

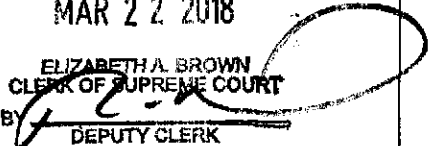
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARBA ENTERPRISES, INC., A  
NEVADA CORPORATION,  
Appellant,  
vs.  
TRAVELERS CASUALTY INSURANCE  
COMPANY OF AMERICA, A  
CONNECTICUT CORPORATION;  
ALPINE INSURANCE ASSOCIATES, A  
NEVADA CORPORATION; AND DWAN  
WRIDE, AN INDIVIDUAL,  
Respondents.

No. 72403

**FILED**

MAR 22 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Darba Enterprises, Inc. appeals from a district court order denying a motion for NRCP 60(b) relief from judgment. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Appellant Darba Enterprises, Inc., sued respondents Travelers Casualty Insurance Company of America (hereafter "Travelers") and its broker Alpine Insurance Associates and agent Dwan Wride (collectively referred to as "Alpine"), alleging claims for declaratory relief, breach of contract, tortious breach of the duty of good faith and fair dealing, breach of Nevada's Unfair Claims Practices Act, NRS 686A.310, and negligence.<sup>1</sup>

At the close of discovery, with the exception of two pending depositions, the district court granted summary judgment in favor of Travelers and Alpine, finding that Darba was unable to prove damages because it failed to provide an NRCP 16.1 computation of damages and failed to notice an expert as to damages. Darba moved for relief from

---

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

judgment under NRCP 60(b), asserting that summary judgment was premature because the parties never finished deposing Darba's owner, CEO, and person most knowledgeable, Darrin Bagnuolo. Darba argued that Travelers' and Alpine's unilateral decision to terminate Bagnuolo's deposition constituted a surprise under NRCP 60(b)(1), and that their assurances to the district court regarding that termination constituted a misrepresentation under NRCP 60(b)(3), as the parties had previously stipulated to continue that deposition. The district court denied Darba's NRCP 60(b) motion, finding that Darba failed to present anything in the record establishing that Travelers or Alpine surprised Darba or made any misrepresentations during the hearing on summary judgment.

On appeal, Darba argues that the district court abused its discretion by denying its NRCP 60(b) motion because Travelers and Alpine unfairly surprised Darba when they unilaterally decided to terminate Bagnuolo's deposition and misrepresented to the district court that Bagnuolo's deposition was properly terminated.<sup>2</sup> We disagree.

This court reviews a district court's decision to deny an NRCP 60(b) motion for an abuse of discretion. *Ford v. Branch Banking & Tr. Co.*, 131 Nev. \_\_\_, \_\_\_, 353 P.3d 1200, 1202 (2015). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence, which is evidence that a reasonable mind might accept as adequate to support a conclusion. *See Otak Nev., LLC v. Eighth Judicial Dist. Court*,

---

<sup>2</sup>On appeal, we decline to consider Darba's arguments with respect to the district court's order granting summary judgment, as Darba stipulated to dismiss its appeal from that order. *See Darba Enters., Inc. v. Travelers Cas. Ins. Co. of Am.*, Docket No. 72340 (Stipulation and Order to Dismiss Appeal, Feb. 24, 2017); *Darba Enters., Inc. v. Travelers Cas. Ins. Co. of Am.*, Docket No. 72340 (Order Dismissing Appeal, Mar. 1, 2017).

129 Nev. 799, 805, 312 P.3d 491, 496 (2013). Under NRCP 60(b)(1) and (3), a district court may relieve a party from a final judgment for surprise or misrepresentation. NRCP 60(b)'s purpose is to redress injustices that result from an opposing party's wrongs. *Carlson v. Carlson*, 108 Nev. 358, 361-62, 832 P.2d 380, 382 (1992).

Our review of the record reveals that Travelers' and Alpine's decision to terminate Bagnuolo's deposition does not constitute either surprise or misrepresentation as contemplated by NRCP 60(b)(1) and (3). Notably, NRCP 60(b) serves the policy of deciding cases on the merits and, by extension, relief is not warranted if the moving party fails to show a meritorious case. *See Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 307 (1993) (addressing the purpose of NRCP 60(b)(1) and the requirements to warrant relief); *see also Hotel Last Frontier Corp. v. Frontier Props., Inc.*, 79 Nev. 150, 154-55, 380 P.2d 293, 295 (1963) (addressing the requirement that the party seeking relief must show that a "meritorious defense" exists in support of its position should relief be granted).

Travelers' and Alpine's decision to terminate Bagnuolo's continued deposition does not constitute surprise under NRCP 60(b). Moreover, Darba failed to show a meritorious case when it did not put forth any evidence to prove damages, a necessary component of its claim. *See Frantz v. Johnson*, 116 Nev. 455, 469, 999 P.2d 351, 360 (2000) (noting a party seeking damages must provide "an evidentiary basis" upon which the court may calculate damages); *see also Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 584, 216 P.3d 793, 798 (2009) (holding summary judgment is proper where an "element[ ] of the plaintiff's prima facie case is clearly lacking as a matter of law" (internal quotation omitted)). Importantly here,

although the parties agreed to continue the deposition, Bagnuolo had already admitted in his deposition that he did not know the amount of Darba's damages, and that Darba could not provide that evidence without a certified public accountant expert. Furthermore, it is undisputed that Darba failed to provide an NRCP 16.1 computation of damages and failed to retain and notice an expert to determine its profit loss or any other form of business damages by the time discovery closed. See NRCP 37(c) (providing that a party who fails to disclose information required by NRCP 16.1 without substantial justification is precluded from introducing such information as evidence at trial). Thus, while Darba may have been taken by surprise when Travelers and Alpine decided against finishing Bagnuolo's deposition, this decision had no effect on the outcome, as Darba's case was otherwise critically flawed by the failure to provide evidence of the claimed damages. Accordingly, relief is not warranted by NRCP 60(b)(1). *Cf. Heard v. Fisher's & Cobb Sales & Distribs., Inc.*, 88 Nev. 566, 568-69, 502 P.2d 104, 105-06 (1972) (concluding appellant failed to show surprise under NRCP 60(b) where the appellant was on notice of the possible action, was not prevented by the respondent's actions from pursuing his case, and otherwise was "not the target of tactical surprise").


Likewise, Travelers and Alpine made no misrepresentation regarding Bagnuolo's deposition termination so as to warrant NRCP 60(b) relief. Moreover, the alleged misrepresentation here, if any, would not have changed the outcome. See *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) (noting that under the federal counterpart to NRCP 60(b)(3), the fraud or misrepresentation must have affected the outcome of the case); *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990) (noting that "the Nevada Rules of Civil Procedure are based

in large part upon their federal counterparts,” and looking to federal case law as persuasive authority in interpreting the Nevada Rules of Civil Procedure).

Thus, under these facts, we conclude the district court did not abuse its discretion by denying Darba’s NRCP 60(b) motion for relief from judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. David M. Jones, District Judge  
Mueller Hinds & Associates  
Foran Glennon Palandech Ponzi & Rudloff, PC  
Hall Jaffe & Clayton, LLP  
Eighth District Court Clerk