

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARIE BROUNCHTAINE,
Appellant,
vs.
NIR AVRAHAM,
Respondent.

No. 48049

FILED

MAY 05 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

This is an appeal from a district court order denying an NRCP 60(b) motion to set aside orders. Eighth Judicial District Court, Clark County; T. Art Ritchie, Jr., Judge, for Steven E. Jones, Judge. As the parties are familiar with the facts, we do not recount them except as necessary for our disposition.

Appellant Arie Brouchtaine argues that the district court abused its discretion when it denied his NRCP 60(b) motion to set aside its November 4 and November 23, 2005 orders. We disagree.

We review the district court's decision to grant or deny a motion to set aside orders for abuse of discretion.¹ NRCP 60(b)(1) provides that a motion to set aside an order may be granted based on mistake or excusable neglect. We consider the following factors when determining whether a party has shown mistake or excusable neglect: "(1) a prompt application to remove the judgment, (2) an absence of an intent to delay

¹Stoecklein v. Johnson Electric, Inc., 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).

the proceedings, (3) a lack of knowledge of the procedural requirements on the part of the moving party, and (4) good faith.”²

In this case, we conclude that Brouchtaine did not act promptly when he moved to set aside the orders almost six months from the time he was served written notice of the judgment and order.³ Brouchtaine failed to contact his counsel after she mailed him a copy of her motion to withdraw, and he repeatedly failed to participate in proceedings, even though he initiated the suit and received notices in conjunction with it. Therefore, we conclude that Brouchtaine failed to establish that he did not intend to delay the proceedings or that he lacked procedural knowledge.⁴ Finally, we conclude that Brouchtaine lacked good faith in failing to appear and asserting that he was unaware that his counsel no longer represented him, because the record reveals that he personally informed counsel that he wanted her off his case and removed his files from her office.⁵

²Id.

³See Union Petrochemical Corp. v. Scott, 96 Nev. 337, 338, 609 P.2d 323, 323 (1980) (concluding that a party who moves to have a judgment set aside “[a]lmost six months” after the district court entered the judgment has not acted promptly).

⁴See Durango Fire Protection v. Troncoso, 120 Nev. 658, 663, 98 P.3d 691, 694 (2004) (concluding that neglect is inexcusable if the party receives notice of scheduled proceedings but repeatedly fails to appear).

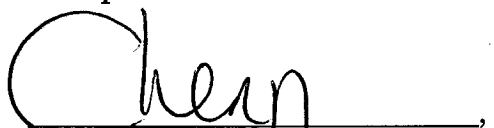
⁵See Kahn v. Orme, 108 Nev. 510, 515, 835 P.2d 790, 794 (1992) (concluding that when the appellant fails to “provide[] a reasonable explanation for waiting five months to obtain other counsel[.]” the appellant has not acted in good faith).

In conclusion, the district court did not abuse its discretion when it denied Brouchtaine's motion to set aside its orders. As the district court's finding that there was no mistake or excusable neglect was a sufficient ground to deny Brouchtaine's motion,⁶ we need not reach his second argument that the district court misapplied Nevada law by requiring a showing of a meritorious defense. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Cherry

 J.

Saitta

cc: Hon. Steven E. Jones, District Judge
Hon. T. Art Ritchie, Jr., District Judge
Ara H. Shirinian, Settlement Judge
Mills & Mills
Qumars Behzadi
Eighth District Court Clerk

⁶See Union Petrochemical Corp., 96 Nev. at 339, 609 P.2d at 324.