IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN BIELINSKI, INDIVIDUALLY; ASIAN WYNN, LLC; AND ONE UNIVERSE, LLC,
Appellants,
vs.
DAVID BEN BASSAT,
Respondent.

No. 68594

ORDER OF AFFIRMANCE

This is an appeal from the denial of a motion to set aside a default judgment brought under NRCP 60(b). Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.[1]

We review a court's decision regarding a motion to set aside a default judgment for an abuse of discretion. *McKnight Family, LLP v. Adept Mgmt. Servs.*, 129 Nev. ___, ___, 310 P.3d 555, 559 (2013). A court may abuse its discretion when it acts "in clear disregard of the guiding legal principles." *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993).

Appellants filed their motion to set aside the default judgment more than a year after the judgment was filed. In their briefing, both parties dispute whether the motion was timely, focusing their arguments on whether the six-month deadline of NRCP 60(b) was met.

However, the six-month deadline applies only to relief sought under NRCP 60(b)(1), (2), or (3), and the instant appeal substantively asserts that the judgment was void, which relates to relief under NRCP

[1]We do not recount the facts expect as necessary to our disposition.

60(b)(4) to which the six-month deadline does not apply. Furthermore, under *any* of NRCP 60(b)'s subsections, an aggrieved party must seek relief within a "reasonable time" after the date of the challenged proceeding or after service of written notice of entry. *See* NRCP 60(b); *Union Petrochemical Corp. of Nev. v. Scott,* 96 Nev. 337, 338–39, 609 P.2d 323, 323–24 (1980) ("want of diligence in seeking to set aside a judgment is ground enough for denial of such a motion"). Moreover, the six-month period referenced in 60(b) is not a fixed grant of time but rather "represents the extreme limit of reasonableness." *Helfstein v. Eighth Jud. Dist. Ct.,* 131 Nev. ___, ___, 362 P.3d 91, 95 (2015).

In their briefing, appellants have provided no cogent explanation or argument as to why their one-year delay was reasonable, choosing instead to argue that they never received any written notice of entry of judgment that they assert was necessary to trigger any deadline. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n. 38 (2006) (This court need not consider claims that are not cogently argued or supported by relevant authority). Whether or not appellants received any formal written notice of entry of judgment, they still must demonstrate that they diligently brought the motion within a "reasonable time" after actually learning about the judgment. *See* NRCP 60(b); *Union Petrochemical,* 96 Nev. at 338–39, 609 P.2d at 323–24. Appellants offer no explanation and, accordingly, we cannot conclude that the district court abused its discretion in denying the 60(b) motion. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (holding we affirm orders that reach the right result, even if for the wrong reason).

Appellants also argue that no proof exists that they were properly served with the second amended complaint. As a threshold matter, "[f]ailure to make proof of service shall not affect the validity of service." NRCP 5(b)(4). Further, service on a party's attorney may be made by "electronic transmission through the Court's electronic filing system if the system provides for electronic service." EDCR 7.26(a)(4); *see also* EDCR 8.05(a).

Here, appellants' counsel e-filed a number of documents early in the case, and parties that e-file (and all registered users of the e-filing system) are deemed to have consented to electronic service, EDCR 8.05, and the record makes clear that the second amended complaint was served electronically. Nonetheless, Appellants argue that "[t]he second amended complaint contained no certificate stating that it was served on defendants or their counsel," but the record plainly includes a certificate of mailing for the second amended complaint attached to the end of "Exhibit 1" of the district court's judgment. Appellants' counsel below also explicitly acknowledged the second amended complaint in his declaration attached to his August 15, 2013 motion to withdraw. Therefore, the district court did not abuse its discretion by declining NRCP 60(c) relief.[2]

---

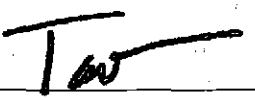
[2]Having determined that the appellants' motion was untimely under NRCP 60(b) and that the district court did not abuse its discretion in denying NRCP 60(c) relief, we need not reach the other arguments made on appeal. However, we have considered appellants' other arguments on appeal, including their argument that they were entitled to notice of the ex parte hearing held after appellants inexplicably failed to appear at the pretrial conference, and hold that they would not warrant relief on this record. *See* EDCR 2.68 (allowing for an ex parte hearing and the direct entry of default judgment for failure to attend the pretrial conference); *Foster v. Dingwall*, 126 Nev. 56, 67–68, 227 P.3d 1042, 1050 (2010)

continued on next page...

Therefore, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

...continued

(interpreting the requirements of NRCP 55, not EDCR 2.68); *see also Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (discussing the doctrine of "invited error": a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit); *Saavedra-Sandoval*, 126 Nev. at 599, 245 P.3d at 1202 (holding that we will affirm the district court if it reaches the correct result, even if for the wrong reason). Further, this court cannot address whether there are fundamental flaws in the evidence provided by Bassat at the prove-up hearing because there is no transcript of the hearing in the record on appeal, so we conclude that the missing portion of the record supports the district court's judgment. *See* NRAP 30(b)(1) ("Copies of all transcripts that are necessary to the Supreme Court's or Court of Appeals' review of the issues presented on appeal shall be included in the appendix"); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (holding "[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision").

cc: Hon. Kenneth C. Cory, District Judge
Stephen E. Haberfeld, Settlement Judge
Law Offices of Michael F. Bohn, Ltd.
Chattah Law Group
Eighth District Court Clerk