

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD NAFT, AN INDIVIDUAL; AND
AMERICAN REALTY INVESTMENTS, LLC, A
NEVADA LIMITED LIABILITY CORPORATION,
Appellants,


vs.

JAMES W. TULLIS, INDIVIDUALLY; AND
THERESA TULLIS, INDIVIDUALLY,
Respondents.

No. 54552

FILED

DEC 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

This is an appeal from a district court judgment in a contract action and from a post-judgment order denying NRCP 60 relief. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

On appeal, appellants challenge the district court's judgment, entered after a bench trial, which included both an award of damages and an attorney fees award in respondents' favor and its denial of appellants' post-judgment motion for NRCP 60(b) relief.

With regard to the award of damages to respondents, having reviewed the parties' briefs and appendices in this case, we find no error in the district court's legal conclusions, see Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007) (applying a de novo standard of review to questions of law), and we conclude that the damages award is supported by substantial evidence. See Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1031, 923 P.2d 569, 573 (1996) (stating that "[w]here the trial court, sitting without a jury, makes a determination predicated upon

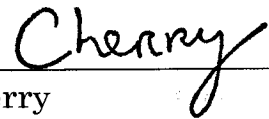
conflicting evidence, that determination will not be disturbed on appeal where supported by substantial evidence” (internal citations omitted)). We thus affirm this portion of the district court’s judgment.


Turning to the award of attorney fees and appellant’s motion for NRCP 60(b) relief from the attorney fees’ portion of the district court’s judgment, we conclude that the district court abused its discretion in denying appellants’ NRCP 60(b) motion. See Bianchi v. Bank of America, 124 Nev. 472, 474, 186 P.3d 890, 892 (2008) (applying an abuse of discretion standard of review to an order denying an NRCP 60(b) motion). As an initial matter, the district court incorrectly concluded that it lacked jurisdiction to act on appellants’ NRCP 60(b) motion, as appellants had timely filed NRCP 50(b) and NRCP 59(e) motions that tolled the time for filing an appeal from the final judgment and, therefore, their premature notice of appeal did not divest the district court of jurisdiction to act. NRAP 4(a)(4) and (6); Chapman Industries v. United Insurance, 110 Nev. 454, 874 P.2d 739 (1994).


Further, because the district court retained jurisdiction to act, it abused its discretion in denying appellants’ motion, which sought NRCP 60(b) relief because their opposition to the attorney fees motion was mistakenly filed under the wrong case number. See Stoecklein v. Johnson Electric, Inc., 109 Nev. 268, 849 P.2d 305 (1993) (concluding that the district court abused its discretion in denying NRCP 60(b)(1) relief due to appellant’s excusable neglect). Accordingly, we reverse the district court’s

denial of appellants' NRCP 60(b) motion, direct the district court to vacate the attorney fees award portion of the judgment, and remand this matter to the district court for further proceedings consistent with this order.¹

It is so ORDERED.²

 _____, J.
Cherry

 _____, J.
Saitta

 _____, J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Carolyn Worrell, Settlement Judge
Steven J. Karen
Kung & Associates
Eighth District Court Clerk

¹We note that it is helpful for this court's appellate review when the district court sets forth its reasoning.

²Having considered appellants' remaining arguments, we conclude that they lack merit. Additionally, we deny respondents' request for their attorney fees and costs on appeal.