

IN THE SUPREME COURT OF THE STATE OF NEVADA

KADEDRA JAMACE PETERSON,
INDIVIDUALLY; AND NIJAILA
GRAVES, INDIVIDUALLY,
Appellants,
vs.
KAYMON ROCHESTER,
Respondent.

No. 83562

FILED

AUG 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER REVERSING IN PART AND REMANDING

This is an appeal from a district court order granting default judgment. Eighth Judicial District Court, Clark County; Bitu Yeager, Judge.

This case arises from a car accident between appellant Kadedra Peterson and respondent Kaymon Rochester. Peterson was driving a vehicle owned by appellant Nijaila Graves.¹ In the months following the accident, Rochester unsuccessfully attempted to settle for the \$25,000 policy limit from Graves's insurance provider, Key Insurance Company.

Rochester then filed a complaint against Peterson and Graves. Peterson and Graves did not timely answer the complaint, so Rochester noticed his intent to take default. Rochester's notices were returned to sender, unclaimed. Rochester did not notify Key Insurance that he had filed a complaint, that defendants had failed to answer, or that Rochester intended to take default. Rochester obtained entry of default. He did not notify Key Insurance of the entry of default.

¹Both Peterson and Graves are represented by the same counsel on appeal. We refer to Peterson and Graves collectively, where applicable, as "Peterson" throughout.

Rochester applied for judgment by default. In his final amended application for default judgment, he sought a total of \$170,000 in damages. Rochester served his amended application for default judgment on Key Insurance. Key Insurance assigned the case to counsel, who entered an appearance on behalf of defendants after Rochester had obtained default and filed his final amended application for default judgment. Explaining that their counsel only became aware of the action in February 2021 (after Rochester obtained default in October 2020), defendants moved to set aside the default in June 2021.

Defendants filed a motion to set aside the default which the district court denied. Among other findings, the court noted that defendants were not contesting liability, but only challenging the reasonableness and necessity of the treatment Rochester received. Because defendants could contest the amount of damages at a later prove-up hearing, the court ruled that they had failed to demonstrate good cause why the default should be set aside.

During closing arguments at the prove-up hearing, Rochester requested \$356,785.53 in past and future damages. The court awarded the requested damages. Peterson now raises multiple issues on appeal.

The district court erred in awarding damages in excess of the amount Rochester sought in his final amended application for default judgment

Peterson argues the district court erred in awarding \$356,785.53 in damages—an amount more than double the \$170,000 that Peterson sought in his final amended application for default judgment. Rochester concedes that the district court erred in awarding damages in excess of the amount he sought in his application for default judgment. We agree.

“A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings, except that if the prayer is for unspecified damages under Rule 8(a)(4)” NRCP 54(c). Here, Rochester requested \$170,000 in his application for default judgment, but the district court awarded more than double that amount. Accordingly, we reverse the district court’s order as to the amount of damages and remand for the limited purpose of correcting that amount to \$170,000.

Peterson failed to preserve her remaining arguments for appellate review

Peterson raises a number of other arguments on appeal. She acknowledges that that she did not “explicitly raise” her remaining arguments below but argues this court should nevertheless consider them. We decline to do so.

“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.” *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). The purpose for this waiver rule is to prevent appellants from raising new issues on appeal which the respondents had no opportunity to respond to and the district court had no chance to decide below. *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 1344-45, 905 P.2d 168, 172 (1995).

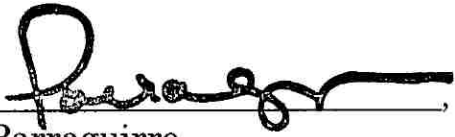
Here, Peterson’s remaining arguments have been waived because they do not go to the district court’s jurisdiction. Peterson does not challenge the district court’s personal jurisdiction over the parties or subject matter jurisdiction over Rochester’s claims. Rochester did not have an opportunity to respond to these arguments below, nor did the district court have a chance to rule on these issues. We therefore decline to consider them on appeal.

We reverse the district court's order as to the amount of damages and remand for the limited purpose of correcting that amount to \$170,000.00.

It is so ORDERED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

cc: Hon. Bita Yeager, District Judge
Kristine M. Kuzemka, Settlement Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Desert Ridge Legal Group
Madrid Hedges & Associates, PLLC
Spreng Law
Eighth District Court Clerk