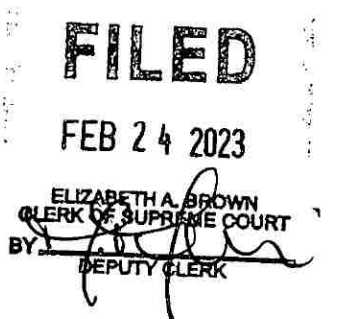
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDI ABTS, AN INDIVIDUAL,
Appellant,
vs.
CYNTHIA ARNOLD-ABTS, AN INDIVIDUAL,
Respondent.

No. 83595-COA



ORDER REVERSING IN PART, VACATING IN PART AND REMANDING

Brandi Abts appeals from a final judgment following a short bench trial and a post-judgment order denying a motion for new trial. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Brandi sued her stepmother, respondent Cynthia Arnold-Abts, asserting claims based on her allegations that Cynthia alienated her from her father, wrongfully possessed her property, and defamed her. After Brandi allegedly encountered difficulties serving her complaint on Cynthia, she obtained leave to serve Cynthia by publication. Shortly after service by publication was completed, Brandi filed an addendum to her complaint, which largely reiterated the allegations in the complaint and included several exhibits regarding her personal property that Cynthia purportedly retained. Eventually, after Cynthia failed to file an answer or otherwise appear in this case, Brandi obtained a clerk's entry of default and default judgment. Approximately ten months later, Cynthia moved to set aside the default judgment pursuant to NRCP 60(b)(3) and (4), arguing that Brandi fraudulently concealed her ability to effect personal service when she sought leave to serve Cynthia by publication and that the addendum to Brandi's

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complaint constituted an amended complaint, which Brandi failed to properly serve. Following a hearing, the district court granted Cynthia's motion over Brandi's opposition, finding that "there [we]re concerns regarding service of process" and citing Nevada's policy in favor of trials on the merits.

Cynthia then moved to dismiss Brandi's complaint pursuant to NRCP 12(b)(5), arguing that Nevada does not recognize a claim for alienation from a family member, that the statute of limitations had run on Brandi's claim for the return of personal property, and that her allegations were insufficient to state a claim for defamation. Following a hearing, the district court entered an order which dismissed Brandi's claims for alienation from a family member and return of personal property but granted her leave to file an amended complaint concerning her defamation claim.[1]

After Brandi filed her amended complaint and Cynthia filed an answer, the case was assigned to Nevada's court-annexed arbitration program, and the arbitrator eventually found in favor of Cynthia. Brandi then filed a timely request for a trial de novo, and the matter was set for a bench trial as part of Nevada's short trial program. Following the trial, the judge pro tempore issued a proposed judgment, finding in favor of Cynthia on Brandi's defamation claim. Brandi did not file an objection to the proposed judgment, but instead, moved for a new trial. The district court

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[1]While the district court did not specifically address Brandi's claim for alienation from a family member, it implicitly dismissed the claim by granting Brandi leave to file an amended complaint concerning only her defamation claim. *Cf. Randono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984) (explaining that an amended complaint is a distinct pleading that supersedes the original complaint).

then entered final judgment in favor of Cynthia, and later, denied Brandi's motion for a new trial. This appeal followed.[2]

On appeal, Brandi first challenges the district court's order setting aside the default judgment, arguing that she diligently attempted to personally serve Cynthia and that she properly served the summons and complaint by publication upon being granted leave to do so. Moreover, Brandi asserts that Cynthia's motion to set aside the default judgment was untimely, that it was unsupported by any evidence, and that Cynthia was incorrect in arguing that Brandi's addendum to the complaint constituted an amended complaint that needed to be separately served in accordance with NRCP 4. Cynthia only responds to these arguments insofar as she characterizes several issues presented in Brandi's informal brief as "ramblings" and baldly asserts that the issues are not supported by the record or any evidence and are not properly before this court.

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[2]Brandi previously filed several appeals challenging the district court's decisions in this matter, which Nevada's appellate courts dismissed for lack of jurisdiction. *See Abts v. Arnold-Abts*, Nos. 81296 & 81297, 2020 WL 4039066 (Nev. Jul. 16, 2020) (Order Dismissing Appeals); *Abts v. Arnold-Abts*, No. 76506, 2018 WL 4189564 (Nev. Aug. 30, 2018) (Order Dismissing Appeal); *Abts v. Arnold-Abts*, No. 75423, 2018 WL 1870734 (Nev. Apr. 16, 2018) (Order Dismissing Appeal); *Abts v. Arnold-Abts*, No. 81298-COA, 2021 WL 3878926 (Nev. Ct. App. Aug. 30, 2021) (Order Dismissing Appeal). Brandi now asks this court to review the dismissal of her various appeals. However, this court cannot overrule the supreme court's dismissal of Brandi's prior appeals, *see Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (observing that stare decisis "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court"), nor can we reconsider our dismissal of one of her prior appeals in the context of this appeal, *see Hsu v. Cty. of Clark*, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007) (explaining that, under the law of the case doctrine, "the law or ruling of a first appeal must be followed in all subsequent proceedings, both in the lower court and on any later appeal").

