

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW BRENT MORGAN,
Appellant,
vs.
RICK SAVAGE,
Respondent.

No. 51594

FILED

NOV 24 2009

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to vacate a default judgment in a torts and contracts action. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

The principal issue on appeal is whether the district court abused its discretion by denying Morgan's motion to vacate a default and default judgment. We conclude that the district court did abuse its discretion because a default and default judgment not supported by proper service of process are void and should be set aside. NRCP 60(b)(4); Browning v. Dixon, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998). Therefore, we reverse the district court's order denying Morgan's motion to vacate, and remand this matter to the district court.

Relevant facts and procedural history

Respondent Rick Savage filed a complaint against appellant Matthew Morgan alleging conversion, fraud, breach of contract, and breach of partnership. Savage attempted to personally serve the original summons and complaint upon Morgan by leaving copies of these documents with a woman of proper age and discretion who lived at a California home owned by Morgan. Morgan did not answer the original complaint, nor did he make a general appearance in this action. Later, Savage filed an amended complaint against Morgan alleging the same

causes of action.¹ Savage failed to personally serve this amended complaint upon Morgan. Instead, Savage mailed a copy of the amended complaint to the California home owned by Morgan.

When Morgan failed to appear or answer in Savage's lawsuit, the district court entered a default and default judgment against him. Savage served notice of the default judgment's entry upon Morgan. In response, Morgan filed a motion to vacate the default and default judgment under NRCP 60(b) and (c). The district court denied Morgan's motion to vacate.

Morgan now appeals. He argues that he did not receive the original or amended complaints because he did not live at the California home where Savage served these documents. Also, he argues that the district court abused its discretion by denying his motion to vacate because Savage divested the district court of jurisdiction when he failed to personally serve the amended complaint upon Morgan. We agree with this argument and reverse. Based on our disposition of this issue, we do not reach the merits of Morgan's other arguments on appeal.

Discussion

District courts have broad discretion to address motions to vacate default judgments. Kahn v. Orme, 108 Nev. 510, 513, 835 P.2d 790, 792 (1992). Therefore, this court reviews the district court's decision for an abuse of discretion. Id.

An amended complaint is a complete pleading which entirely supersedes the original complaint. Randono v. Ballow, 100 Nev. 142, 143,

¹The record is unclear as to whether Savage mailed Morgan an additional summons with the amended complaint.

676 P.2d 807, 808 (1984). When a plaintiff files an amended complaint before the defendant makes a general appearance, the plaintiff must personally serve the amended complaint upon the defendant. See NRCP 4(d)(6). Further, NRCP 60(b)(4) states that the court, upon motion, can relieve parties from a final judgment or order if the judgment is void.² A judgment is void when it is not supported by valid service of process. Dobson v. Dobson, 108 Nev. 346, 348, 830 P.2d 1336, 1337-38 (1992); Doyle v. Jorgensen, 82 Nev. 196, 201, 414 P.2d 707, 710 (1966), overruled on other grounds as stated in Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 654-55, 6 P.3d 982, 984-85 (2000). Therefore, absent valid service of process, district courts are without jurisdiction to enter default judgments. Sawyer v. Sugarless Shops, 106 Nev. 265, 269-70, 792 P.2d 14, 17 (1990).

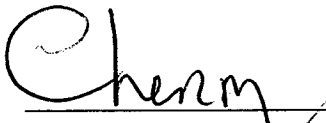
In this case, Savage filed an amended complaint before Morgan made a general appearance in the underlying case. Thus, Nevada law required Savage to personally serve an additional summons and amended complaint upon Morgan. See id. Because Savage failed to do so and, instead, attempted to serve the amended complaint by mail, service of process was not valid in this case.³ See NRCP 4(d)(6). When a judgment is not supported by valid service of process, the judgment is void


²NRCP 60(b)(4) does not have a six-month time limitation.

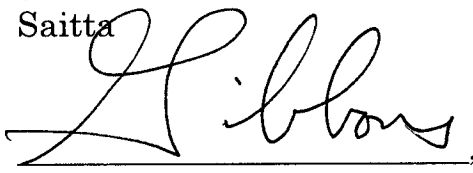
³If Savage was unable to personally serve Morgan, then he should have requested an order for substituted service by publication. NRCP 4(e)(1)(i). To obtain an order for substituted service, Savage would be required to show he acted with due diligence to locate Morgan when attempting to serve him. Price v. Dunn, 106 Nev. 100, 102-03, 787 P.2d 785, 786 (1990), overruled on other grounds by NC-DSH, Inc. v. Garner, 125 Nev. ___, ___, ___ P.3d ___, (Adv. Op. No. 50, October 29, 2009).

because due process requires defendants to be subject to the court's personal jurisdiction. See Browning v. Dixon, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998); Tandy Computer Leasing v. Terina's Pizza, 105 Nev. 841, 843, 784 P.2d 7, 7 (1989). Consequently, we conclude that the default judgment entered in this case is void, and therefore, the district court abused its discretion by denying Morgan's motion to vacate the default and default judgment. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Richard G. Hill, Chartered
Rick Savage
Washoe District Court Clerk