

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

REX STOCK,  
Appellant,  
vs.  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, AS TRUSTEE FOR RALI  
2007-QA5, A/K/A DEUTSCHE BANK  
TRUST COMPANY AMERICAS, AS  
TRUSTEE FOR RESIDENTIAL  
ACCREDIT LOANS, INC., MORTGAGE  
ASSET-BACKED PASS-THROUGH  
CERTIFICATES, SERIES 2007-QA5,  
Respondent.

No. 78902-COA

**FILED**

JUL 30 2020

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

*ORDER OF AFFIRMANCE*

Rex Stock appeals from a district court order denying a motion to set aside a default judgment under NRCP 60 in a judicial foreclosure action. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

After Stock defaulted on his home loan, respondent Deutsche Bank Trust Company Americas commenced the underlying judicial foreclosure action against him. Deutsche Bank subsequently filed an affidavit of service from a process server who attested to having served the summons and complaint on a man at Stock's residence who the process server described in detail after noting that the man refused to identify himself. Nevertheless, Stock did not timely appear in the underlying proceeding, and Deutsche Bank obtained a default judgment against him. During the ensuing sixteen months, Deutsche Bank obtained two

amendments to the default judgment and later had Stock personally served with a writ of execution for the subject property. Over three months after receiving the writ of execution, Stock filed a claim of exemption from execution, which the district court denied. Stock then moved to set aside the default judgment under Justice Court Rules of Civil Procedure (JCRCP) 60(b) and (c), arguing that he was never served with the summons and complaint and that he did not learn of the default judgment, or the judicial foreclosure action as a whole, until he was served with the writ of execution. The district court construed Stock's motion as one for relief under NRCP 60(b)(1) and denied it based on an analysis of the four factors for evaluating such motions set forth in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982).<sup>1</sup> This appeal followed.

As a preliminary matter, the district court properly looked to NRCP 60(b), as opposed to JCRCP 60(b), since the underlying proceeding was before the district court rather than the justice court. Compare NRCP 1 (providing that the NRCP govern civil cases before Nevada's district courts), with JCRCP 1 (providing that the JCRCP govern civil cases before Nevada's justice courts). On appeal, Stock does not address the district court's decision to confine its analysis of his motion to whether relief was

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<sup>1</sup>Although *Yochum* also required district courts to consider, in addition to the four factors, whether the moving party "tender[ed] a meritorious defense," in addition to the four factors, *id.* at 487, 653 P.2d at 1216 (internal quotation marks omitted), that portion of the decision has since been abrogated. See *Epstein v Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997).

warranted under NRCP 60(b)(1), and as a result, he has waived any challenge thereto. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

But regardless of whether Stock was also seeking relief under the remaining subsections of NRCP 60(b) or under NRCP 60(d)(2),<sup>2</sup> we are not persuaded that the district court abused its discretion by refusing to set aside the default judgment for the reasons discussed below. *See Price v. Dunn*, 106 Nev. 100, 103, 787 P.2d 785, 787 (1990) (explaining that district court orders resolving motions to set aside default judgments are reviewed for an abuse of discretion), *overruled in part on other grounds by NC-DSH, Inc. v. Garner*, 125 Nev. 647, 651 n.3, 218 P.3d 853, 857 n.3 (2009).

As was the case before the district court, Stock's sole basis on appeal for arguing that the default judgment was improperly entered against him is that he was not served with process and did not learn about the underlying proceeding until after entry of the default judgment. The district court rejected this argument, however, reasoning that Stock failed to address substantial evidence in the record showing that he repeatedly received notice of the underlying proceeding—including nine certificates of mailing for filings mailed to his home and the process server's affidavit, which included the description of a man who the process server served with

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<sup>2</sup>In his motion to set aside the default judgment, Stock cited JCRCP 60(c), which provides a mechanism for a party who was not personally served with a summons and complaint to seek relief from a default judgment. We refer to NRCP 60(d)(2) here, as it is the corresponding provision in the present iteration of the NRCP.

the summons and complaint that the district court found to be consistent with Stock's appearance. Rather than directly addressing this evidence on appeal or the district court's finding concerning his appearance, Stock argues that he was unable to present evidence or witnesses to support his motion because of the way the hearing on the matter was scheduled; that he lived at the subject property for over 20 years and was active in the community; and that his history of participating in foreclosure mediations demonstrates that, if he was aware of the underlying proceeding, then he would have timely appeared.

But Stock offers no explanation as to what evidence or witness testimony he would have presented in the underlying proceeding and how it would have overcome the evidence identified by the district court, and we therefore decline to consider this argument further. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider issues that are not supported by cogent argument). Moreover, the fact that Stock lived at the subject property for over 20 years and was active in the community supports the district court's finding that the evidence of documents being delivered to Stock's residence shows that he repeatedly received notice of the underlying proceeding. And insofar as Stock relies on his prior participation in foreclosure mediations to show that, because he did not timely appear in the underlying proceeding he must not have known about it, his efforts are unavailing given the evidence in the record to the contrary.

As Stock has therefore failed to demonstrate that he was not served with process and did not learn of the underlying action until after the default judgment was entered, he cannot establish that he was entitled

to relief under NRCP 60(b) or (d)(2). Consequently, the district court did not abuse its discretion by refusing to set aside the default judgment, see *Price*, 106 Nev. at 103, 787 P.2d at 787, and we therefore affirm its decision.

It is so ORDERED.<sup>3</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. David A. Hardy, District Judge  
Rex Stock  
Wright, Finlay & Zak, LLP/Las Vegas  
Washoe District Court Clerk

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<sup>3</sup>Insofar as Stock raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.