

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOCRATES ROUSSOS,
Appellant,
vs.
TERRI GILMORE,
Respondent.

No. 55525

FILED

NOV 16 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Indigou*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order and final judgment in a dispute concerning a marital settlement agreement. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Respondent filed a complaint against appellant for breach of contract and fraud. The district court struck appellant's answer to the complaint as a sanction for misconduct, after which a prove-up hearing was held. During the hearing, the district court orally ruled that it would immediately enter a default judgment for respondent's breach-of-contract claim, but that it wanted additional information relating to respondent's fraud claim and request for attorney fees.

When the district court entered the default judgment in March 2007, it did not expressly delineate that it was a "partial" judgment. On respondent's request for attorney fees, fraud damages, and punitive damages, the district court entered a second judgment in November 2007 awarding attorney fees and compensatory and punitive damages. Appellant then sought NRCP 60(b) relief from this judgment, which the district court denied.

On appeal, appellant challenges the district court's denial of his NRCP 60(b) motion. Specifically, he contends that the November

judgment should be vacated because (1) the district court lacked jurisdiction to enter the November judgment, thereby rendering it void; or (2) the judgment was a product of respondent's misconduct.

Appellant first contends that the March judgment was the final judgment in this case and that respondent needed to move to amend this judgment within ten days if she wanted additional relief. See NRCPC 59(e) (providing a ten-day window for a party to request that a judgment be amended). According to appellant, respondent's failure to do so deprived the district court of jurisdiction to enter the November judgment. Stapp v. Hilton Hotels Corp., 108 Nev. 209, 212, 826 P.2d 954, 956 (1992) (“[A] district court is without jurisdiction to consider an untimely NRCPC 59(e) motion.”). We disagree.

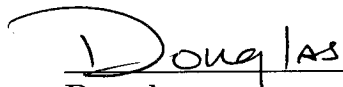
“[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court” Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). Here, the March judgment gives no indication that the \$55,000 award was meant to satisfy all of respondent's claims. Thus, even giving credence to appellant's argument that a written judgment trumps an oral ruling, the March judgment still cannot reasonably be construed as “final.” See Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 444, 874 P.2d 729, 733 (1994) (“This court has consistently looked past labels . . . and has instead taken a functional view of finality.”). Accordingly, the district court retained jurisdiction over the case, and respondent was free to seek a judgment for her fraud claim and her request for attorney fees and punitive damages without moving to amend the March judgment under NRCPC 59(e). SFPP, L.P. v. Dist. Ct., 123 Nev. 608, 612, 173 P.3d 715, 718

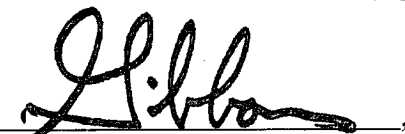
(2007) (“Nevada district courts retain jurisdiction until a final judgment has been entered.”).

Nor was the November judgment a product of respondent’s misconduct. Appellant points to a letter that respondent submitted to the district court as evidence of respondent’s misconduct. Although this letter may have violated NRCP 7(b)’s motion-filing requirement, the letter simply asked the court to enter a judgment that it had already agreed to enter, the materials submitted with the letter had all been previously filed with the court, and appellant was given a copy of the letter.¹

Because the November judgment was ultimately based upon properly submitted materials, the district court was within its discretion to determine that respondent’s alleged misconduct did not warrant NRCP 60(b) relief. Kahn v. Orme, 108 Nev. 510, 513, 835 P.2d 790, 792 (1992) (reviewing the denial of an NRCP 60(b) motion for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

¹Appellant also identifies several other instances in which respondent allegedly violated various court rules and rules of civil procedure. We have reviewed the record and have concluded that these contentions lack merit.

cc: Hon. Michelle Leavitt, District Judge
Law Firm of Chasey Honodel
James J. Lee
Eighth District Court Clerk