

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER MILAM, AN  
INDIVIDUAL; MHRH-A, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; MHRH-B, LLC, A NEVADA  
LIMITED LIABILITY COMPANY; IDM  
INVESTMENTS 1, LP, A TEXAS  
LIMITED PARTNERSHIP; IDM  
INVESTMENTS 2, LP, A TEXAS  
LIMITED PARTNERSHIP; MILAM H.R.  
MANAGEMENT, LLC, A TEXAS  
LIMITED LIABILITY COMPANY; AND  
IDM PROPERTIES GP, LLC, A TEXAS  
LIMITED LIABILITY COMPANY,  
Appellants,  
vs.  
STEALTH HOLDINGS, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Respondent.

No. 56268

**FILED**

NOV 28 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment, certified as final under NRCP 54(b), in a corporate law action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

This case arises out of a failed real estate development known as the Hard Rock Hotel and Casino Condominium Project. Appellant Christopher Milam, together with Peter Morton and their associated entities, formed a limited liability company in order to build a luxury condominium development in Las Vegas, Nevada. Respondent Stealth Holdings, LLC, invested \$1.1 million into the Project. Before construction could commence, a dispute arose between Milam and Morton, ultimately

leading to the collapse of their business relationship. Upon the relationship's demise, Milam signed a settlement agreement, purporting to release him and his entities from the Project. Thereafter, Morton and his associated entities sold the property on which the Project was to be built. As Stealth was left with no return on its investment, it filed a complaint against Morton and Milam and his associated entities for, inter alia, fraud and breach of fiduciary duty.

During the litigation, the district court granted Stealth's motion for summary judgment against Milam pursuant to NRCP 56(c). Milam, who attended the summary judgment hearing, did not oppose the motion. In fact, he signed an affidavit in support of the motion for summary judgment. Subsequently, the district court granted an oral motion by Stealth for judgment as a matter of law under NRCP 50(a), assessing \$1.1 million in damages against Milam and his associated entities. Six months later, Milam and his entities obtained counsel and filed an interlocutory NRCP 60(b) motion to set aside the judgment based on fraud, but they did not request an evidentiary hearing. The district court, without holding an evidentiary hearing, denied the motion to set aside the judgment, holding that Milam and his associated entities already had their day in court.

Milam was represented by two law firms at the beginning of the litigation. However, after both firms alleged that Milam failed to pay their legal fees and expenses, they withdrew as counsel prior to the development of the procedural issues raised on appeal.<sup>1</sup>

---

<sup>1</sup>The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

On appeal, Milam and his associated entities argue that: (1) the district court erred in granting summary judgment in Stealth's favor, (2) the district court erred in granting Stealth's oral motion for judgment as a matter of law under NRCP 50(a), and (3) the district court abused its discretion in denying their motion to set aside the judgment under NRCP 60(b).

### Summary judgment

Milam contends that the district court erred when it summarily granted Stealth's motion for summary judgment under NRCP 56(c). He argues that the district court must take particular care of proper person parties who may not understand the consequences of summary judgment.

This court reviews a district court's order granting summary judgment de novo, without deference to the findings of the lower court. Francis v. Wynn Las Vegas, 127 Nev. \_\_\_, \_\_\_, 262 P.3d 705, 714 (2011). Summary judgment is proper only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c).

Milam was self-represented, and we recognize that "in the summary judgment setting at least, lack of explanation to a proper person litigant as to what is required to defeat a properly supported summary judgment has been held in some jurisdictions to be error cognizable on direct appeal." Bonnell v. Lawrence, 128 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Op. No. 37, August 9, 2012). However, we have not adopted such a rule. Milam attended the summary judgment hearing, heard Stealth's arguments, and did not oppose Stealth's motion for summary judgment.

