

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUDITH R. ADAMS AND MARK
CHRISTOPHER,
Appellants,
vs.
LEONA QUILICI,
Respondent.

No. 53477

FILED

OCT 25 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying NRCP 60(b) relief in a real property action. Third Judicial District Court, Churchill County; Robert E. Estes, Judge.

Appellants Judith Adams and Mark Christopher own real estate in Churchill County, Nevada. They obtained a loan from respondent Leona Quilici for \$200,000. Appellants used this money to buy properties and then leverage them by borrowing money on the equity in the homes. To obtain the loan, appellants represented to Quilici that they had secured a buyer for a particular property who would pay over \$1 million for it, that they were not in default on any loans or other financial obligations, that Adams had excellent credit, and that the property would increase in value dramatically. When the real estate bubble burst, appellants faced foreclosure and could not pay their loans. They made several timely payments to Quilici, but failed to pay her in October 2007, and subsequently failed to pay each month thereafter.

Quilici filed suit against appellants and moved for summary judgment. The district court granted her motion and entered judgment for Quilici, awarding compensatory damages in the total amount of \$240,921.69. The district court also awarded punitive damages in the

amount of \$240,921.69. Subsequently, appellants filed a motion for reconsideration, alleging that the district court erred when it entered the punitive damages award. The district court found appellants' motion untimely under NRCP 59(e), but considered the motion under NRCP 60. The district court then stated that an award of punitive damages is not a clerical error, thus the court did not have jurisdiction to alter or amend the judgment under NRCP 60(a). The district court stated that appellants did not allege facts that would support a motion for relief under NRCP 60(b), and accordingly the district court denied their motion. This appeal followed. Appellants now appeal, arguing that the district court erred when it denied their motion for reconsideration because entering \$240,921.69 as punitive damages was error.¹

For the reasons set forth below, we conclude that the district court properly denied appellants' motion, and we affirm the decision of the district court.

DISCUSSION

Standard of review

We review an order denying a motion for relief under NRCP 60(b) for an abuse of discretion. Kahn v. Orme, 108 Nev. 510, 513, 835

¹As a threshold matter, respondent argues that this court lacks jurisdiction to consider the appeal. Respondent contends that appellants raised the issue of punitive damages for the first time in their motion for reconsideration, and no jurisdiction exists for this court to consider a claim raised for the first time in a motion for reconsideration. But, the district court construed the motion for reconsideration as a motion pursuant to NRCP 60(b), the denial of which is substantively appealable. Holiday Inn v. Barnett, 103 Nev. 60, 63, 732 P.2d 1376, 1379 (1987). Accordingly, this court has jurisdiction to consider the merits of this appeal.

P.2d 790, 792 (1992). This court affords district courts with broad discretion in ruling on NRCP 60(b) motions. Id.

NRCP 60(a)

Appellants contend that the district court erred when it denied their motion for reconsideration because entering \$240,921.69 as punitive damages was a clerical error. We disagree.

Under NRCP 60(a), a court may correct clerical mistakes in a judgment arising from an oversight or omission at any time on its own initiative or on a party's motion. Clerical errors are mistakes in writing or copying, or, as applied to judgments, mistakes that are not the result of the exercise of judicial function. Pickett v. Comanche Construction, Inc., 108 Nev. 422, 428, 836 P.2d 42, 46 (1992). A clerical error is "one which cannot reasonably be attributed to the exercise of judicial consideration or discretion." Channel 13 of Las Vegas v. Ettlinger, 94 Nev. 578, 580, 583 P.2d 1085, 1086 (1978) (emphasis omitted) (quoting Marble v. Wright, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961)). A clerical error is distinct from a judicial error that occurs "when the court reaches an incorrect result in the intentional exercise of the judicial function" or when a judge makes an incorrect decision when deciding a judicial question. Marble, 77 Nev. at 248, 362 P.2d at 267.

In its order, the district court correctly stated that an award of punitive damages is a judicial function and therefore not a clerical error. Accordingly, we conclude that the district court could not afford appellants relief under NRCP 60(a) because the award of punitive damages was the result of the intentional exercise of a judicial function and not clerical error.

NRCP 60(b).

Appellants argue that the district court's award of punitive damages constitutes a mistake under NRCP 60(b). We disagree.

Under NRCP 60(b), the court may relieve a party from a final judgment for the following reasons: (1) mistake, inadvertence, surprise, or neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct by the adverse party; (4) void judgment; or (5) the judgment has been satisfied, released, or discharged.

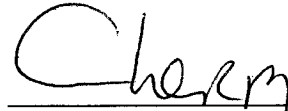
At trial appellants alleged that the district court made a mistake in entering the amount for compensatory damages as punitive damages, but the district court stated that appellants did not make allegations that would support a motion for relief under NRCP 60(b). The district court granted Quilici's motion for summary judgment, which determined as a matter of law that, even when viewed in the light most favorable to appellants, no genuine issues of material fact exist. This determination included Quilici's claims against appellants for punitive damages. The district court also asserted that it did not make the mistake that appellants allege by stating that its punitive damages award was an exercise of judicial function. We conclude that the district court did not abuse its discretion in denying appellants' motion under NRCP 60(b).

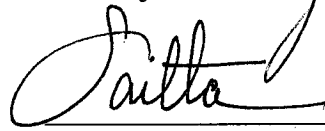
NRS 42.005

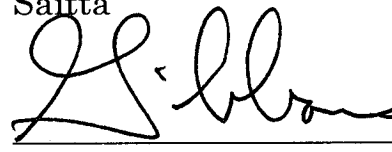
Appellants also argue that the district court erred in awarding punitive damages without a proceeding to determine the amount of such damages, pursuant to NRS 42.005(3). Although it is unclear whether appellants characterize this alleged failure as a mistake under NRCP 60(b)(1), we conclude that the district court did not abuse its discretion in

denying appellants' motion for this alleged failure since the motion was not properly opposed and reconsideration was not timely requested.²

Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Third Judicial District Court Dept. 3, District Judge
Carolyn Worrell, Settlement Judge
Pederson & Kalter, P.C./Yerington
Gayle A. Kern
Churchill County Clerk

²In view of our holding, we do not need to make any conclusion as to whether a separate evidentiary hearing was mandated by NRS 42.005(3).