

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUDITH PENDERGAST,
Appellant,
vs.
SAN REMO HOMEOWNERS'
ASSOCIATION,
Respondent.

No. 45229

FILED

MAY 19 2006

BY *[Signature]*
KARINE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order setting aside a default judgment in a personal injury action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

On October 24, 2000, appellant Judith Pendergast slipped and fell on her condominium's grounds, sustaining injuries. On October 16, 2002, Pendergast filed a complaint against respondent San Remo Homeowners' Association, seeking damages for her injuries. The complaint was served on Kim Weitekamp, who was listed with the Secretary of State as San Remo's resident agent. San Remo did not file an answer, and Pendergast moved for a default, which the court entered on February 5, 2003. The court explained during a subsequent proceeding that it had attempted to "wake up the case by scheduling a [NRCP 41(e)] dismissal hearing" for November 29, 2004. Only Pendergast appeared at the hearing, and the court allowed the case to proceed based on her plan to seek a default judgment. Ultimately, the court entered the default judgment on December 23, 2004.

San Remo filed a motion to set aside the judgment on March 16, 2005, and after a hearing, the court granted the motion under NRCP 60(b)(1) based on mistake or excusable neglect. Specifically, the court determined that San Remo's failure to notify the Secretary of State about a change in its resident agent was excusable.

The district court has wide discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b), and its determination will not be disturbed on appeal absent an abuse of that discretion.¹ Under NRCP 60(b)(1), the district court may relieve a party from a final judgment for mistake or excusable neglect. Factors relevant to the district court's NRCP 60(b)(1) determination include whether the defaulting party: (1) promptly moved to set aside the judgment; (2) lacked an intent to delay the proceedings; (3) demonstrated that it lacked knowledge of procedural requirements; and (4) brought the motion to set aside in good faith.² In considering the NRCP 60(b)(1) motion, the district court must also weigh Nevada's policy favoring decisions on the merits whenever possible.³ "Because of this policy, . . . an appellate court is more likely to affirm a lower court ruling setting aside a default judgment than it is to affirm a refusal to do so."⁴

¹Kahn v. Orme, 108 Nev. 510, 513, 835 P.2d 790, 792 (1992).


²Id. at 513, 835 P.2d at 792-93 (citing Yochum v. Davis, 98 Nev. 484, 653 P.2d 1215 (1982)); cf. Epstein v. Epstein, 113 Nev. 1401, 950 P.2d 771 (1997) (eliminating a prior mandate, which required the party moving to set aside the default to also show a meritorious defense).

³Id. at 513, 835 P.2d at 793.

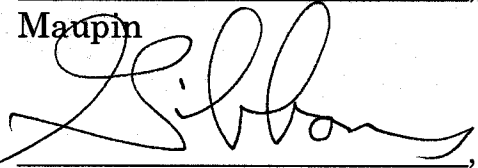
⁴Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

Upon review of the record and consideration of the parties' briefs, we perceive no abuse of discretion in the district court's decision. The district court's order comports with Nevada's policy of favoring decisions on the merits, and the record demonstrates that the court considered the factors relevant to a NRCP 60(b)(1) determination, including that San Remo moved to set aside the judgment within the period prescribed under NRCP 60(b), and that its delay in defending the action was related to its neglect in updating its resident agent information with the Secretary of State. Accordingly, because the district court is afforded wide discretion in determining a motion to set aside a default judgment under NRCP 60(b), and nothing in the record suggests that the court abused its discretion in finding San Remo's mistake excusable, we affirm the district court's order.

It is so ORDERED.


_____ J.

Maupin

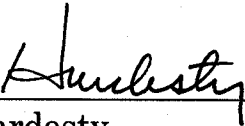

_____ J.

Gibbons

cc: Hon. Mark R. Denton, District Judge
Whitehead & Whitehead
Jeffrey J. Whitehead
Cisneros & Associates
Hall Jaffe & Clayton, LLP
Clark County Clerk

Hardesty, J., dissenting:

I conclude that San Remo's failure to notify the Secretary of State about its change in resident agent cannot constitute excusable neglect. San Remo was required by NRS 78.110 to provide this updated information and should not benefit by having the default judgment set aside.


_____, J.
Hardesty