IN THE SUPREME COURT OF THE STATE OF NEVADA

VERONICA BECERRA FABELA,
Appellant,
vs.
JOSE FABELA-COCA,
Respondent.

No. 86357

FILED

JUN 13 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a default judgment in a real property dispute. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

Respondent Jose Fabela-Coca sued appellant Veronica Becerra Fabela on December 13, 2022, seeking partition of real property and quiet title. Veronica was personally served at the property at issue on December 19, 2022. Because Veronica failed to plead or otherwise defend the complaint, a clerk's default was entered on January 12, 2023. The district court held a hearing on February 13, 2023, during which Veronica appeared without counsel. After the hearing, the district court entered the default judgment. Veronica now appeals challenging both the clerk's default and the entry of the default judgment.[1]

First, Veronica makes several arguments about the motion to set aside the clerk's default, all of which we reject. As to the argument that the default may be void because Jose did not file a notice of lis pendens, NRS 39.040 requires that a plaintiff file a notice of lis pendens "[i]mmediately after filing the complaint" but does not set forth an explicit

[1]TBI Mortgage Company was a named defendant below but was dismissed after entry of the default judgment and is not a party to this appeal.

time limitation. Jose did eventually file a notice of lis pendens. To the extent that the notice of lis pendens was untimely, we conclude that no relief is warranted because Veronica was a party to the proceedings and had actual knowledge of the proceedings. *Cf. Victor Plastering, Inc. v. Swanson Bldg. Materials, Inc.*, 200 P.3d 657, 660 (Utah Ct. App. 2008) (holding that a failure to file a notice of lis pendens as to a mechanics' lien on a property voided the lien "as to everyone *except those named in the action and those with actual knowledge of the action*") (emphasis added) (quoting *Projects Unlimited, Inc. v. Copper State Thrift & Loan Co.*, 798 P.2d 738, 752 (Utah 1990)).

Veronica also appears to argue that the district court violated due process by denying the motion to set aside the clerk's default without proper notice. Because "there can be no valid default judgment without a valid default," *Jacobs v. Sheriff, Washoe Cnty.*, 108 Nev. 726, 729, 837 P.2d 436, 438 (1992), the district court necessarily had to address Veronica's predicate motion to set aside default before reaching any issues pertaining to Jose's motion for default judgment at the hearing on default judgment. The record therefore reflects that Veronica filed the predicate motion to set aside the clerk's default, had notice of the hearing in which the district court addressed the predicate motion, and had an opportunity to be heard on the motion at the hearing. Thus, we conclude that Veronica's due process rights were not violated. *See Sw. Gas Corp. v. Pub. Utils. Comm'n of Nev.*, 138 Nev. 37, 46, 504 P.3d 503, 512 (2022) (rejecting a due process argument where the party was provided with both notice and an opportunity to be heard). And we also reject Veronica's argument that the district court abused its discretion by finding Veronica's failure to timely file a reply was fatal to the motion to set aside the default. The record reflects that the court

did not deny Veronica's motion solely because the reply was untimely. Instead, the district court concluded that the facts of the case did not support an order granting relief from the clerk's default. Thus, we conclude Veronica's argument in this regard is belied by the record.

Veronica next argues that the district court abused its discretion by finding that ongoing domestic violence did not constitute good cause for setting aside the default or for excusing the untimely filing of the reply. *See Cicerchia v. Cicerchia*, 77 Nev. 158, 161-62, 360 P.2d 839, 841 (1961) (holding that we review a district court's determinations as to motions to set aside default for an abuse of discretion), *superseded by rule on other grounds in Vargas v. J Morales Inc.*, 138 Nev., Adv. Op. 38, 510 P.3d 777 (2022). The district court did not find that domestic violence *could not* constitute good cause for setting aside an entry of default under NRCP 55(c); instead, the district court found, and the record supports, that Veronica failed to demonstrate how the domestic violence impacted her ability to timely answer Jose's complaint. *See Cicerchia*, 77 Nev. at 161-62, 360 P.2d at 841. This is true regardless of whether the district court applied the higher "competent evidence" standard needed to set aside a default judgment. *See Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 307 (1993) (holding that a district court order granting a motion to set aside default judgment under NRCP 60(b) must be supported by "competent evidence"), *holding modified on other grounds by Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 469 P.3d 176 (2020); *see also Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 426 n.40, 132 P.3d 1022, 1033 n.40 (2006) (holding that we will affirm the district court if it reaches the right result, even when it does so for the wrong reason). Therefore, we conclude the district court did

not abuse its discretion in denying Veronica's motion to set aside the clerk's default.

Second, Veronica argues that the default judgment is procedurally void on various grounds, all of which we reject. To the extent Veronica argues the default judgment could not be entered because she filed an answer, we disagree. Veronica identifies the pro se answer to Jose's opposition to the motion to set aside the default as an answer to the complaint. Even if that document could be construed as an answer, it was filed on January 31, 2023, more than 21 days after the complaint was served. Therefore, it would have been an untimely answer to the complaint. *See* NRCP 12(A)(i) (requiring an answer be filed 21 days after service of the summons and complaint); *see also Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 255, 259 (2018) ("While district courts should assist pro se litigants as much as reasonably possible, a pro se litigant cannot use his alleged ignorance as a shield to protect him from the consequences of failing to comply with basic procedural requirements."), *holding modified on other grounds by Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 469 P.3d 176 (2020). And thus, the default judgment would not be void even if the district court had treated Veronica's pro se answer to Jose's opposition to the motion to set aside the default as an answer to the complaint.

Veronica also argues that she received insufficient notice of the hearing on default judgment under NRCP 55(b)(2). Veronica concedes that she received notice of Jose's application to set a hearing on the default judgment and of Jose's corrected notice of the hearing, which stated that the hearing was "to set and determine the plaintiff's damages and other relief in favor of the plaintiff and against the defendant Veronica Becerra Fabela." As the corrected notice was filed nearly one month before the

hearing, and Veronica cites no authority supporting her contention that the notice was insufficient, Veronica fails to demonstrate that she did not receive written notice of the application for default judgment at least seven days before the hearing. *See* NRCP 55(b)(2); *see also Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that it is appellant's duty to "cogently argue, and present relevant authority, in support of his [or her] appellate concerns").

Lastly, Veronica argues that the default judgment is void because the matter had not been adjudicated as to TBI Mortgage Company when the default judgment was entered. The cases Vernonica cites for this proposition are distinguishable in that they address separate judgments for joint debtors. *See, e.g., Diamond Nat'l Corp. v. Thunderbird Hotel, Inc.*, 85 Nev. 271, 275, 454 P.2d 13, 16 (1969) (holding that if one joint debtor defaults, no separate judgment may be entered against that debtor since the remaining joint debtors have the right to defend for all of them). TBI Mortgage was not a joint debtor, and the complaint alleged no claims against it. Indeed, Jose filed a notice of dismissal as to TBI Mortgage after entry of default judgment. Therefore, the default judgment was not void based on this purported procedural deficiency. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Herndon

_____, J.
Lee

_____, J.
Bell

cc: Hon. Kathleen A. Sigurdson, District Judge
Margaret M. Crowley, Settlement Judge
Bittner & Widdis Law
Erickson Thorpe & Swainston, Ltd.
Washoe District Court Clerk