

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BIKRAM'S YOGA COLLEGE OF INDIA,
LP, A FOREIGN LIMITED
PARTNERSHIP; AND BIKRAM
CHOUDHURY YOGA, INC., A
FOREIGN CORPORATION,
Appellants,
vs.
NAV-LVH, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Respondent.

No. 70336

FILED

JUL 21 2017

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

ORDER OF AFFIRMANCE

Bikram's Yoga College of India, LP, appeals from a district court order denying a NRCP 60(b) motion to set aside a default judgment. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

After Bikram's Yoga College of India, LP (BYCI), failed to appear multiple times in a breach of contract case, NAV-LVH, LLC (Hilton), obtained a default judgment, which BYCI sought to set aside pursuant to NRCP 60(b). BYCI argued that after its attorney withdrew, an employee in its legal department (a nonparty, Micki Jafa-Bodden) committed fraud upon the court by intercepting legal mail, improperly interacting with Hilton's counsel and the district court, and failing to keep BYCI apprised of important court dates. BYCI also argued that it did not receive proper notice under NRCP 55(b)(2), and the judgment is therefore void.¹

¹We do not recount the facts except as necessary to our disposition.

On appeal, BYCI argues that the court abused its discretion by denying its NRCP 60(b) motion and declining to hold an evidentiary hearing. *See Ford v. Branch Banking & Tr. Co.*, 131 Nev. ___, ___, 353 P.3d 1200, 1202 (2015) (this court reviews denials of NRCP 60(b) motions for an abuse of discretion). We disagree.

The district court concluded that BYCI failed to demonstrate that Jafa-Bodden committed fraud upon the court, finding that BYCI was properly served and noticed throughout the litigation, orders putting BYCI on notice were sent after Jafa-Bodden had already been fired, and BYCI failed to provide clear and convincing evidence of fraud upon the court. After reviewing the record, we cannot conclude the district court abused its discretion by so holding.² *See Durango Fire Prot., Inc. v. Troncoso*, 120 Nev. 658, 661, 98 P.3d 691, 692 (2004) (declining to set aside the judgment due to fraud or excusable neglect where appellant claimed he was unaware of hearings because he lacked counsel and his estranged wife “was doing everything in her power to ruin him, including not informing him of [his company]’s duties in this case”); *see also Otak Nev., LLC v.*

²Although not reached by the district court below, we are not persuaded that BYCI moved for NRCP 60(b) relief within the “reasonable time” required. BYCI argues in a conclusory fashion that it did not delay in bringing the motion after it became aware of collection efforts, but does not explain waiting six months after that, nor does it explain the more troubling fact that it failed to obtain Nevada counsel for over two years and eight months—despite being court-ordered to do so. Thus, we note that the untimely nature of the motion alone presents alternative and independent grounds for affirmance. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (“This court will affirm a district court’s order if the district court reached the correct result, even if for the wrong reason.”); NRCP 60(b) (“The motion shall be made within a reasonable time . . .”).

Eighth Judicial Dist. Court, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013) (holding that a court abuses its discretion when its decision is not supported by substantial evidence; substantial evidence being “defined as that which a reasonable mind might accept as adequate to support a conclusion” (internal quotation marks omitted)).


Moreover, the district court did not abuse its discretion by denying BYCI’s request for an evidentiary hearing because BYCI’s motions and attached exhibits did not establish an adequate factual predicate; even if BYCI provided evidence that Jafa-Bodden prevented them from actual notice of the proceedings from 2013-2015—which it did not—this allegation falls short of the requirement that the fraud “subvert the integrity of the court itself.” *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 654, 218 P.3d 853, 858 (2009) (internal quotation marks omitted); *see also Durango*, 120 Nev. at 662, 98 P.3d at 693 (rejecting an argument that actual notice is required where notices were mailed to appellant’s address and placed in his counsel’s file at the courthouse).


BYCI also argues that the district court erred because it failed to dispose of the case on the merits. While BYCI is correct that this court prefers to resolve cases on the merits, “[l]itigants and their counsel may not properly be allowed to disregard process or procedural rules with impunity,” and we reject this argument. *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d 254, 256-57 (1968); *cf. Huckabay Props., Inc. v. NC Auto Parts, LLC*, 130 Nev. 196, 203, 322 P.3d 429, 434 (2014) (discussing the rules of appellate procedure and stating “a party cannot rely on the preference for deciding cases on the merits to the exclusion of all other policy considerations”).

Lastly, we conclude that BYCI's NRCP 55(b)(2) argument lacks merit for two reasons. First, the district court was not required to give notice because the court entered the default as a sanction. See *Durango*, 120 Nev. at 661, 98 P.3d at 693 (“[T]he district court had the discretion to sanction Durango by entering judgment against it without complying with the notice requirement in NRCP 55(b)(2).”). And second, even if notice was required, the record demonstrates that BYCI received written notice by mail and facsimile a week in advance of the default judgment hearing. See NRCP 55(b)(2) (a defendant that has appeared in the case is entitled to written notice of the application for default judgment at least three days prior to the hearing on the application).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Rob Bare, District Judge
Eva Garcia-Mendoza, Settlement Judge
Chesnoff & Schonfeld
Jolley Urga Wirth Woodbury & Little
Greenspoon Marder, P.A.
Eighth District Court Clerk