

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMAR CENTRAL OUTDOOR, LLC, D/B/A
LAMAR ADVERTISING COMPANY, A
DELAWARE LIMITED LIABILITY COMPANY,
Appellant,
vs.
CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF NEVADA,
Respondent.

No. 50937

FILED

NOV 19 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to vacate a judgment in a zoning case.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Lamar Central Outdoor, LLC, d/b/a Lamar Advertising Company, filed a district court petition for judicial review and writ of mandamus challenging the denial of its special use permit application by the City Council of respondent City of Las Vegas. After transmittal of the Council's record and briefing by the parties, a district court hearing was rescheduled at the City's request to be set anytime after September 3, 2007. The district court, however, did not notify either party of the new hearing date, which was set for September 17, 2007. Although the City learned of the date on its own and appeared at the hearing, Lamar did not appear. Because Lamar was not at the hearing, the district

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

court did not allow any oral argument by the City. Based solely on its review of the pleadings and papers, the district court entered a September 26, 2007, order denying Lamar's petition with prejudice. Lamar did not appeal the order denying its petition.²

Lamar subsequently filed a motion to vacate the judgment under NRCP 60(b), claiming that excusable neglect warranted relief as it had been prevented from presenting oral argument due to the district court's failure to notify it of the hearing. The City opposed the motion.

After a hearing, the district court entered a December 6, 2007, order denying Lamar's NRCP 60(b) motion to vacate. The order specified that the court had "reviewed and considered all of the papers and pleadings on file" and that it was expressly authorized and permitted by EDCR 2.23(c) to decide a motion on its merits at anytime with or without oral argument. The order further stated that the court did not entertain any oral argument by the City at the earlier hearing that Lamar did not attend due to the lack of notice. But while the order denied the motion to vacate, it scheduled another hearing to allow Lamar to present its oral argument based on the record before the City Council. On January 16, 2008, Lamar timely filed a notice of appeal from this order.

At a December 10, 2007, hearing on Lamar's motion to vacate, the district court allowed the parties to orally argue the merits of the petition for judicial review, but ultimately denied Lamar's motion. In affirming its prior ruling to deny Lamar's petition for judicial review, the

²Consequently, the parties' substantive arguments concerning the district court's denial of Lamar's petition for judicial review are not properly before this court and will not be considered. Holiday Inn v. Barnett, 103 Nev. 60, 63, 732 P.2d 1376, 1379 (1987).

district court again emphasized, after hearing oral arguments, that it had based its decision on the pleadings. An “order affirming prior order denying petitioner’s petition for judicial review and/or petition for alternative writ of mandamus” was entered on January 23, 2008. On January 30, 2008, Lamar filed an amended notice of appeal from this order.

As a jurisdictional matter, once Lamar filed its first notice of appeal on January 16, 2008, the district court was divested of jurisdiction to act.³ Thus, the district court’s order entered on January 23 was void and cannot be appealed.⁴ Consequently, we will only consider the appeal as to the December 6, 2007, order denying Lamar’s motion to vacate.⁵

On appeal, Lamar contends that the district court abused its discretion by denying its NRCP 60(b) motion to vacate the September 26 judgment, because Lamar’s nonappearance and inability to orally argue its case was excusable neglect due to the district court’s failure to notify it of the hearing. The City argues that the district court did not abuse its discretion in deciding the merits of the case without oral argument under EDCR 2.23(c).

The district court has wide discretion to determine an NRCP 60(b) motion for relief from a judgment, which this court will not overturn

³Smith v. Emery, 109 Nev. 737, 740-41, 856 P.2d 1386, 1388-89 (1993).

⁴Id.

⁵See Holiday Inn, 103 Nev. at 63, 732 P.2d at 1379 (allowing an appeal from a postjudgment order resolving an NRCP 60(b) motion to vacate a judgment).

absent an abuse of discretion.⁶ Under NRCP 60(b)(1), the district court may relieve a party from a final judgment due to mistake, inadvertence, surprise, or excusable neglect.⁷

In this case, Lamar claims that the district court violated an unspecified provision of the Nevada Administrative Procedures Act (APA) by denying its petition without giving it proper notice to appear at the September 17 hearing; thus, Lamar implicitly predicates its argument of excusable neglect on an assumed right to provide oral arguments to the district court in support of its petition for judicial review.⁸

The APA, however, applies only to actions by state agencies and is inapplicable in this case involving an action by the City Council.⁹ The procedural requirements for non-APA petitions for judicial review filed in the Eighth Judicial District are instead set forth in EDCR 2.15. Moreover, EDCR 2.15(f) specifically provides that EDCR 2.22 through 2.28 apply to hearings on petitions for judicial review. Under EDCR 2.23(c), “[t]he judge may consider the motion on its merits at anytime with or

⁶Stoecklein v. Johnson Electric, Inc., 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).

⁷Id.

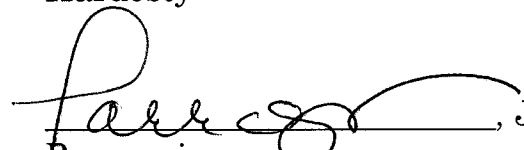
⁸As Lamar made no arguments concerning its request to the district court for writ relief, we need not consider that issue. See Browning v. State, 120 Nev. 347, 361, 91 P.3d 39, 50 (2004) (recognizing that a “claim warrants no consideration” when appellant fails to provide this court with “any cogent argument, legal analysis, or supporting factual allegations”).

⁹See NRS 233B.020 (stating the legislative intent to provide procedural requirements and judicial review of actions by “all agencies of the Executive Department of the State Government”); NRS 233B.031 (defining “agency” as those of the Executive Department).

without oral argument, and grant or deny it.”¹⁰ Because EDCR 2.15(f) provides that EDCR 2.23(c) applies to “the hearing of petitions for judicial review,” a district court judge can consider the merits of a petition for judicial review at any time with or without argument. Thus, the parties did not have any right to present oral argument to the district court. Consequently, the district court did not abuse its discretion in denying Lamar’s motion to vacate the order denying its petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Michelle Leavitt, District Judge
Nathaniel J. Reed, Settlement Judge
Kummer Kaempfer Bonner Renshaw & Ferrario/Las Vegas
Las Vegas City Attorney
Eighth District Court Clerk

¹⁰ Emphasis added.