

IN THE SUPREME COURT OF THE STATE OF NEVADA

NORTH AMERICAN ENTERPRISES,  
INC., AND ROBERT R. GARGANESE,  
INDIVIDUALLY,

No. 34887

Appellants,

vs.

GRECIAN IMPORTS, INC.,

Respondent.

**FILED**

DEC 13 2001

MANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a motion to vacate a default judgment.

On May 19, 1998, respondent Grecian Imports, Inc. filed a complaint against appellants North American Enterprises, Inc. and its president Robert R. Garganese to recover money due and owing for goods and services provided. Respondent attempted to personally serve appellants with the summons and complaint, but was unsuccessful. On June 19, 1998, respondent filed an affidavit of due diligence in the district court, detailing its attempts at locating appellants for personal service. The district court ordered service by publication. On November 20, 1998, respondent obtained a default judgment for \$165,066.81 plus interest and costs. On June 28, 1999, seven months after the default judgment, appellants filed a motion to vacate the judgment in the district court. The district court denied the motion, and this appeal followed.

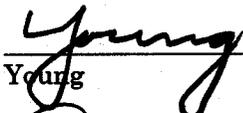
Appellants contend that service by publication was ineffective because it was not supported by adequate evidence of due diligence in attempting to locate appellants for personal service. Thus, appellants argue that the district court abused its discretion in denying appellants' motion to vacate the default judgment.

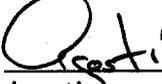
NRCP 4(e)(1)(i) provides that a court, upon affidavit, may order service by publication on a person who cannot, after due diligence, be found within this state. There is no specific formula in determining due diligence; it is "measured by the qualitative efforts of a specific plaintiff

seeking to locate and serve a specific defendant.”<sup>1</sup> Due diligence determinations are reviewed for an abuse of discretion.<sup>2</sup> Further, when a default judgment has been taken against a party not personally served, the district court may vacate the default judgment upon a motion made within six months from the date of the judgment under NRCP 60(c).

We conclude that the district court did not abuse its discretion in denying appellants’ motion to vacate the default judgment. The record demonstrates that respondent exercised due diligence in attempting to locate appellants before resorting to service by publication. Moreover, appellants’ motion to vacate the default judgment was untimely, as it was filed seven months after the judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Allan R. Earl, District Judge  
Michael H. Singer, Ltd.  
Dowon S. Kang  
Leo P. Flangas  
Clark County Clerk

<sup>1</sup>Abreu v. Gilmer, 115 Nev. 308, 313, 985 P.2d 746, 749 (1999).

<sup>2</sup>Id. at 312, 985 P.2d at 749.