IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RODNEY KIRK ARLINE, AN INDIVIDUAL,
Appellant,
vs.
ANGELA MARIE WRIGHT, AN INDIVIDUAL,
Respondent.

No. 84712-COA

FILED

MAY 30 2023

BROWN

ORDER OF AFFIRMANCE

Rodney Kirk Arline appeals from a district court order granting a motion to set aside a default judgment in a tort action. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

This appeal involves a 2019 automobile accident between Arline and respondent Angela Marie Wright. In the time following the accident, Arline's counsel and Wright's insurance company, Infinity Insurance Company ("Infinity"), exchanged at least five letters and at least one phone call concerning medical records, liability, and settlement negotiations. As relevant here, it appears that the parties had no further contact from the period of December 14, 2020, (the date of Infinity's last letter to Arline's counsel), to July 6, 2021, when Arline commenced an action against Wright in district court. On July 9, 2021, Arline mailed a letter to Infinity, indicating that he had filed a complaint, and noted that Infinity "may want to take measures necessary to protect your interest."

Because Wright failed to respond to Arline's complaint, in October 2021, Arline requested and received a default and default judgment in the amount of $49,999. In February 2022, Infinity became aware of the default judgment and filed a motion to set that judgment aside under NRCP

60(b) for failure to comply with the notice requirements of NRCP 55(b)(2). Following briefing by the parties and a hearing, the district court granted Wright's motion and set aside the default judgment. Arline now appeals.

"The district court has wide discretion to grant or deny a motion to set aside a [default] judgment under NRCP 60(b), and its determination will not be disturbed on appeal absent an abuse of that discretion." *See Vargas v. J Morales Inc.*, 138 Nev., Adv. Op. 38, 510 P.3d 777, 780 (2022) (citing *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996)).

Under NRCP 55(b)(2), "[i]f the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing." "The failure to serve such notice voids the judgment." *Christy v. Carlisle*, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978). The Nevada Supreme Court has further extended the notice requirement of NRCP 55(b)(2) and its holding in *Christy* to prelitigation claims handled by an insurance company "when pre-suit interactions evince a clear intent to appear and defend." *Lindblom v. Prime Hospitality Corp.*, 120 Nev. 372, 376, 90 P.3d 1283, 1285 (2004).

On appeal, Arline primarily argues that NRCP 55(b)(2)'s notice requirement was not triggered here because Infinity failed to take any steps to make a formal appearance in the case after he filed his complaint in district court. But this argument lacks merit under the controlling Nevada caselaw. Indeed, in *Lindblom*, the appellant made a similar argument and contended that its failure to comply with NRCP 55(b)(2)'s notice requirement did not void the default judgment because "an appearance cannot be made before an action was filed." 120 Nev. at 376, 90 P.3d at 1285. However, the supreme court disagreed, and held that "the policy considerations underlying NRCP 55(b)(2)'s [] notice requirement are furthered by equating pre-suit negotiations with an appearance under the

rule." *Id.* Accordingly, the supreme court extended its holding in *Christy* to require notice of hearings on applications for default judgments where "pre-suit interactions evince a clear intent to appear and defend." *Lindblom*, 120 Nev. at 376, 90 P.3d at 1285.

Here, the record on appeal reflects that Arline's counsel and Infinity exchanged several letters, and at least one phone call, regarding the claims at issue in this litigation. Certainly, Infinity's prior actions in this case were sufficient for Arline's counsel to determine that a letter informing Infinity that Arline had filed a complaint against their insured, whom Infinity was duty bound to defend, was warranted. *See, e.g., Christy*, 94 Nev. at 654, 584 P.2d at 689 ("Defendant Carlisle's insurance carrier had indicated a clear purpose to defend the suit. Indeed, it was duty bound to do so, and plaintiff's counsel must have known this."). Nonetheless, Arline's counsel admittedly failed to follow NRCP 55(b)(2)'s notice requirement, which voids the default judgment. *Christy*, 94 Nev. at 654, 584 P.2d at 689. Accordingly, we cannot conclude that the district court abused its discretion in granting Wright's motion to set aside. *See Vargas*, 138 Nev., Adv. Op. 38, 510 P.3d at 780. We therefore,

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Erika D. Ballou, District Judge
The Firm, P.C.
Richard F. Scotti
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Eighth District Court Clerk