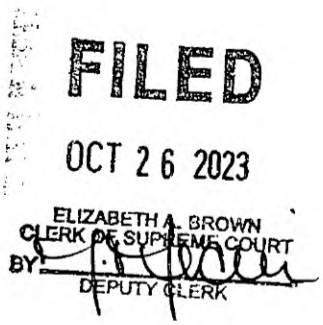
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEX PENLY,
Appellant,
vs.
MILTON J. WOODS; AND CIRRUS AVIATION SERVICES INC., A WASHINGTON CORPORATION,
Respondents.

No. 84710-COA



ORDER OF AFFIRMANCE

Alex Penly appeals from a district court order denying a motion to declare the renewal of a judgment invalid.[1] Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Respondents Milton J. Woods and Cirrus Aviation Services Inc. (collectively referred to as respondents), were granted judgment in their favor against Penly and Eagle Jet Aviation. Judgment was entered on January 20, 2016. On January 7, 2022, respondents filed four signed affidavits of renewal of this judgment with the district court. Respondents

[1]Respondents argue this matter should be dismissed for lack of jurisdiction because no statute or court rule permits an appeal from the order at issue in this case. However, the Nevada Supreme Court already determined that jurisdiction over this appeal is proper. *Penly v. Woods*, Docket No. 84710 (Order Granting Petition for Rehearing, Reinstating Appeal and Setting Briefing Schedule, August 30, 2022). And we are bound by that decision and cannot revisit the issue of jurisdiction over this appeal. *See Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting that stare decisis "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court").

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also filed a certificate of service stating that they served Penly with copies of the affidavits on January 10, 2022.

Penly subsequently challenged the validity of respondents' renewal of judgment by filing a motion to strike the affidavits and declare the renewal invalid. He contended that the service of the notice was ineffectual because one of the affidavits did not contain a signature and asserted that respondents failed to timely serve him with the affidavits as required by NRS 17.214(3).

Respondents opposed this request, contending that they sent a parcel containing copies of the affidavits of renewal of judgment to Penly by certified mail, return receipt requested, within the required three-day timeframe. Respondents also noted that all of the affidavits they filed with the district court were properly signed and claimed that they substantially complied with the notice requirements even if they inadvertently included an unsigned copy of one of the affidavits when they served Penly with the notice of the renewal of judgment.

The district court held a hearing concerning these issues and subsequently entered a written order denying Penly's motion to strike the affidavits. While the order does not explain the reason for the denial, the minutes reflect that the court found that copies of the affidavits were timely served upon Penly, that respondents filed signed affidavits with the court, and that Penly did not demonstrate he was entitled to relief based upon his claim that respondents improperly failed to serve him with a signed affidavit. Penly now appeals this decision.

Penly asserts that the district court found that respondents substantially complied with the requirement to timely provide notice of the renewal of judgment by mailing him the copies of the affidavits of renewal

of judgment. He contends that this determination was in error, however, as respondents did not mail the affidavits within three days of their filing with the court, respondents should have been required to strictly comply with NRS 17.214(3)'s notice requirements, and the court should have stricken the unsigned affidavit pursuant to NRCP 11(a). We address each of these arguments below, in turn.

"Under NRS 17.214, timely filing an affidavit, timely recording (if the judgment being renewed was recorded), and timely service are required to successfully renew a judgment." *Leven v. Frey*, 123 Nev. 399, 402, 168 P.3d 712, 714 (2007). The "time and manner" requirements of NRS 17.214 "must be complied with strictly . . . whereas substantial compliance may be sufficient for form and content requirements." *Id.* at 408, 168 P.3d at 718 (internal quotation marks omitted).

"To determine whether a statute and rule require strict compliance or substantial compliance . . . court[s] look[ ] at the language used and policy and equity considerations." *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 475-76, 255 P.3d 1275, 1278 (2011) (citing *Leven*, 123 Nev. at 406-07, 168 P.3d at 717). "In so doing, [courts] examine whether the purpose of the statute or rule can be adequately served in a manner other than by technical compliance with the statutory or rule language." *Id.* at 476, 255 P.3d at 1278. When a party actually complies "as to matters of substance, technical deviations from form requirements do not rise to the level of noncompliance." *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 665, 310 P.3d 569, 572 (2013). Substantial compliance requires that a party (1) has actual knowledge and (2) does not suffer prejudice. *Hardy Cos. v. SNMARK, LLC*, 126 Nev. 528, 536, 245 P.3d 1149, 1155 (2010).

Whether a party was properly mailed notice is a question of fact, *Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983), and "[t]his court will not disturb the district court's factual determinations if substantial evidence supports those determinations," *J.D. Constr., Inc. v. IBEX Int'l Grp., LLC*, 126 Nev. 366, 380, 240 P.3d 1033, 1043 (2010).

