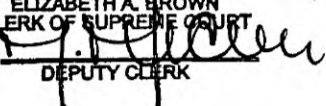


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GOLDBERG, KERSHEN & ALTMANN,
LLC, A DELAWARE LIMITED
LIABILITY COMPANY,
Appellant,
vs.
MT REAL ESTATE INVESTMENT,
INC.,
Respondent.

No. 85260-COA

FILED
OCT 31 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Goldberg, Kershen & Altmann, LLC (Goldberg) appeals from a district court order granting a motion to intervene and to set aside a default judgment. Eighth Judicial District Court, Clark County; David M. Jones, Sr. Judge.

Goldberg filed a quiet title action in which it alleged that it was the rightful owner of a property based upon its alleged adverse possession of the property for five years and payment of property taxes during that time. In its complaint, Goldberg named as defendants the property owners of record, John Barrier and John Harney. Goldberg also named as defendants several entities associated with a deed of trust that secured a promissory note concerning the property: the Martin W. Keough Trust, Martin W. Keough Trustee, and the Estate of Martin W. Keough. In addition, Goldberg alleged that a bankruptcy court had directed Barrier and Harney to surrender the property to Keough but noted that no deed had been recorded reflecting that transfer.

Goldberg subsequently filed an affidavit of service stating that it had served Barrier and Harney with copies of the summons and complaint. Barrier and Harney did not file an answer and clerk's defaults were entered, and Goldberg later filed a motion for default judgment against both. The district court granted the motion and entered an order granting a default judgment against both Barrier and Harney. Goldberg later filed notice that it voluntarily dismissed the Martin W. Keough Trust and Martin W. Keough Trustee as defendants but stated that its claim against the Estate of Martin W. Keough remained pending.

Respondent MT Real Estate Investment Inc. (MT) later entered an appearance and filed a motion to intervene and to set aside the default judgment. In its motion, MT contended that Goldberg sought to adversely possess the property against all parties with an interest in the property and contended that Goldberg failed to notify interested parties of the action. It asserted that it was the successor in interest to the Martin W. Keough Trust and as such was the beneficiary of the deed of trust. To that end, MT contended that it was a necessary party to the adverse possession action as it had an interest in the property and it therefore sought leave to intervene in this matter.

MT also moved the district court to set aside the default judgment pursuant to NRCP 60. MT contended that Goldberg failed to serve the necessary parties with the complaint or provide other notice to those parties of the adverse possession action. MT further contended that Goldberg's interest in the property was subordinate to its interest as the beneficiary of the deed of trust and that setting aside the default judgment was warranted so that MT could protect its interest. MT also contended that Goldberg's adverse possession claim lacked merit, that it had not met

the statutory requirements to adversely possess the property, and that it perpetrated a fraud upon the court.

Goldberg opposed the motion, urging the district court to reject MT's attempt to intervene in this matter and to deny MT's request to set aside the default judgment. Goldberg contended that MT did not hold the note secured by the deed of trust and questioned whether MT could successfully revive the note. Goldberg also asserted that the lien created by the deed of trust should be extinguished because ten years had expired since the debt secured by the deed of trust became due. Goldberg accordingly argued that MT did not have a valid interest in the property and thus should not be permitted to intervene. Goldberg also urged the court to decline MT's request to set aside the default judgment, as Goldberg contended the judgment was not entered against MT.

The district court ultimately entered an order permitting MT to intervene in this matter and setting aside the default judgment. The court noted that Goldberg sought to acquire an interest in real property via adverse possession and that Goldberg had represented that it had complied with the statutory requirements for adverse possession. The court found that, although a default judgment against the property owners had been entered, MT had an interest in the property pursuant to a recorded assignment of the deed of trust in its favor and that it could challenge the validity of Goldberg's claim of adverse possession. Based on the aforementioned information, the court concluded that MT had an interest in the relevant property and thus had standing to intervene in this action. The court also found that MT's interest in the property may be affected by this matter and no other party could protect its interest. Thus, the court concluded that MT's intervention was warranted. The court further found

that an assessment of the rightful owner of the property was critical to MT's ability to foreclose based on the deed of trust. In addition, the court found that there were disputed questions of fact and Nevada has a public policy in adjudicating cases on the merits. The district court therefore concluded that this matter should proceed to trial to ascertain the rightful owner of the property and it accordingly set aside the default judgment. This appeal followed.

