

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOROTHY REYNOLDS, AN  
INDIVIDUAL, AND JEFF REYNOLDS,  
AN INDIVIDUAL,  
Appellants,  
vs.  
FRANK SPINELLI, AN INDIVIDUAL,  
AND KIMBERLY SPINELLI, AN  
INDIVIDUAL,  
Respondents.

No. 52618

**FILED**

SEP 28 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting reconsideration of the denial of an NRCP 60(b) motion and granting NRCP 60(b) relief to vacate a default judgment entered in a real property matter. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

This case arose from a residential real estate transaction gone awry. Respondents Frank Spinelli and Kimberly Spinelli signed an agreement and made a \$5,000 earnest money deposit to purchase the real property of appellants Dorothy Reynolds and Jeff Reynolds. The agreement was contingent upon the Spinellis being able to sell their real property. The Spinellis, however, were unable to sell their property and the deal fell through.

Claiming that the Spinellis knew that they could not sell their property when they entered into the contract, the Reynoldses refused to release the earnest money deposit and, on November 23, 2004, brought suit against the Spinellis for damages in excess of \$10,000. Approximately three years later, on November 19, 2007, default judgment was entered against the Spinellis. However, for some unknown reason, the notice of

entry of judgment by default was not sent to the Spinellis until March 4, 2008. The Spinellis promptly filed a motion to vacate the default judgment on May 16, 2008, which the district court ultimately granted.<sup>1</sup>

On appeal, the Reynolds argue that the district court erred by vacating the default judgment entered against the Spinellis because the Spinellis failed to show any excusable neglect in seeking to set aside the default judgment under NRCP 60(b)(1). For the following reasons, we disagree and therefore affirm the district court's order.

#### Standard for vacating a default judgment

Under NRCP 60(b)(1), the district court may set aside a default judgment on the grounds of "mistake, inadvertence, surprise, or excusable neglect." Our review of a district court's decision to grant or deny a motion to set aside a default judgment is guided by the following factors: (1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith. See Yochum v. Davis, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982).

Under these factors, this court is much "more likely to affirm a lower court ruling setting aside a default judgment than it is to affirm a refusal to do so." Id. at 487, 653 P.2d at 1217 (quoting Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 155, 380 P.2d 293, 295 (1963) (emphasis omitted)). The reason is that there is a strong policy favoring resolution of disputes on their merits. See id. Accordingly, the district court enjoys

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<sup>1</sup>Initially, the district court denied the Spinellis' motion, but later, upon granting their motion to reconsider, granted the motion to vacate the default judgment.

wide discretion in deciding whether to set aside a default judgment. See Gazin v. Hoy, 102 Nev. 621, 623, 730 P.2d 436, 437 (1986).

For the following reasons, we cannot conclude that the district court abused its discretion in granting the Spinellis' motion to vacate the default judgment.

First, by filing their motion just over two months after receiving notice of the default judgment, the Spinellis were not dilatory in seeking to set aside the judgment. Therefore, we reject the Reynoldses' argument that the Spinellis' motion was untimely or that they did not proceed in a prompt manner.<sup>2</sup>

Second, even though this case has experienced multiple delays, there is no evidence that the Spinellis intended to delay the proceedings. Instead, the record suggests that the Spinellis were under the misimpression that their case was being pursued by their attorney, Gary Gowen. During this period, Gowen and the Spinellis seemingly had a disagreement over Gowen's billing practices. As a result, Gowen attempted to substitute attorney William Jackson or withdraw as the attorney of record in this case. However, Gowen's attempts were

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<sup>2</sup>The Reynoldses contend that we should look at the date the judgment was entered, November 19, 2007, to determine whether the Spinellis promptly sought relief under NRCP 60(b). Under NRCP 60(b), a motion to vacate a default judgment "shall be made within a reasonable time, and for reasons [of excusable neglect,] not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served." Even if the date of judgment was used as the starting point, the Spinellis still filed their motion to set aside the default judgment within the six-month time frame under NRCP 60(b).

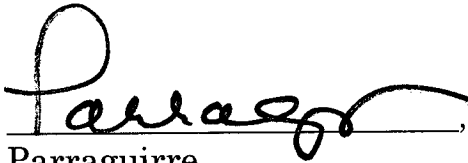
unsuccessful and, instead of continuing his representation, he did not make any further appearances on the Spinellis' behalf.

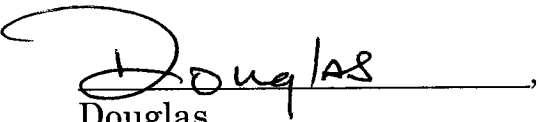
Third, there was evidence that the Spinellis were unaware of the ongoing proceedings and relied on the belief that Gowen or the court would contact them about the case. While it was undoubtedly a mistake to not independently monitor their case, a point which the Spinellis concede, this evidence, combined with the fact that the Spinellis' change of address prevented them from receiving multiple important court documents, demonstrates their ignorance of the ongoing proceedings.

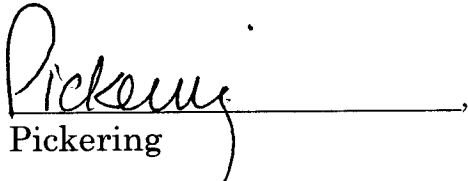
Fourth, as to the factor regarding good faith, there is no evidence that the Spinellis have acted otherwise than in good faith in defending against the Reynoldses' lawsuit.

Based on the factors above, and in consideration of our policy favoring resolution of a dispute on its merits, we conclude that the Reynoldses' arguments on appeal lack merit. Accordingly, we affirm the district court's order.

IT IS SO ORDERED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Timothy C. Williams, District Judge  
Janet Trost, Settlement Judge  
Ashworth & Kerr  
Simon & Berman  
Eighth District Court Clerk