

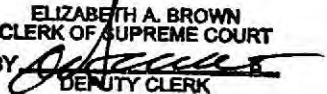
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YOANNY ROMAN-DELGADO; AND  
ARIEL DELGADO,  
Appellants,  
vs.  
CHARLES CHOPPING, AN  
INDIVIDUAL; AND COX  
COMMUNICATIONS LAS VEGAS,  
INC., A DELAWARE CORPORATION,  
Respondents.

No. 79883-COA

**FILED**

DEC 16 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Yoanny Roman-Delgado and Ariel Delgado (the Delgados) appeal from a district court order denying a motion, considered under NRCP 60(b), to set aside the final judgment in a tort action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

The Delgados were involved in a motor vehicle collision with Charles Chopping, an employee for Cox Communications Las Vegas, Inc.<sup>1</sup> The Delgados filed their complaint in April 2018 against Chopping and Cox Communications (collectively Cox). The case was assigned to Nevada's mandatory arbitration program. The arbitrator issued a decision in March 2019 in favor of the Delgados. Cox filed a request for trial de novo, which was granted. The case entered the Nevada short trial program and was set for August 2019 before a short trial judge. Due to scheduling conflicts, the case was vacated and reset twice before it was finally scheduled for September 13, 2019, at 8:00 a.m.

At the start of the short trial, the Delgados were not present in the courtroom. The Delgados' counsel advised the short trial judge that her

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<sup>1</sup>We recount the facts only as necessary for our disposition.

office had mistakenly informed the Delgados that their trial started at 10:00 a.m., pursuant to the first amended order. The Delgados' counsel declined to begin trial without her clients as they were the only witnesses scheduled to testify. The short trial judge did not delay or reset the trial. Instead, he entered judgment in favor of Cox.

The Delgados filed a motion for reconsideration from judgment, which Cox opposed. In the motion, the Delgados' counsel claimed that the mistake occurred due to a calendaring error and language barrier between her and her clients. The day before trial, the Delgados' counsel directed her paralegal, whom she relied on to communicate in Spanish with the Delgados, to provide the Delgados with the pertinent information regarding their short trial. The paralegal gave the Delgados the incorrect trial time because she had been out of the office when the amended scheduling order was served. No one updated the firm's calendaring system while the paralegal was gone.

The trial court treated the Delgados' motion for reconsideration from judgment as a motion to set aside judgment pursuant to NRCP 60(b)(1) and denied the motion. The trial court found that the Delgados had failed to demonstrate a lack of procedural knowledge; one of the four factors to consider when determining whether to set aside a judgment. *See Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in part by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997). The short trial judge did not address the three remaining *Yochum* factors.

On appeal, the Delgados contend that the short trial judge erroneously denied their motion for NRCP 60(b)(1) relief because their motion was supported by the *Yochum* factors. We conclude that the trial court abused its discretion when it failed to address all of the *Yochum* factors.

We review the denial of an NRCP 60(b)(1) motion for an abuse of discretion. *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255,

257 (2018), *holding modified by Willard v. Berry-Hinckley Indus.*, 136 Nev., Adv. Op. 53, 469 P.3d 176, 180 n.6 (2020). We give wide discretion to the trial court in ruling on NRCP 60(b)(1) motions. *Id.* Nevertheless, the trial court abuses its discretion when it disregards established legal principles. *McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. 610, 617, 310 P.3d 555, 559 (2013).

Under NRCP 60(b)(1), the trial court may relieve a party from a final judgment on grounds of “mistake, inadvertence, surprise, or excusable neglect.” “NRCP 60(b)(1) operates as a remedial rule that gives due consideration to our court system’s preference to adjudicate cases on the merits, without compromising the dignity of the court process.” *Willard*, 136 Nev., Adv. Op. 53, 469 P.3d at 179. In *Yochum*, the supreme court held that when a trial court determines whether grounds for NRCP 60(b)(1) relief exist, the trial court must apply four factors: “(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith.” *Yochum*, 98 Nev. at 486, 653 P.2d at 1216. The trial court must also consider Nevada’s bedrock policy to adjudicate cases on their merits whenever feasible in determining an NRCP 60(b)(1) motion. *Rodriguez*, 134 Nev. at 657, 428 P.3d at 257.

Our supreme court recently reiterated “that our ability to review a district court’s NRCP 60(b)(1) determination for an abuse of discretion necessarily requires district courts to issue findings pursuant to the pertinent factors in the first instance.” *Willard*, 136 Nev., Adv. Op. 53, 469 P.3d at 180. The supreme court held “that district courts must issue explicit and detailed findings, preferably in writing, with respect to the four *Yochum* factors to facilitate this court’s appellate review of NRCP 60(b)(1) determinations for an abuse of discretion.” *Id.* Therefore, a trial court abuses

its discretion when it makes an NRCP 60(b)(1) determination without reviewing all of the *Yochum* factors. *Id.*

Here, the trial court supported its decision by issuing explicit factual findings for only the third *Yochum* factor. This violates the supreme court's holding in *Willard*, which was issued subsequent to the district court's decision. The short trial judge did not offer an explanation as to why it addressed only one of the four *Yochum* factors.<sup>2</sup> "Without an explanation of the reasons or bases for a district court's decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation." *Boonsong Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011). Because the trial court abused its discretion when it did not address all of the *Yochum* factors, we conclude that reversal and remand is required and instruct the trial court to reconsider the Delgados' motion for NRCP 60(b)(1) relief, in compliance with *Willard* and *Yochum*, by analyzing all four factors. Accordingly, we

ORDER the judgment of the district court REVERSED and REMAND for further proceedings consistent with this order.

  
Gibbons, C.J.

  
Tao, J.

  
Bulla, J.

<sup>2</sup>Cox argues that only the third factor is pertinent to this case. However, Cox does not offer any explanation as to why the first, second, or fourth factors are not pertinent in this case, and Cox concedes that the other three factors favor the Delgados. We conclude that all of the *Yochum* factors have relevance in this case and must be addressed by the trial court. Furthermore, Nevada's policy of deciding cases on the merits must also be considered. *See Rodriguez*, 134 Nev. at 657, 428 P.3d at 257.

cc: Hon. Kenneth C. Cory, District Judge  
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Eighth District Court Clerk