First, Goldberg argues that the district court abused its discretion by granting MT's request to intervene in this matter. Goldberg contends that intervention was improper because MT's motion to intervene was untimely as it came after entry of a final judgment, as the district court had already issued the default judgment and Goldberg voluntarily dismissed most of the remaining parties.

"Determinations on intervention lie within the district court's discretion," and we generally defer to the court's exercise of its discretion. *Nalder v. Eighth Jud. Dist. Ct.*, 136 Nev. 200, 203, 462 P.3d 677, 682 (2020). "NRCP 24(a)(2) permits a party to intervene as a right where the party shows that (1) it has a sufficient interest in the subject matter of the litigation, (2) its ability to protect its interest would be impaired if it does not intervene, (3) its interest is not adequately represented, and (4) its application is timely." *Id.* at 206, 462 P.3d at 684.

Moreover, NRS 12.130(1)(a) provides that "[b]efore the trial, any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both." However, "[t]he plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment." *Lopez v. Merit Ins. Co.*, 109 Nev. 553, 556, 853 P.2d 1266, 1268 (1993). "[A] final

judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs." *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). "Thus, when a final judgment is reached, there necessarily is no pending issue left." *Nalder*, 136 Nev. at 207, 462 P.3d at 684 (internal quotation marks omitted).

Goldberg's contention that MT's motion to intervene was untimely lacks merit as MT did not seek leave to intervene in this matter subsequent to entry of a final judgment as Goldberg's claim against the Estate of Martin W. Keough remained pending. As a claim remained pending in this matter, neither the default judgment against Barrier and Harney nor the voluntary dismissals of the Martin W. Keough Trust and Martin W. Keough Trustee constituted a final judgment in the underlying case. Because a final judgment resolving all issues has not yet been entered, MT was not barred from seeking to intervene in this matter, and thus, MT's motion was timely. *See Lopez*, 109 Nev. at 556, 853 P.2d at 1267-68.

Beyond the timing of MT's request, in granting MT's motion to intervene, the district court found that MT's intervention was warranted because it claimed an interest in the property as the beneficiary of the deed of trust, that its interest in the property may be affected by this matter, and that no other party adequately represented its interest. Based on our review of the record and the court's findings regarding the factors articulated in *Nalder*, we cannot conclude that the district court abused its discretion in granting MT's motion to intervene. *See Nalder*, 136 Nev. at 203, 462 P.3d at 682; NRCPC 24(a)(2); *see also* NRS 40.090(2) (stating that in an adverse possession action, a plaintiff must include as defendants such persons known "to have some claim to an estate, interest, right, title, lien

or cloud in or on the land described in the complaint adverse to plaintiff's ownership").

Second, Goldberg argues that the district court abused its discretion by granting MT's motion to set aside the default judgment. Goldberg contends that MT should not have been permitted to move to set aside the default judgment because it should not have been permitted to intervene in this matter in the first place. Goldberg also contends that MT was not aggrieved or the party affected by the default judgment, and thus, it could not properly have sought to set aside a default judgment that did not affect its interests.

A district court order resolving a motion to set aside a default judgment is reviewed for an abuse of discretion. *Price v. Dunn*, 106 Nev. 100, 103, 787 P.2d 785, 787 (1990), *overruled in part on other grounds by NC-DSH, Inc. v. Garner*, 125 Nev. 647, 651 n.3, 218 P.3d 853, 857 n.3 (2009). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) (internal quotation marks omitted).

"[W]hen an intervenor intervenes, it is bound by all prior orders and adjudications of fact and law as though [it] had been a party from the commencement of the suit." *Est. of Lomastro v. Am. Fam. Ins. Grp.*, 124 Nev. 1060, 1067-68, 195 P.3d 339, 345 (2008) (internal quotation marks omitted). "Prior decrees should only be set aside, on the motion of the intervenor, if such decrees would deprive the intervenor of substantial rights which it has not been remiss in pressing." *Id.* at 1068, 195 P.3d at 345 (internal quotation marks and brackets omitted). In addition, when considering whether to set aside a default judgment "the district court

should recognize that the basic underlying policy is to have each case decided on its merits.” *Price*, 106 Nev. at 104, 787 P.2d at 787. Moreover “an appellate court is more likely to affirm a lower court ruling setting aside a default judgment than it is to affirm a refusal to do so. In the former case a trial upon the merits is assured, whereas in the latter it is denied forever.” *Yochum v. Davis*, 98 Nev. 484, 487, 653 P.2d 1215, 1217 (1982) (internal quotation marks omitted), *overruled in part by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997).

