

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR DUARTE, AN INDIVIDUAL  
AND LUIS A. GALDAMEZ, AN  
INDIVIDUAL,  
Appellants,

vs.

MRI MOBILE IMAGING, LLC AND  
JESSE L. CISNEROS, INDIVIDUALLY  
AND AS ITS PRESIDENT,  
Respondents.

No. 50039

FILED

OCT 08 2009

THACIEK. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion for NRCP 60(b) relief in a conversion action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

On appeal, appellants contend that the district court abused its discretion in denying their motion to set aside the judgment based on newly discovered evidence under NRCP 60(b)(2).<sup>1</sup> We disagree.

The district court has wide discretion to determine an NRCP 60(b) motion for relief from a judgment and without an abuse of discretion, the district court's determination will not be disturbed. Union Petrochemical Corp. v. Scott, 96 Nev. 337, 338, 609 P.2d 323, 323 (1980). When relief is sought under NRCP 60(b)(2), based on newly discovered evidence, the evidence must be such that "by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)."

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<sup>1</sup>Although appellants refer to this motion as a motion for a new trial, it actually seeks relief from the district court's judgment under NRCP 60(b)(2).

Based on our review of the record on appeal and having considered all arguments in the parties' briefs, we find no abuse of discretion in the denial of appellants' motion. Accordingly, we affirm the district court's denial of appellants' NRCP 60(b)(2) motion.

It is so ORDERED.

Cherry, J.  
Cherry

Douglas, J.  
Douglas

Gibbons, J.  
Gibbons

cc: Hon. Kenneth C. Cory, District Judge  
Robert F. Saint-Aubin, Settlement Judge  
Law Office of John C. Brown  
David M. Korrey  
Eighth District Court Clerk