Instead, he signed an affidavit attesting to facts that supported the motion for summary judgment. Having reviewed the record and the parties' arguments on appeal, we conclude that the motion for summary judgment sufficiently demonstrated a basis for holding Milam liable, and, as the district court had sufficient grounds to deem the summary judgment motion unopposed and thus meritorious, it properly granted summary judgment. See King v. Cartlidge, 121 Nev. 926, 928, 124 P.3d 1161, 1162 (2005) (affirming a district court's grant of summary judgment after deeming the motion unopposed and thus meritorious).

Judgment as a matter of law

Milam also contends that the district court erred in granting judgment as a matter of law, because he was not "fully heard."

This court reviews de novo a district court's order granting judgment as a matter of law. See Wyeth v. Rowatt, 126 Nev. \_\_\_, \_\_\_, 244 P.3d 765, 775 (2010). NRC 50(a)(1) provides that a district court may grant judgment as a matter of law once "a party has been fully heard on an issue and on the facts and law a party has failed to prove a sufficient issue for the jury." However, "[i]f there is conflicting evidence on a material issue, or if reasonable persons could draw different inferences from the facts, the question is one of fact for the jury and not one of law for the court." Banks v. Sunrise Hospital, 120 Nev. 822, 839, 102 P.3d 52, 64 (2004) (alteration in original) (quoting Broussard v. Hill, 100 Nev. 325, 327, 682 P.2d 1376, 1377 (1984)).

We conclude that Milam independently chose not to participate in the trial and, consequently, abandoned his opportunity to present conflicting evidence favorable to him and his entities. If we were

to accept the position taken by the dissenting justice, the statutory concept of a judgment as a matter of law would be nullified. The dissent's interpretation would allow parties who fail to protect their interests at trial to avoid judgment as a matter of law by claiming that they were not "fully heard." Therefore, the district court properly granted Stealth's motion for judgment as a matter of law in accordance with NRCP 50.


Motion to set aside judgment

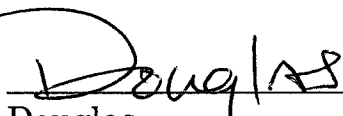
Milam further contends that the district court abused its discretion in denying his motion to set aside the judgment. He asserts that the district court was required to hold an evidentiary hearing on his NRCP 60(b) motion for relief. We disagree. This court has not mandated that a district court hold an evidentiary hearing to determine whether to set aside a judgment concerning allegations of fraud. Cf. NC-DSH, Inc. v. Garner, 125 Nev. 647, 657, 218 P.3d 853, 860-61 (2009) (providing that "[i]t is only after a proper hearing in which the fraud [upon the court] has been established by clear and convincing evidence that relief can be granted." (citations omitted) (internal quotations omitted)); Occhiuto v. Occhiuto, 97 Nev. 143, 146 n.2, 625 P.2d 568, 570 n.2 (1981) (recognizing a fundamental difference between "fraud" and "fraud upon the court"). Moreover, Milam did not expressly request an evidentiary hearing in his motion or during the proceedings. As such, we conclude that the district

court did not abuse its discretion in denying Milam's motion to set aside the judgment. See Lindblom v. Prime Hospitality Corp., 120 Nev. 372, 375, 90 P.3d 1283, 1284 (2004).

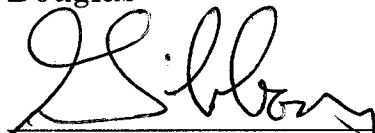
Accordingly, we<sup>2</sup>


ORDER the judgment of the district court AFFIRMED.

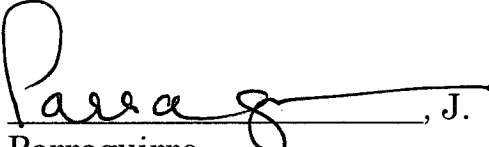
  
Cherry, C.J.  
Cherry

  
Douglas, J.  
Douglas

  
Saitta, J.  
Saitta

  
Gibbons, J.  
Gibbons

  
Pickering, J.  
Pickering

  
Parraguirre, J.  
Parraguirre

cc: Hon. Mark R. Denton, District Judge  
Howard Roitman, Settlement Judge  
The Bach Law Firm  
McDonald Carano Wilson LLP/Reno  
McDonald Carano Wilson LLP/Las Vegas  
Harry DeHaan, Esq.  
Shumway Van & Hansen  
Molof & Vohl  
Eighth District Court Clerk

---

<sup>2</sup>We conclude that all other arguments on appeal lack merit.

