IN THE SUPREME COURT OF THE STATE OF NEVADA

AMERICAN SPORTS RADIO NETWORK, INC., A NEVADA CORPORATION, A FULLY OWNED SUBSIDIARY OF SOUND MONEY INVESTORS, INC., A NEVADA CORPORATION,
Appellant,
vs.
GARRETT KRAUSE,
Respondent.

No. 37502

FILED

JUN 05 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order setting aside the default judgment in an action for interference with a contract and related claims.

Appellant American Sports Radio Network ("ASRN") argues that the judgment against a deceased co-defendant should stand as a properly entered judgment against his estate. Therefore, since there was a judgment adjudicating the rights and liabilities of all the parties, ASRN argues that the district court erred in relying on a purported defect in the judgment against the co-defendant in order to set aside the default judgment against Respondent Garrett Krause. We conclude that the district court did not abuse its discretion despite there being no defect in the judgment against the co-defendant.

This court will not reverse the district court's decision to set aside a default judgment absent a clear abuse of discretion.[1] Pursuant to NRCP 60(b)(3), a district court may set aside a judgment where the judgment is void. "Under NRCP 60(b) a motion to set aside a void judgment is not restricted to the six months' period specified in the rule."[2] NRCP 60(b) provides that the motion must be made within a reasonable time.

Here, ASRN filed an application for entry of default against all three defendants on November 5, 1998, which was served upon Baggs as special administrator of Grisar's estate. Default was entered on December 8, 1998. The district court entered a default judgment against all three defendants on March 19, 1999. On October 18, 2000, Krause filed a motion to set aside the default judgment. The district court granted the motion, holding that a special administrator was not authorized to defend the estate of the deceased co-defendant, rendering the default against the co-defendant void. Therefore, the district court held that there was no final judgment against all the parties, and the judgment against Krause was subject to later revision in the absence of NRCP 54(b) certification.

NRS 140.010 provides for the appointment of a special administrator to preserve an estate when good cause exists. Further, a special administrator is permitted to "defend actions and other legal proceedings as a personal representative,"[3] and may "[e]xercise such other

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[1]Stoecklein v. Johnson Electric, Inc., 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).

[2]Foster v. Lewis, 78 Nev. 330, 337, 372 P.2d 679, 683 (1962).

[3]NRS 140.040(2)(a).

powers as have been conferred by the order of appointment."[4] While a special administrator is not a general representative of the estate and may not conduct the administration of the estate, "he has full authority to maintain any action necessary to recover property of the estate. He may also be required to defend any claim against the decedent for which the estate is not liable."[5] Therefore, we conclude that the appointed special administrator was authorized to defend the estate of the deceased co-defendant, and the default against the co-defendant was not void and NRCP 54(b) certification was not required. However, a judgment which is not supported by proper service is void.[6]

Here, the district court found that Krause "was demonstrably not at the address provided to this Court in his former counsel's withdrawal papers." The district court erroneously noted the absence of a prior substituted qualified representative on behalf of Grisar when the default judgment was entered. However, the district court also noted "the policy of . . . requiring notice to an appearing party before default judgment is to be entered." Here, Krause provided evidence that an incorrect address was provided to the district court in his former counsel's withdrawal papers. Since Krause did not receive actual notice, public policy supports the decision of the district court. Although the district

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[4]NRS 140.040(2)(c).

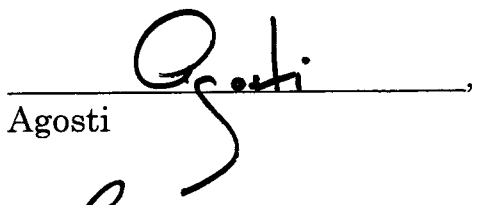
[5]Bodine v. Stinson, 85 Nev. 657, 661, 461 P.2d 868, 871-72 (1969). NRS 140.040(2)(a) has since been amended and explicitly provides that a special administrator may defend actions as a "personal representative."

[6]Doyle v. Jorgensen, 82 Nev. 196, 201, 414 P.2d 707, 710 (1966) (overruled on other grounds by Gassett v. Snappy Car Rental, 111 Nev. 1416, 906 P.2d 258 (1995)).

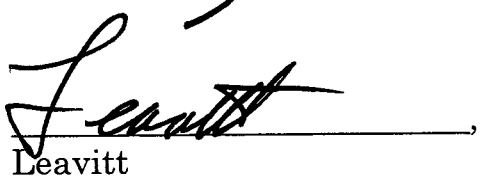
court based its decision on the lack of NRCP 54(b) certification, "a correct judgment will not be reversed simply because it was based on a wrong reason."[7] Therefore, we conclude that the district court did not abuse its discretion in granting the motion to set aside the default judgment because the default judgment was not supported by proper service. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young



_____, J.
Agosti



_____, J.
Leavitt

cc: Hon. Mark R. Denton, District Judge
Albright Stoddard Warnick & Albright
Kirshman, Harris & Branton
Clark County Clerk

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[7]Foster, 78 Nev. at 337, 372 F.2d at 687.