

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LADAN DILLON,
Appellant,
vs.
2CHECKOUT.COM,
Respondent.

No. 69781

FILED

DEC 21 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to set aside a default judgment. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

After filing a complaint against appellant, respondent made multiple unsuccessful attempts to serve the complaint. Because respondent was unable to complete personal service, the district court granted respondent's request to serve the complaint by publication. After service by publication was complete, appellant still failed to file an answer or otherwise respond to the complaint and respondent sought, and was awarded, a default judgment against appellant. The district court later granted respondent's motion to conduct a judgment debtor exam of appellant. Upon receiving notice of the order granting the judgment debtor exam, appellant filed a motion seeking to set aside the default judgment, which the district court denied. This appeal followed. On appeal, appellant argues that the district court abused its discretion in refusing to set the default judgment aside.

Under NRCP 60(c), the party moving to set the default aside has the initial burden to show that they were not personally served and that they filed their motion in a timely fashion. *See Basf Corp., Inmont*

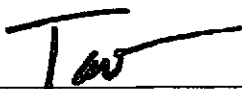
Div. v. Jafbros, Inc., 105 Nev. 142, 144, 771 P.2d 161, 162 (1989), *overruled in part by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997) (removing the requirement that an NRCP 60(c) movant also show that it had a meritorious defense). Once the movant has met this burden, the burden shifts to the opposing party to show that setting aside the default would be inequitable. *See Basf*, 105 Nev. at 144, 771 P.2d at 162. We review a decision on a motion to set aside a default judgment for an abuse of discretion and, in doing so, we will not disturb factual findings that are supported by substantial evidence. *See Price v. Dunn*, 106 Nev. 100, 103, 787 P.2d 785, 787 (1990), *overruled on other grounds by NC-DSH, Inc. v. Garner*, 125 Nev. 647, 651 n.3, 218 P.3d 853, 857 n.3 (2009); *see also Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).


In this case, respondent concedes that appellant met her initial burden because she filed her motion within six months of the notice of entry of the default judgment and she was not personally served. And, from our review of the briefs and record on appeal, we conclude the district court did not abuse its discretion in finding that respondent met its burden in showing that setting aside the default judgment would be inequitable. *See Basf*, 105 Nev. at 144, 771 P.2d at 162. Substantial evidence supports the district court's determination that appellant was aware of the underlying action long before respondent sought the entry of a default and a default judgment and that, in light of this awareness, appellant's failure to take any action, such as contacting respondent or the court, prior to the notice of entry of order allowing respondent to conduct a judgment debtor exam of appellant, would make it inequitable to set aside the default judgment in favor of respondent. *See id.* (requiring a party opposing setting aside a default judgment to "show circumstances which

would make granting the motion inequitable"). To the extent appellant argues the district court judge prevented her from fully presenting her case, we disagree, as appellant had ample opportunity to file a reply brief to respond to respondent's arguments in opposition to setting aside the default judgment, but failed to do so. Thus, in light of the conclusions set forth above, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Susan Johnson, District Judge
Ladan Dillon
Law Office of Hayes & Welsh
Eighth District Court Clerk