

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIANNE POLIVKA, AKA JULIANNE
SHINTO, AKA JULIANNE SHINTO-
POLIVKA
Appellant,
vs.
JASON KULLER,
Respondent.

No. 58078

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingerson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying an NRCP 60(b) motion to set aside an annulment entered by default.¹ Second Judicial District Court, Washoe County; Bridget Robb Peck, Judge.

Appellant contends that the district court abused its discretion by denying her motion to set aside the default judgment and the decree of annulment because she did not have her day in court to oppose the annulment and because the default judgment should have been set aside for excusable neglect.² The district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion.

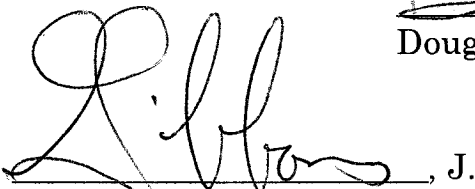
¹To the extent that appellant seeks to challenge the district court's order denying the motion to quash service, that order is not substantively appealable. NRAP 3A(b); Trump v. District Court, 109 Nev. 687, 857 P.2d 740 (1993).

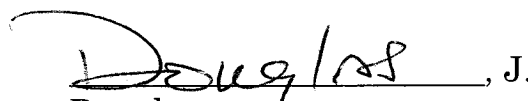
²This court does not review a district court's determination that appellant did not show good cause to set aside the entry of default. NRAP 3A(b); Aetna Life & Casualty v. Rowan, 107 Nev. 362, 362-63, 812 P.2d 350, 350 (1991) (noting that orders denying motion to set aside defaults pursuant to NRCP 55 are not substantively appealable). Appellant also argues the merits of respondent's complaint for annulment and forum non conveniens, neither of which are proper arguments under NRCP 60(b).

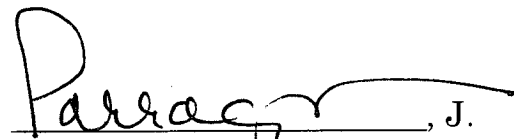
Cook v. Cook, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996). A party seeking to set aside a default judgment has the burden to prove mistake, inadvertence, surprise, or excusable neglect by a preponderance of the evidence. Kahn v. Orme, 108 Nev. 510, 513-14, 835 P.2d 790, 793 (1992).

Here, the district court determined that appellant had not met the factors set forth in Kahn to compel the court to set aside the default judgment. Id. at 513, 835 P.2d at 792-93 (holding that the district court must consider whether the party moving to set aside a judgment promptly applied to remove the judgment, lacked intent to delay the proceedings, lacked knowledge of the procedural requirements, and demonstrated good faith, in addition to considering the state's underlying policy of resolving cases on the merits). The appellate record provides substantial evidence to support the district court's determinations. Further, the policy of resolving cases on the merits does not allow litigants "to disregard process or procedural rules with impunity." Kahn, 108 Nev. at 516, 835 P.2d at 794 (quoting Lentz v. Boles, 84 Nev. 197, 200, 438 P.2d 254, 256-57 (1968)). Thus, having considered appellant's civil proper person appeal statement and the appellate record, we conclude that the district court did not abuse its discretion when it denied appellant's NRCP 60(b) motion. Accordingly, we affirm the district court's order denying relief.

It is so ORDERED.


Gibbons, J.


Douglas, J.


Parraguirre, J.

cc: Hon. Bridget Robb Peck, District Judge
Julianne Polivka
Silverman, Decaria & Kattelman, Chtd.
Washoe District Court Clerk