HARDESTY, J., concurring in part and dissenting in part:

While I concur with the majority's conclusion that summary judgment on the issue of liability was proper, I must dissent on the majority's affirmance of the order granting the motion for judgment as a matter of law against Milam because this motion failed to meet even the minimum requirements of NRCP 50(a)(1).

NRCP 50(a)(1) requires that parties be fully heard on an issue during a jury trial before a district court can grant a motion for judgment as a matter of law. See Estate of Blume v. Marian Health Center, 516 F.3d 705, 707 (8th Cir. 2008) (concerning FRCP 50(a)(1), which is similar to NRCP 50(a)(1)); Foster v. Dingwall, 126 Nev. \_\_\_, \_\_\_, 228 P.3d 453, 456 (2010) (stating that "federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules" (internal quotations omitted)). In all fairness, nonmoving parties "must have a meaningful opportunity to reply [to such a motion] and must not be sandbagged by a decision on grounds not properly noticed." Summers v. Delta Air Lines, Inc., 508 F.3d 923, 927-28 (9th Cir. 2007) (reversing a district court's grant of judgment as a matter of law because the court violated the requirement that a party be "fully heard").

Thus, district courts have a dual responsibility to afford adequate notice to the nonmoving party of the basis for the motion as well as to provide the nonmoving party an opportunity to cure any deficiencies by presenting further evidence on dispositive facts. Waters v. Young, 100 F.3d 1437, 1441-42 (9th Cir. 1996) (reversing a district court's grant of judgment as a matter of law because the court had neither explained the basis for its ruling nor given the plaintiff an opportunity to cure any deficiencies). When considering whether to grant a motion for a directed

verdict against a party without counsel, district courts must “ensure that pro se litigants do not unwittingly fall victim to procedural requirements that they may, with some assistance from the court, be able to satisfy.” Id. at 1441.

Here, Milam had no notice of the oral motion for a directed verdict, which assessed a \$1.1 million judgment against him. At the trial, as the parties were settling jury instructions, the following colloquy occurred:

The Court: — can we get into the jury instructions?

Mr. DeHaan [counsel for Stealth]: Your Honor, while they’re doing that, can I make a motion for directed verdict for 1.1 million against Chris Milam?

The Court: You certainly can. Any response?

Mr. Epstein [counsel for codefendant Morton]: Your Honor, we don’t object.

The Court: All right.

Mr. DeHaan: Well, I’d like to make that issue and --

The Court: So ordered.

Mr. DeHaan: Thank you, Your Honor.

The Court: Submit it.

Mr. DeHaan: It’s one of the easier victories in my career. It’s hell to lose a default, Your Honor.

As the transcript demonstrates, Stealth’s oral motion did not “specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.” NRCPC 50(a)(2). Further, the district court did not ensure that Milam had adequate notice of the basis



for the motion. While it appears that Milam was present in the courtroom when the summary judgment motion was considered, he did not participate thereafter. However, Milam did not believe that his further participation was required after Stealth represented to him that it was no longer pursuing its claims against Milam because Milam had agreed to submit the affidavit in support of Stealth's motion for summary judgment. Furthermore, it appears that the written summary judgment order against Milam was not entered until after the trial occurred. As a result, Milam, a proper person party, did not have an opportunity to be fully heard and cure any deficiencies. See Waters, 100 F.3d at 1441. Therefore, I must dissent from the majority and conclude that the district court erred in granting Stealth's oral motion for judgment as a matter of law.

1. J. Hardesty, J.  
Hardesty