As explained previously, the district court permitted MT to intervene because the court found it claimed an interest in the property as the beneficiary of the deed of trust, MT’s interest in the property might be affected by the default judgment, and no other party could adequately represent its interest. See NRCP 24(a)(2). Because—as set forth above—the court properly permitted MT to intervene in this matter, it became a party to this case such that the district court appropriately considered MT’s request to set aside the default judgment. See *Est. of Lomastro*, 124 Nev. at 1068, 1069 n.17, 195 P.3d at 345, 346 n.17 (stating “[w]e conclude that when an intervenor wishes to assert defenses to liability on behalf of the original defendant, it must intervene before entry of default or move to set aside the default” and citing *Bliss v. Wiatrowski*, 724 A.2d 1264, 1269 (Md. Ct. Spec. App. 1999) for the proposition that a third party that would be bound by a default judgment should have the power to move to set aside the default judgment).

Moreover, the district court explained that Goldberg and MT disputed whether Goldberg actually met the statutory requirements of a valid adverse possession claim, that the court had not yet fully considered the factual questions raised by the parties, and that Nevada has a policy

preference for deciding cases on the merits. Considering the foregoing, the court found that ownership of the property should be determined at a trial.¹ The district court accordingly set aside the default judgment.

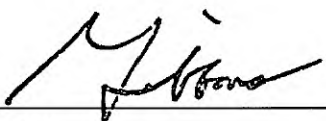
Under these circumstances, we cannot say that the district court's decision to set aside the default judgment was arbitrary or capricious or exceeded the bounds of law or reason. Goldberg does not demonstrate that MT was remiss in seeking to set aside the default judgment. In addition, the court reviewed the issues in this matter and, contrary to Goldberg's assertion that MT was not aggrieved by the default judgment, the court found that the question of the ownership of the property was critical to MT's interest in the property such that failure to set aside the default judgment could deprive MT of its substantial rights. *See id.* at 1068, 195 P.3d at 345. The court also noted the public policy of deciding cases on the merits, *see Price*, 106 Nev. at 104, 787 P.2d at 787, which is of particular importance in an adverse possession action as NRS 40.110(1) states that, in

¹Goldberg states in its reply brief that it proved its adverse possession claim at the hearing concerning its motion for a default judgment. However, the order for default judgment contains no findings of fact concerning the merits of Goldberg's adverse possession claim and the district court's later order granting the motion to set aside the default judgment found—contrary to Goldberg's appellate contentions—that the claims at issue in this matter had not yet been reviewed on the merits. Moreover, Goldberg did not provide this court with a copy of the transcript of the hearing concerning its motion for default judgment, and thus, we necessarily presume that this missing portion of the record supports the district court's conclusion that the ownership of the property had not yet been proven. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting appellant has the burden of providing this court with an adequate appellate record and when he “fails to include necessary documentation in the record, [this court] necessarily presume[s] that the missing portion supports the district court's decision”).

such cases, a district court “must not enter any judgment by default, but must in all cases require evidence of plaintiff’s title and possession and receive such legal evidence as may be offered respecting the claims and title of any of the defendants and must thereafter direct judgment to be entered in accordance with the evidence and the law.”

In light of the foregoing, we conclude that Goldberg fails to demonstrate that the district court abused its discretion by granting MT’s motion to set aside the default judgment. *See Price*, 106 Nev. at 103, 787 P.2d at 787. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²Insofar as Goldberg raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief. In addition, we have considered the parties’ responses to this court’s order to show cause and conclude no additional action is warranted.

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 29
Hon. David M. Jones, Senior Judge
James A. Kohl, Settlement Judge
Origins Legal Group, LLC
Christopherson Law Offices
Eighth District Court Clerk