On appeal, Penly contends that the district court erred by rejecting his assertion that respondents failed to mail him the required notice within three days of the filing of the affidavits of renewal of judgment with the district court. NRS 17.214(3) requires a judgment creditor to notify a judgment debtor of the renewal of the judgment by mailing a copy of the affidavit of renewal to the judgment debtor "within 3 days after filing the affidavit." This issue implicates a timing requirement and, thus, strict compliance with the three-day mailing provision is required. *See Leven*, 123 Nev. at 408, 168 P.3d at 718; *see also BMO Harris Bank, N.A. v. Whittemore*, 139 Nev., Adv. Op. 31, 535 P.3d 241, 244 (2023) (explaining that NRS 17.214(3) requires strict compliance with both its timing requirement and its certified mail method-of-notice requirement).

The district court's order does not contain written findings concerning this issue, but the minutes reflect that the court held a hearing regarding Penly's challenge to the renewal, and that the court found that the affidavits were mailed within three days of filing. *See Knox v. Dick*, 99 Nev. 514, 517, 665 P.2d 267, 269 (1983) (looking to district court minutes to interpret an order granting summary judgment that failed to specify grounds for the decision). Here, the record contains a certificate of service indicating that respondents placed the affidavits in the mail within the required three-day mailing period. Penly, however, argues that the tracking information for the mailed affidavits shows they entered the postal

system one day after the three-day mailing period expired. Penly presented this argument below, but the district court ostensibly rejected it, as it determined that the affidavits were mailed within three days of filing as required by the statute.

Although neither the challenged order nor the minutes indicate why this argument was rejected, Penly failed to provide this court with a copy of the transcript of the hearing on his motion to strike the affidavits, and we necessarily presume this missing document supports the district court's decision.[2] *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (holding that appellant is responsible for making an adequate record on appeal and when "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision"). Under these circumstances, we conclude that the court's finding regarding the timely mailing of the affidavits is supported by substantial evidence. *See J.D. Constr., Inc.*, 126 Nev. at 380, 240 P.3d at 1043. As a result, respondents strictly complied with the timing requirement set forth in NRS 17.214(3) and the district court did not err in refusing to invalidate the judgment renewal on this basis.

Penly next contends that the notice provided by respondents was insufficient because one of the affidavits they mailed him was unsigned. Respondents acknowledge that one of the affidavits they mailed to Penly

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[2]While Penly filed a transcript request form, he did not provide this court with the transcript he sought, request that the court reporter be compelled to prepare it, or otherwise act to ensure this court received a copy of the transcript. *See* NRAP 9(b)(1)(B) (requiring pro se litigants who request transcripts and have not been granted in forma pauperis status to file a copy of their completed transcript with the clerk of court).

was unsigned, but assert that all of the affidavits filed with the district court were signed and, thus, they substantially complied with NRS 17.214(3)'s notice requirement. While NRS 17.214(3) contains specific provisions concerning the time and manner of the notice that must be provided to the judgment debtor, it does not specify whether the copy of the affidavit mailed to the judgment debtor has to be an exact copy of the filed affidavit.

"To determine whether a statute requires strict or substantial compliance, we consider the statute's language, as well as policy and equity." *BMO Harris Bank,* 139 Nev., Adv. Op. at 31, 535 P.3d at 245. "The inquiry is whether the purpose of the statute can be served by substantial compliance rather than technical compliance with the statute." *Id.* "And we will allow substantial compliance when requiring strict compliance would lead to an absurd result." *Id.*

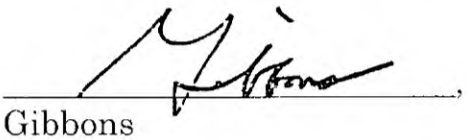
Turning to NRS 17.214(3), the purpose of requiring a judgment creditor to mail a copy of the affidavits of renewal to a judgment debtor is to afford that party notice of the renewal of the judgment. *See id.* ("We recognize that the purpose of notifying the judgment debtor of the renewal is met if the debtor has actual knowledge of the renewal regardless of how the debtor came to learn of it."). And there is nothing in the statute to suggest that the required notice is somehow deficient when, despite filing a signed copy of an affidavit of renewal in the district court, the judgment creditor inadvertently mails an unsigned copy of the affidavit to the debtor. Under the circumstances presented here, we conclude that substantial compliance is sufficient, *see id.* (noting that substantial compliance is allowed when "requiring strict compliance would lead to an absurd result"); *see also Hardy Cos.,* 126 Nev. at 536, 245 P.3d at 1155 (providing, in the context of a mechanic's lien renewal, that substantial compliance is

appropriate so long as the party has actual knowledge and is not prejudiced), and that respondents substantially complied with NRS 17.214(3)'s notice requirements, despite having mailed an unsigned copy of one of the affidavits of renewal. As a result, Penly is not entitled to relief based on this argument.

Finally, Penly contends that the district court improperly refused to strike the unsigned affidavit pursuant to NRCP 11. Under NRCP 11(a), pleadings, written motions, and other papers must be signed and the district court "must strike an unsigned paper unless the omission is promptly corrected." The record demonstrates that respondents filed four signed affidavits of renewal of judgment with the court. And because the affidavits respondents filed with the court were signed, we conclude that Penly is not entitled to relief based upon an application of NRCP 11(a).

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.[3]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[3]Insofar as Penly 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 the disposition of this appeal.

cc: Hon. Nancy L. Allf, District Judge
Alex Penly
Fox Rothschild, LLP/Las Vegas
Eighth District Court Clerk