

IN THE SUPREME COURT OF THE STATE OF NEVADA

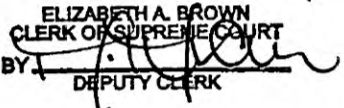
DOUGLAS B. ANSELL, AS GUARDIAN
FOR MINOR CHILD,
Appellant,
vs.
MARSHAL S. WILICK; MARSHAL S.
WILICK, LLC, A NEVADA LIMITED
LIABILITY COMPANY, D/B/A WILICK
LAW GROUP,
Respondents.

DOUGLAS B. ANSELL, AS GUARDIAN
FOR MINOR CHILD,
Appellant,
vs.
MARSHAL S. WILICK; MARSHAL S.
WILICK, LLC, A NEVADA LIMITED
LIABILITY COMPANY, D/B/A WILICK
LAW GROUP,
Respondents.

No. 86687

FILED

OCT 31 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

No. 86811

*ORDER AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING*

These are consolidated appeals from a district court judgment and postjudgment order regarding costs. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Douglas Ansell challenges the denial of NRCP 60(b)(1) relief from summary judgment and the district court's award of costs to Marshal Willick and the Willick Law Group (collectively, Willick). We affirm the district court's denial of Ansell's NRCP 60(b)(1) motion because the challenged summary judgment was not a final judgment amenable to NRCP 60(b)(1) relief. We reverse the award of costs because the district court did not consider Ansell's dual role as individual and guardian in the litigation.

We remand for the district court to award costs in accordance with this order.

This case began when Ansell sued Willick on behalf of Ansell's minor child, E.A., alleging that Willick improperly disclosed E.A.'s medical records. Ansell also requested the court appoint a guardian ad litem (GAL) for E.A. because of the contentious history between Ansell and Willick. Willick counterclaimed for abuse of process against Ansell, as E.A.'s guardian and as an individual. The district court appointed a GAL for E.A., but Ansell remained in the case in his guardian capacity and as an individual counterdefendant. Willick sought summary judgment on E.A.'s claims. The GAL did not oppose the motion and instead filed a report with the court recommending dismissal of E.A.'s claims as nonviable. Ansell's attorney failed to oppose the motion due to an alleged mental health crisis. The district court granted the unopposed motion.

After the court granted summary judgment, Ansell retained new counsel, moved for relief from summary judgment under NRCP 60(b)(1), and moved to dismiss the GAL. The district court denied Ansell's NRCP 60(b)(1) motion, concluding that it did "not find good cause to set aside this particular matter." The court granted Ansell's standalone motion to dismiss the GAL. Ansell then moved for summary judgment on Willick's counterclaim, which the district court granted. Ansell and Willick both moved for costs and to retax the other's costs. The district court granted Willick's motion for costs and denied Ansell's motion, determining Willick was the prevailing party and Ansell did not sufficiently prevail to qualify for costs. Ansell appealed the court's judgment and order awarding costs.

Ansell first challenges the district court's denial of NRCP 60(b)(1) relief. Ansell argues that the summary judgment against E.A.

should be set aside because Ansell's failure to oppose was the result of excusable neglect owing to Ansell's attorney's mental health crisis. See NRCP 60(b)(1) (providing that parties may obtain relief "from a final judgment, order, or proceeding" for the reasons of "mistake, inadvertence, surprise, or excusable neglect"). NRCP 60(b)(1) relief is only available for "a final judgment." The summary judgment order only resolved Willick's claims as to E.A. and did not address Willick's claims against Ansell. Thus, it was not a final judgment. This court considers "an order or judgment depend[ing] on 'what the order or judgment actually *does*, not what it is called.'" *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (quoting *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d, 729, 733 (1994)). Because NRCP 60(b)(1) relief is only available for final judgments, the rule is inapplicable here. When an order does not adjudicate all the claims in a dispute, as here, the determination of the court may be revised at any time before all claims are adjudicated. NRCP 54(b). Thus, rather than consider the district court's ruling under NRCP 60(b)(1), we analyze reconsideration of the grant of summary judgment under NRCP 54(b).