While this court cannot review the dismissal of Brandi's prior appeals as discussed above, *see supra* note 2, the arguments in her informal brief concerning the order setting aside the default judgment are reviewable in the context of the present appeal from the final judgment in the underlying case. *See Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (providing that, although the district court's interlocutory orders are not independently appealable, they are reviewable in the context of an appeal from the final judgment).[3]

Although Cynthia arguably failed to specifically address Brandi's arguments regarding the district court's inadequate order setting aside her default judgment on appeal, even without the deficiency in Cynthia's briefing, we cannot fully evaluate the propriety of the district court's decision to set aside the default judgment. A default judgment may only be set aside in accordance with NRCP 60(b), which sets forth specific grounds for granting relief from a final judgment and is subject to specific timing requirements. *See* NRCP 55(c) (authorizing the district court to set aside a final default judgment pursuant to NRCP 60(b)); NRCP 60(c)(1), (d) (explaining the timing requirements for NRCP 60(b) motions); *see also Greene v. Eighth Judicial Dist. Court*, 115 Nev. 391, 395, 990 P.2d 184, 186 (1999) ("Once a judgment is final, it should not be reopened except in conformity with the [NRCP]."). Here, Cynthia sought relief under NRCP

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[3]Insofar as Brandi presents arguments in her informal brief regarding other decisions that she challenged in her prior appeals, we have likewise considered those arguments since they concern interlocutory orders that are reviewable in the context of her present appeal from the final judgment. *See Consol. Generator-Nev., Inc.*, 114 Nev. at 1312, 971 P.2d at 1256; *see also* NRAP 3A(b) (listing appealable determinations). In light of our resolution of this matter, however, we need not address the merits of these arguments.

60(b)(3) based on fraud upon the court and pursuant to NRCP 60(b)(4) on grounds that the default judgment was void due to defective service. However, it does not appear from the district court's oral or written findings that the court considered whether those requests were timely, or whether Brandi's conduct rose to the level of extrinsic fraud on the court excusing the time limitations imposed under the rule. Moreover, in granting Cynthia's motion, the district court did not make specific findings that Brandi committed fraud upon the court or that the default judgment was void. Instead, the district court vaguely found that "there [we]re concerns regarding service of process" and referenced Nevada's policy in favor of trials on the merits. Given this dearth of pertinent findings, we cannot say with assurance that the district court granted Cynthia's motion for appropriate reasons. *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (explaining that, even in the context of the district court's discretionary determinations, "deference is not owed to legal error or to findings so conclusory they may mask legal error" (internal citations omitted)).

Thus, given the foregoing, we reverse the district court's order setting aside Brandi's default judgment and remand this matter for further proceedings on Cynthia's motion to set aside the default judgment. *See McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. 610, 617, 310 P.3d 555, 560 (2013) (observing that Nevada's appellate courts do not make factual findings in the first instance and reversing a district court order setting aside a default judgment based on the court's failure to make necessary findings), *abrogated on other grounds by Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Cmty. Ass'n*, 137 Nev., Adv. Op. 52, 495 P.3d 492, 498 (2021). In addressing Cynthia's motion on remand, the

district court shall fully address the appropriate considerations for granting or denying NRCP 60(b) relief from a default judgment as outlined in this order and issue explicit, detailed findings of fact and conclusions of law, preferably in writing, to support its decision with respect to that motion. Lastly, we are constrained to vacate the final judgment in favor of Cynthia and order denying Brandi's motion for a new trial, which were predicated on the absence of a default judgment against Cynthia. *Cf. Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 571, 427 P.3d 104, 106 (2018) (holding that, because a portion of the challenged judgment was reversed, the supreme court would "necessarily reverse the attorney fees and costs awarded to the [ ] parties"). We recognize that on remand, the district court will necessarily also have to address the resolution of these issues.

It is so ORDERED.[4]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[4]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

cc: Hon. Ronald J. Israel, District Judge
Brandi Abts
Patricia A. Marr, Ltd.
Eighth District Court Clerk