


IN THE SUPREME COURT OF THE STATE OF NEVADA

NASSE, LLC; GEORGE NASSE; AND  
MARK C. NASSE,  
Appellants,  
vs.  
LEERAD FAMILY LIMITED  
PARTNERSHIP,  
Respondent.

No. 46665

**FILED**

JAN 30 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting an NRCP 60(b) motion to set aside an order dismissing with prejudice a breach of contract and fraud action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

When granting or denying a motion to set aside a default judgment under NRCP 60(b), the trial court's exercise of discretion will not be disturbed on appeal absent an abuse of discretion.<sup>1</sup> NRCP 60(b)(1) provides that "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment . . . [for] excusable neglect."

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<sup>1</sup>Lindblom v. Prime Hospitality Corp., 120 Nev. 372, 375, 90 P.3d 1283, 1284 (2004).

In this case, the district court granted appellants Nasse, LLC and George and Mark C. Nasse's (the Nasse's) unopposed motion to dismiss with prejudice. Respondent Leerad Family Limited Partnership (Leerad) filed a motion for relief from the district court's earlier dismissal pursuant to NRCP 60(b)(1). After hearing arguments as to gross procedural errors committed by Leerad's former attorney, the district court granted Leerad's motion for relief and reversed its prior motion to dismiss. Accordingly, we are compelled to address whether an attorney's nonfeasance may be imputed to that of the client.

In Guardia v. Guardia,<sup>2</sup> this court established the "general rule that the negligence of an attorney is imputable to his client, and that the latter cannot be relieved from a judgment taken against him, in consequence of the neglect, carelessness, forgetfulness, or inattention of the former."<sup>3</sup> In Tahoe Village Realty v. DeSmet,<sup>4</sup> we reaffirmed this general rule and concluded that the district court did not abuse its discretion in denying a motion to set aside a default judgment when the defendant made no attempt to establish that the failure to file the answer resulted from mistake, inadvertence, surprise or excusable neglect on the part of counsel.

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<sup>2</sup>48 Nev. 230, 233-34, 229 P. 386, 387 (1924).

<sup>3</sup>Id.

<sup>4</sup>95 Nev. 131, 134, 590 P.2d 1158, 1161 (1979), overruled on other grounds by Ace Truck v. Kahn, 103 Nev. 503, 507, 746 P.2d 132, 135 (1987).

Our decision in Tahoe Village Realty failed to note, however, the qualifying language from Guardia, which states that “this court is quite indulgent in setting aside defaults in consequence of ‘excusable neglect’ of attorneys, provided the party himself was not directly at fault.”<sup>5</sup> Accordingly, a client who is unknowingly deprived of effective representation is not directly at fault and may be entitled to relief under NRCP 60(b).<sup>6</sup>

Relying on this court’s conclusion in Staschel v. Weaver Bros., Ltd.,<sup>7</sup> Leerad contends that it is entitled to relief from the excusable neglect committed by its former counsel. We disagree.

Here, Leerad, acting on its own behalf, hired a paralegal instead of an attorney to perform services reserved for attorneys. Then, subsequent to the gross procedural errors committed by the paralegal, Leerad continued to execute additional and identical complaints against the Nasse’s. Each additional complaint was dismissed either for failure to oppose the Nasse’s motion to dismiss or failure to timely serve the complaint. While the failure to properly file the complaint may suggest some neglect “[t]he showing does not necessarily establish mistake,

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<sup>5</sup>Guardia, 48 Nev. at 234, 229 P. at 387.

<sup>6</sup>See Passarelli v. J-Mar Development, 102 Nev. 283, 286, 720 P.2d 1221, 1224 (1986) (holding that the client was “effectually and unknowingly deprived of legal representation” and, therefore, “[i]t would be unfair to impute such conduct to [the client] and thereby deprive him of a full trial on the merits”).

<sup>7</sup>98 Nev. 559, 560, 655 P.2d 518, 519 (1982) (holding that attorney neglect amounting to misconduct is not properly imputed to the client in determining whether a default judgment should be set aside).

surprise or inadvertence.”<sup>8</sup> In any event, “the lower court was not bound to declare such conduct excusable.”<sup>9</sup> Finally, unlike Staschel, there is no evidence in the record to support the contention that Leerad was “unknowingly deprived of effective representation by . . . reason of the attorney’s misrepresentation.”<sup>10</sup>

Further, we conclude that “[a] party seeking relief against a judgment on the ground of excusable negligence must clear himself of the imputation of due diligence, and he cannot have relief if the taking of the judgment appears to have been due to his own carelessness, slothfulness, or indifference to his own rights.”<sup>11</sup> Leerad’s decision to hire a paralegal to perform those services reserved for a licensed attorney was the result of its own carelessness and indifference to its own rights. In addition, Leerad’s failure to hire new counsel to oppose Nasse’s motion to dismiss in the first action appears to have been due to its own slothfulness or indifference to its own rights. In Leerad’s second pro se action, the district court again granted Nasse’s motion to dismiss for failure to oppose the motion, which was a result of Leerad’s indifference to its own rights. The third and instant action was dismissed due to Leerad’s failure to timely assert its rights in the previous actions. Consequently, we conclude that the district court abused its discretion in granting relief under NRCP 60(b). Thus, we

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<sup>8</sup>Intermountain Lumber v. Glens Falls, 83 Nev. 126, 130, 424 P.2d 884, 886 (1967).

<sup>9</sup>Id.

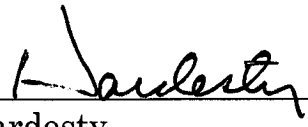
<sup>10</sup>Staschel, 98 Nev. at 560-61, 655 P.2d at 519.

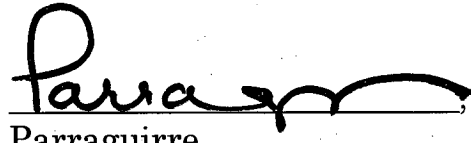
<sup>11</sup>49 C.J.S. Judgments § 323 (2007).

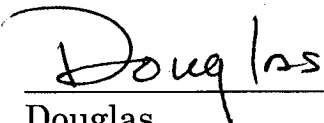
conclude that the district court erred in setting aside the default judgment because Leerad's negligence was not excusable under the circumstances.

Accordingly, we

ORDER the judgment of the district court REVERSED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Michelle Leavitt, District Judge  
Larry J. Cohen, Settlement Judge  
Gordon & Silver, Ltd.  
Ellsworth Moody & Bennion Chtd  
Williams & Wiese  
Eighth District Court Clerk