

IN THE SUPREME COURT OF THE STATE OF NEVADA

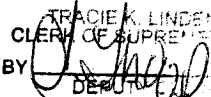
ZORAN SAVICIC,
Appellant,
vs.
VLADIMIR KATIC,
Respondent.

No. 49915

FILED

FEB 26 2010

ORDER OF AFFIRMANCE

TRACIE K. LINDEN
CLERK OF SUPREME COURT
BY  DEPUTY

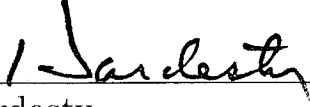
This is an appeal from a district court judgment in a contract action. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

We conclude that the district court did not abuse its discretion in setting aside the default judgment as void because of appellant's failure to exercise due diligence prior to seeking service by publication. NRCP 4(e)(1)(i); NRCP 60(b)(4); Price v. Dunn, 106 Nev. 100, 102-03, 787 P.2d 785, 786-87 (1990), overruled on other grounds by NC-DSH, Inc., 125 Nev. ___, ___ P.3d ___ (holding that due diligence in locating a defendant for service is required prior to seeking permission for service by publication, even though the defendant is located out of state).


We also affirm the district court's dismissal of appellant's claims. Appellant cannot maintain the asserted causes of action individually, and appellant was precluded from substituting the real party in interest under NRCP 17, as no excusable mistake existed for appellant's failure to properly institute the lawsuit in the name of the real party in interest corporation that signed the contracts at issue in this case. Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (stating that this court will affirm the district court's order "if it reached the

that this court will affirm the district court's order "if it reached the correct result, albeit for different reasons"); Goodman v. U.S., 298 F.3d 1048, 1053-54 (9th Cir. 2002) (quoting 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1555 (2d ed. 1990)) (stating that Rule 17 is available "when an understandable mistake has been made in selecting the party in whose name the action should be brought"); see also 6A Wright, Miller & Kane § 1555 (stating that Rule 17 is not applicable and a case should be dismissed "when the determination of the right party to bring the action was not difficult and when no excusable mistake had been made"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Robert F. Saint-Aubin, Settlement Judge
Nersesian & Sankiewicz

¹Having considered the other arguments raised on appeal, we conclude that they lack merit and we affirm the district court's judgment.