IN THE COURT OF APPEALS OF THE STATE OF NEVADA

UNIFERN, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
ALARMCO, INC., A NEVADA CORPORATION,
Respondent.

No. 82719-COA

FILED

DEC 19 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Unifern, LLC appeals from a district court order denying NRCP 60(b) relief in a breach of contract matter. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

The underlying matter involved a contractual dispute between Unifern and respondent Alarmco, Inc., related to the installation and operation of Alarmco's security systems on Unifern's property. Alarmco commenced an action against Unifern, claiming that Unifern had breached two contractual agreements by refusing to pay Alarmco the monies due under the contracts. Unifern answered and counterclaimed, alleging that Alarmco breached the agreements by failing to install security devices that would meet the requirements specified in the contracts.

Approximately two weeks before the start of trial in October 2020, Unifern's counsel filed a motion to withdraw, alleging that they had not been able to contact their client for over three months, and that the client had approximately $7,500 in unpaid bills. Alarmco opposed the motion, arguing that Unifern had failed to participate in discovery during the pendency of the case and that allowing counsel to withdraw at this point

would delay trial. Ultimately, the district court granted the motion to withdraw, and in the same order, issued an order to show cause to Unifern. This order to show cause cautioned Unifern that corporations may not appear in proper person under EDCR 7.42(b) and instructed Unifern to retain new counsel within thirty days. The order also warned Unifern that failure to retain counsel would result in the court striking Unifern's answer and counterclaim and holding a bench trial solely on the issue of Alarmco's damages.

Following additional proceedings, Unifern failed to retain counsel as instructed and the district court entered an order striking Unifern's answer and counterclaim and scheduled a bench trial on Alarmco's damages only. Alarmco filed an application for default judgment the next day. Approximately thirteen days following entry of the order striking Unifern's answer and counterclaim, Unifern retained counsel who filed a "Motion to Set Aside and/or Reconsider Order Striking Defendant-Counterclaimant Unifern's Answer and Setting Trial Date," which sought relief under EDCR 2.24, NRCP 55(c), and NRCP 60(b). Notably, the district court had not entered a clerk's default or a default judgment at the time Unifern filed its motion.

After briefing and a hearing, the district court orally denied Unifern's motion and, in a later proceeding, entered a default judgment against Unifern and awarded Alarmco $137,922.64 in damages. Thereafter, the district court entered an order denying Unifern's motion to set aside under NRCP 60(b) and Unifern now appeals, albeit only from the denial of its motion for NRCP 60(b) relief.

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 on other grounds by Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 471 n.6, 469 P.3d 176, 180 n.6 (2020). However, our appellate courts have held that NRCP 60(b) relief only applies to final judgments and cannot provide relief from interlocutory orders. *See Barry v. Lindner*, 119 Nev. 661, 669-70, 81 P.3d 537, 542-43 (2003) (providing that NRCP 60(b) relief is only available from a *final* judgment, order, or proceeding and does not provide for relief from interlocutory orders), *superseded by rule on other grounds as stated in LaBarbera v. Wynn Las Vegas, LLC*, 134 Nev. 393, 395, 422 P.3d 138, 140 (2018). A final judgment is one "that disposes of the issues presented in the case, determines the costs, and leaves nothing for the future consideration of the court." *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

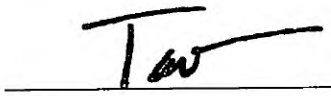
Having considered the arguments of the parties and the record on appeal, we conclude that the district court did not abuse its discretion when it denied Unifern's motion to set aside. Here, Unifern's motion to set aside the district court's order striking its answer and counterclaim was premature, as it was filed prior to the entry of the default judgment—which constituted the final judgment in this matter as it resolved the last remaining issue in the case. *See Barry*, 119 Nev. at 669-70, 81 P.3d at 542-43; *see also Lee*, 116 Nev. at 426, 996 P.2d at 417. And Unifern was not entitled to NRCP 60(b) relief as its motion challenged the district court's interlocutory order striking its answer and counterclaim.[1] *See id.* And

[1]We recognize that Unifern also sought relief under EDCR 2.24 and NRCP 55(c) below. However, the district court did not address these arguments in its order, and Unifern has failed to raise them on appeal, thereby waiving any argument related to those issues. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).

because Unifern was not entitled to NRCP 60(b) relief here, we conclude that the district court did not abuse its discretion in denying Unifern's motion to set aside the order striking its answer and counterclaim. *See Rodriguez*, 134 Nev. at 656, 428 P.3d at 257; *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (recognizing that this court may affirm the district court on any ground supported by the record, even if not relied upon by the district court). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Persi J. Mishel, Settlement Judge
Holley Driggs/Las Vegas
Hartwell Thalacker, Ltd.
Eighth District Court Clerk

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[2]Insofar as the parties raise 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.