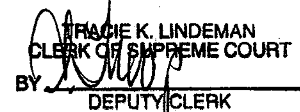
IN THE SUPREME COURT OF THE STATE OF NEVADA

EMMETT MICHAELS,
Appellant,
vs.
TWYLAH MICHAELS,
Respondent.

No. 47065



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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying appellant's motion to set aside a default judgment in a divorce action. Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge.

On appeal, appellant argues that the judgment should be set aside because he did not receive adequate notice of either the mandatory pre-trial conference or the trial and because the district court did not comply with NRCP 55 when it struck appellant's answer and entered a default against appellant, before entering a default divorce decree.

The district court may exercise its discretion in granting or denying a motion to set aside a default judgment on the grounds of mistake, inadvertence, surprise, or excusable neglect, and we will not disturb the district court's decision on appeal absent an abuse of that

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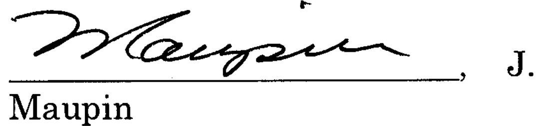
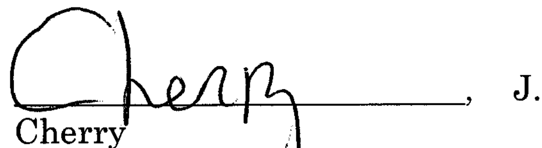
discretion.[1] NRCP 60(b)(1) allows the district court to relieve a party from a final judgment if a party can demonstrate "mistake, inadvertence, surprise, or excusable neglect."

Having reviewed the record on appeal, we conclude that the district court abused its discretion when it denied appellant's motion to set aside the default judgment. Appellant was not given adequate notice of the trial as required by EDCR 2.60 and 5.44, because the trial date was set in the court's minutes, and not in a setting order as required by the EDCR. Moreover, the minutes contained an error, purporting to set the trial nine months before the minute entry. Accordingly, we reverse the district court's order denying appellant's motion to set aside the default judgment and remand this case for further proceedings consistent with this order.

It is so ORDERED.[2]



_______________________, J.
Maupin



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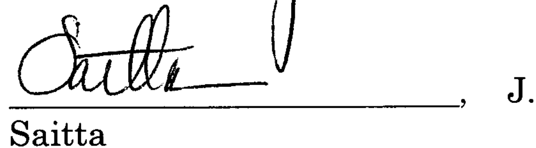
Cherry



_______________________, J.
Saitta

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[1]Lindblom v. Prime Hospitality Corp., 120 Nev. 372, 375, 90 P.3d 1283, 1284 (2004).

[2]In light of this order, we need not address the other arguments raised by appellant.

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Nathaniel J. Reed, Settlement Judge
John R. Hawley
Lawrence J. Semenza
Law Offices of John P. Lukens
Eighth District Court Clerk