

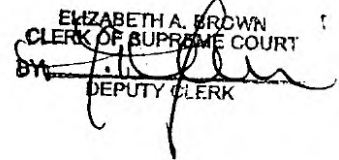
IN THE SUPREME COURT OF THE STATE OF NEVADA

ALIED GONZALEZ-NUNEZ,
INDIVIDUALLY; YISET AMEZQUITA-
CUETO, INDIVIDUALLY; AND
LEOBEL LOPEZ-SALOMON,
INDIVIDUALLY,
Appellants,
vs.
DEBORAH RANDOLPH,
INDIVIDUALLY; AND RANDY
RANDOLPH, INDIVIDUALLY,
Respondents.

No. 81329

FILED

FEB 23 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court default judgment and related orders in an action for damages resulting from a motor vehicle accident. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

In December 2016, respondents Deborah and Randy Randolph were injured in a motor vehicle accident with a vehicle driven by appellant Alied Gonzalez-Nunez, owned by appellants Yiset Amezquita-Cueto and Leobel Lopez-Salomon, and insured by State Farm. In September 2018, respondents filed suit against appellants, and in October 2018, respondents filed proof of service on appellants. On December 14, 2018, the district court entered defaults against appellants after they failed to answer the complaint. Appellants appeared in the action for the first time on August 1, 2019, almost 1 year after service and some 8 months following entry of the defaults, by filing NRCP 55(c) motions to set aside the defaults, arguing that their limited English proficiency caused them to miss the deadline to

file a responsive pleading. After hearing oral arguments on the motion, the district court entered a written order on October 10, 2019, denying appellants' NRCP 55(c) motions to set aside the defaults.

Four months later, on February 28, 2020, appellants filed a NRCP 60(b) motion for relief from the district court's October 2019 order and requested an order shortening time. Appellants' NRCP 60(b) motion asserted that the underlying defaults were invalid due to defects in service of process and in providing notice to State Farm. At that time however, respondents had already filed an application for default judgment, which was set for a proveup hearing the following week. Due to appellants' request for an order shortening time, the district court held a hearing on appellants' NRCP 60(b) motion at the default proveup hearing. Although appellants requested to participate in the proveup hearing, the district court denied their request. At that hearing, the district court made an oral ruling denying the NRCP 60(b) motion, reasoning that appellants failed to timely raise any issues with service and notice. On April 7, 2020, the district court entered a written order denying appellants' NRCP 60(b) motion, and on May 13, 2020, entered a default judgment against appellants in the principal amount of \$1,060,273.

On appeal, appellants argue that the default judgment is void for improper service and lack of due process, and therefore the district court abused its discretion by denying their NRCP 60(b) motion to set aside the underlying defaults. Appellants also argue that the district court erred by barring them from participating in the proveup hearing.

We disagree with appellants and affirm. The district court correctly found appellants' NRCP 60(b) motion to be untimely. Moreover,

any error in disallowing appellants' participation in the proveup hearing was harmless.

The default judgment was valid and thus, the district court did not abuse its discretion in denying appellants' NRCP 60(b) motion

This court reviews a denial of a motion to set aside an entry of default for an abuse of discretion. *Landreth v. Malik*, 127 Nev. 175, 188, 251 P.3d 163, 171 (2011). This court will uphold a district court's decision that falls within a broad range of permissible conclusions. *See Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014) ("An abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances.").

While appellants argue that appellant Amezquita-Cueto was not served, we decline to address this argument on the merits. While this court may consider constitutional challenges for the first time on appeal, we need not do so where appellants failed to timely raise alleged defects in service of process. *See e.g., Miller v. Burk*, 124 Nev. 579, 589 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (noting that this court need not address issues that are unnecessary to resolve the case at bar).

NRCP 60(c)(1) provides: "[a] motion under Rule 60(b) must be made within a reasonable time . . . no more than 6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later." Here, appellants filed a NRCP 60(b) motion that raised new issues regarding notice to their insurer on February 28, 2020, approximately one week before the date of the proveup hearing on respondents' pending default judgment application, March 3, 2020, and well after the district court's denial of appellants' initial NRCP 55(c) motion to set aside, which failed to raise any of the issues with service

and notice raised in their NRCP 60(b) motion. Therefore, we conclude that the district court correctly rejected appellants' untimely challenges to service and notice.¹

Thus, we conclude that the district court did not abuse its discretion by denying appellants' motion for relief on the basis that it was not made within a reasonable time pursuant to NRCP 60(c)(1).²

Any error in not allowing appellants to participate in the proveup hearing was harmless

Appellants next assert that the district court erred by preventing them from participating in the proveup hearing to contest damages. However, because appellants failed to make an offer of proof, there is no evidence in the record for this court to review to determine whether the hearing's outcome would have been different had appellants been allowed to participate. *See e.g., Las Vegas Convention and Visitors Auth. v. Miller*, 124 Nev. 669, 688, 191 P.3d 1138, 1150-51 (2008) ("Offers of proof are intended to (1) fully disclose to the court and opposing counsel the nature of evidence offered for admission, but rejected, and (2) preserve the record for appellate review."); *see also* NRCP 61 ("At every stage of the


¹We have considered appellants' other arguments regarding their motion to quash service and determine them to be without merit.

²We have considered appellants' argument that respondents failed to serve them with notices of intent to take default, and we conclude it is without merit. Appellants concede that the district court entered defaults against them after they failed to appear and defend in the action. NRCP 55(a) does not require notice of intent to be served on a non-appearing party, and states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Therefore, we conclude that appellants' arguments are moot.

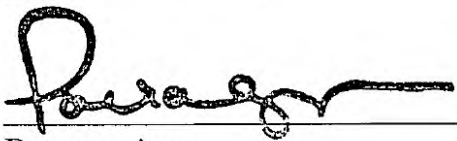
proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

Consequently, we conclude that any alleged error by the district court's decision to exclude appellants from participation in the proveup hearing was harmless. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

cc: Hon. Tierra Danielle Jones, District Judge
Eleissa C. Lavelle, Settlement Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
University of Nevada, Las Vegas, Office of General Counsel
Messner Reeves LLP
Winner Booze & Zarcone
Bighorn Law/Las Vegas
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk