside a default judgment are explicitly set forth in NRCP 60.

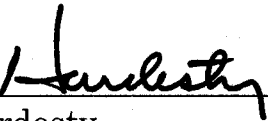
<sup>5</sup>See Rosenstein v. Steele, 1-3 Nev. 571, 575, 747 P.2d 230, 233 (1987) ("this court will affirm the order of the district court if it reached the correct result, albeit for different reasons").

<sup>6</sup>F.C. Mortimer v. P.S.S. & L. Co., 62 Nev. 142, 153, 145 P.2d 733, 735 (1944) ("[t]he formal written order signed by the court, must, we think, supersede the minute order entered by the clerk").

ORDER the judgment of the district court AFFIRMED.

  
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Maupin J.

  
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Gibbons J.

  
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Hardesty J.

cc: Hon. Valerie Adair, District Judge  
Groesbeck Group, Ltd.  
Goodman Brown & Premsrirut  
Clark County Clerk