

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHEN TANNER HANSEN AND  
CLARK LEFEVRE,  
Appellants,  
vs.  
ERNEST BRADLEY AGUILAR; AND  
ERNEST SUNDERLAND AGUILAR,  
Respondents.

No. 64239

**FILED**

MAY 25 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting a motion to reconsider and denying a motion to set aside a stipulated judgment. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Five years after respondents, Brad and Ernest Aguilar, executed a settlement agreement and signed a stipulated judgment, appellants Hansen and Lefevre (collectively "Hansen") moved to set aside the stipulated judgment. Hansen alleged the Aguilars' counsel committed fraud upon the court by instructing the Aguilars' insurer, State Farm, to fund the settlement in contravention of the settlement agreement. The trial court (for clarity, we refer to this judge hereinafter as the "trial judge") signed the stipulated judgments in 2008, but the case was later reassigned and a different district court judge (who we will refer to as the "district court") ruled on the motion to set aside the stipulated judgment. The district court initially granted Hansen's motion to set aside the stipulated judgment, finding the Aguilars' counsel committed fraud upon the court when counsel failed to advise the trial court that State Farm would fund the settlement during a 2008 hearing. The Aguilars thereafter

moved the district court to reconsider its order granting relief. The district court concluded its prior order was clearly erroneous and granted the Aguilar's motion to reconsider and denied Hansen's motion to set aside the stipulated judgment.<sup>1</sup> On appeal, we consider whether the district court erred in granting reconsideration but, denying Hansen's motion to set aside the judgment based on NRCP 60(b) based on fraud upon the court.

We review the district court's decision to grant a motion for reconsideration for abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (noting that a motion for reconsideration is reviewed for an abuse of discretion where appealed with the underlying judgment).

A district court "may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n. of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Thus, if the district court properly determines the earlier decision was clearly erroneous, the trial judge does not err in reconsidering the motion. *Id.*

Reconsideration is proper where an earlier decision denying the same motion was clearly erroneous. We therefore consider whether the district court erred in concluding the earlier decision granting Hansen's motion to set aside the stipulated judgment was clearly erroneous.

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<sup>1</sup>We do not recount the facts except as necessary to this disposition.

The savings clause in NRCP 60(b) provides, "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court." NRCP 60(b).

The supreme court defines "fraud upon the court" as

[T]hat species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases . . . and relief should be denied in the absence of such conduct.

*NC-DSH, Inc. v. Garner*, 125 Nev. 647, 654, 218 P.3d 853, 858 (2009) (quoting *Demjanjuk v. Petrovsky*, 10 F.3d 338, 352 (6th Cir. 1994)). The supreme court has further clarified that "fraud upon the court," as used in NRCP 60(b), does not mean "any conduct of a party or lawyer of which the court disapproves." *Id.* Further, "a party seeking to vacate a final judgment based on fraud upon the court bears a heavy burden," *id.* at 657, 218 P.3d at 860, as the law favors finality in judgments. *Id.* at 653, 218 P.3d at 858 (quoting *Hazel-Atlas Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944), abrogated on other grounds by *Standard Oil Co. of Cal. v. United States*, 429 U.S. 17 (1976) (noting "in most instances society is best served by putting an end to litigation after a case has been tried and a judgment entered")). To grant NRCP 60(b) relief for fraud upon the court, the district court must first conduct a "proper hearing" to determine if fraud has been established by clear and convincing evidence. *Id.* (quoting *Occhiuto v. Occhiuto*, 97 Nev. 143, 146 n. 2, 625 P.2d 568, 570 n. 2 (1981) (internal quotations omitted)). The motion "is addressed to the sound discretion of the district court." *Id.* at 657, 218 P.3d at 861.


Here the district court properly found that Aguilar's' counsels' conduct does not rise to the level of fraud upon the court required under NRCP 60(b). Rather, the record reflects the parties interpret the settlement agreement differently. While Hansen believed the Aguilar's were going to pay the \$5,500 settlement personally, the Aguilar's believed that State Farm could fund or reimburse the settlement based on the parties' final formal written agreement. Not only did Aguilar's' counsel fail to clarify to the trial court that the parties agreed to allow State Farm to fund the settlement, the 2008 transcript reflects that Hansen's counsel failed to clarify this either. Further, the record reflects that the trial judge was not concerned with specific settlement terms within the agreement, but instead was concerned with whether the parties would execute a final written agreement so that the trial judge could vacate the firm trial setting. Accordingly, the trial court's findings were supported by evidence and did not represent an abuse of its discretion.

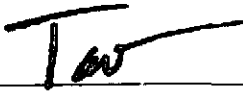
Additionally, although there is no deadline for seeking NRCP 60(b) relief from a judgment based on fraud upon the court, *NC-DSH, Inc.*, 125 Nev. at 659, 218 P.3d 862-63, NRCP 60(b) requires movants to bring motions to set aside a judgment "within a reasonable time." The record indicates Hansen was aware as early as 2010 that State Farm funded the settlement, yet failed to seek NRCP 60(b) relief for more than three years. We therefore conclude Hansen did not timely bring a motion to set aside the stipulated judgment. In light of these circumstances, we conclude that


the district court order granting the motion to set aside the stipulated judgment was clearly erroneous.<sup>2</sup>

Because Hansen failed to show that the Aguilar's' counsels' conduct constituted a fraud upon the court, and because Hansen did not timely move to set aside the stipulated judgment, we conclude the district court did not abuse its discretion in reconsidering its prior order was clearly erroneous, and denying Hansen's motion to set aside the stipulated judgment pursuant to NRCP 60(b). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

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<sup>2</sup>We note that *NC-DSH, Inc. v. Garner* requires a district court to conduct a "proper hearing" prior to granting NRCP 60(b) relief based on fraud upon the court to determine if the movant has met the clear and convincing burden required. 125 Nev. at 657, 218 P.3d at 860-61. But because the district court ultimately denied NRCP 60(b) relief, as opposed to granting relief under the rule, we find Hansen's argument that the district court erred by failing to conduct an evidentiary hearing without merit.

cc: Hon. Ronald J. Israel, District Judge  
Carolyn Worrell, Settlement Judge  
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Eighth District Court Clerk