Here, the district court denied reconsideration of Ansell's motion before all claims were adjudicated, as permitted by NRCP 54(b). The Eighth Judicial District Court also has rules on motions for reconsideration. Relevant here is EDCR 2.24(b), which states that motions for reconsideration must be filed within 14 days of order of the judgment. Ansell contends that he only found out about the grant of summary judgment after any motion for reconsideration would have been untimely under EDCR 2.24(b), and we should not consider his motion as one for reconsideration. Although EDCR 2.24(b) requires a party to move for

reconsideration within 14 days, this court has acknowledged a district court's authority to implicitly enlarge that time under NRCP 54(b). *R.J. Reynolds Tobacco Co. v. Eighth Jud. Dist. Ct.*, 138 Nev., Adv. Op. 55, 514 P.3d 425, 429 n.2 (2022). The fact that Ansell's motion fell outside EDCR 2.24(b)'s 14-day window does not convince us that we should consider the motion as an NRCP 60(b)(1) motion, and we hold that it is a motion for reconsideration.

We review a district court's decision on reconsideration for an abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (citing 11 C. Wright et al., *Federal Rules of Practice & Procedure* § 2818, at 188 (2d ed. 1995)). "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. *Wright v. Watkins & Shepard Trucking, Inc.*, 968 F.Supp.2d 1092, 1096 (D. Nev. 2013) (quoting *U.S. Aviation Underwriters, Inc. v. WesAir, LLC*, No. 2:08-CV-00891-PMP-LRL, 2010 WL 1462707, at *2 (D. Nev., Apr. 12, 2010)). The record does not reflect an abuse of discretion. There was no newly discovered evidence or change in controlling law. Nor was there a showing that the initial decision to grant summary judgment was manifestly unjust. The district court notified Ansell's attorney of the judgment, and the notice is imputed to Ansell. *Lange v. Hickman*, 92 Nev. 41, 43, 544 P.2d 1208, 1209 (1976) (citing *Milner v. Dudrey*, 77 Nev. 256, 264, 362 P.2d 439, 443 (1961); *Aldabe v. Adams*, 81 Nev. 280, 286, 402 P.2d 34, 37 (1965)). Ansell did not provide any documentary evidence that his attorney was unresponsive due to a mental health breakdown. In fact, Ansell's attorney emailed the other attorneys in the case shortly before and after the


summary judgment order at issue. Lastly, Ansell makes no argument that he would have prevailed in defending the motion for summary judgment, and therefore did not show any resulting injustice. The district court did not abuse its discretion in denying reconsideration on the grant of summary judgment. We affirm.

Ansell next contends the district court abused its discretion in resolving the costs requests. *See LVMPD v. Blackjack Bonding, Inc.*, 131 Nev. 80, 89, 343 P.3d 608, 614 (2015) (explaining that this court reviews attorney fee and cost awards for an abuse of discretion). We agree. The district court neglected to consider Ansell's dual role in the litigation. Ansell is effectively two parties in this case. Ansell litigated E.A.'s claims as her guardian and defended against Willick's counterclaim as both E.A.'s guardian and as an individual. Willick prevailed on summary judgment against E.A.'s claims, so Willick may only recover costs from E.A., not Ansell.

The failure of E.A.'s claims do not affect Ansell's entitlement to costs for succeeding on every issue involving him individually. As stated in *Blackjack Bonding*, "a party need not succeed on every issue" to receive costs and fees, but Ansell did succeed on every issue involving him here. 131 Nev. at 90, 343 P.3d at 615 (emphasis added). While Willick prevailed against E.A., Ansell and E.A. prevailed against Willick on the counterclaim. Because Ansell was only in the case individually as a counterdefendant, Ansell should receive the costs incurred in his individual capacity defending against Willick's counterclaim. We reverse the district court's cost award, and remand for the district court to reconsider the award. On remand, the district court must allocate Willick's costs properly to E.A. and determine

what costs Ansell as an individual is entitled to for succeeding on the counterclaim. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 17
Israel Kunin, Settlement Judge
Kaempfer Crowell/Las Vegas
Clark Hill PLLC
Eighth Judicial District Court Clerk