


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDI ABTS, AN INDIVIDUAL,
Appellant,
vs.
CYNTHIA ARNOLD-ABTS, AN
INDIVIDUAL,
Respondent.

No. 87222-COA

FILED

NOV 07 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brandi Abts appeals from a final judgment following a short bench trial. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

This appeal involves proceedings following remand in *Abts v. Arnold-Abts*, Docket No. 83595-COA, 2023 WL 2229677, (Nev. Ct. App. Feb. 24, 2023) (Order of Reversal and Remand), wherein we reversed and remanded the district court's order granting respondent Cynthia Arnold-Abts' motion to set aside a default judgment. In doing so, we directed the district court to "fully address the appropriate considerations for granting or denying NRCP 60(b) relief from a default judgment . . . and issue explicit, detailed findings of fact and conclusions of law, preferably in writing, to support its decision with respect to [Cynthia's motion]." *Id* at *3.

On remand, the court held an evidentiary hearing wherein the parties addressed the issue of whether Brandi had properly served Cynthia with the summons and complaint in the underlying case. Following the

evidentiary hearing, the district court again granted Cynthia's motion to set aside the default judgment against her, on the grounds that (1) it considered Cynthia's testimony that she only became aware of this case in 2018 credible; (2) there are multiple discrepancies between Brandi's filings, sworn affidavits, and testimony at the evidentiary hearing; (3) it appears that Brandi only attempted to personally serve Cynthia twice before filing her motion for service by publication, which does not support a finding of due diligence; (4) Brandi's affidavit of due diligence is not supported by the evidence as she "under oath conceded that she did not perform the tasks stated in the Affidavit" and "failed to provide any details and/or documentation to support the allegation that she performed such tasks;" and (5) the order for service by publication was entered days after the 120 day service deadline had expired.

In light of these findings, the district court concluded that the decision to allow service by publication was clearly erroneous under "the facts and circumstances and the totality of the evidence presented at the evidentiary hearing" and that the default judgment was void under NRCPC 60(b)(4) as the summons and complaint were never served upon Cynthia, violating Cynthia's due process rights. In doing so, the district court relied on *Price v. Dunn*, an opinion wherein the supreme court reversed and remanded an order denying a motion to set aside a judgment terminating parental rights that was served by publication, holding that the respondent's "failure to exercise due diligence in locating [appellant's] whereabouts before making service upon him through publication violated the Nevada Rules of Civil Procedure as well as [the appellant's] due process

rights.” 106 Nev. 100, 105, 787 P.2d 785, 788 (1990). Alternatively, the court found that, by falsifying the information on her due diligence affidavit, Brandi committed extrinsic fraud upon the court, excusing the six-month time limit under NRCP 60(b)(3). For these reasons, the district court set aside the default judgment and reinstated the orders vacated by this court’s prior order of reversal and remand, including the judgments entered during the short trial after the initial decision to set aside the default judgment. Brandi now appeals.

On appeal, Brandi presents numerous arguments challenging the district court’s order. However, many of these arguments, including her arguments (1) that she was not served with Cynthia’s exhibit book for the evidentiary hearing; (2) that she did not have time to serve written discovery on Cynthia before the evidentiary hearing; (3) that Cynthia was allowed to place her exhibits on a zip drive; and (4) addressing scheduling issues with the department prior to the evidentiary hearing, were not raised in the district court below and are therefore waived on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“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.”)

With regard to Brandi’s remaining arguments, namely that the district court failed to properly consider the evidence at the evidentiary hearing, and that the default judgment was appropriate because Brandi completed service by publication—we have considered them and conclude that they do not provide a basis for relief. To the extent that Brandi argues that the district court failed to properly consider the evidence presented at

the evidentiary hearing, Brandi does not provide any cogent argument or explanation to rebut the district court's conclusion that "the evidence of [Brandi's] unsuccessful attempts to serve [Cynthia] by mail or [at] erroneous addresses do not support due diligence," other than to simply express disagreement with the conclusions set forth in the district court's order. Thus, we need not consider her argument in this regard. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued). And even if she had developed this point, it is well established that this court will not reweigh witness credibility or evidence on appeal. See *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). Thus, these arguments do not provide grounds to reverse the district court's decision to set aside the default judgment.

Moreover, Brandi does not mention or challenge the district court's analysis and application of *Price*, wherein it found that Brandi's failure to exercise due diligence prior to resorting to service by publication violated the NRCP and Cynthia's due process rights, and thus supported setting aside the default judgment. See *Price*, 106 Nev. at 105, 787 P.2d at 788 (concluding that the failure to exercise due diligence is an appropriate ground for setting aside a default judgment under NRCP 60). As a result, she has waived any challenge to this determination. See *Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983.

Additionally, because motions to set aside a judgment as void under NRCP 60(b)(4) are not subject to the time limits of NRCP 60(c)(1) (setting a six-month time limit for motions to set aside under NRCP


60(b)(1), (2) or (3)), Brandi's argument that Cynthia's motion to set aside the default was untimely does not provide a basis for reversing the challenged order.

Finally, Brandi argues that reversal is appropriate because the district court was biased against her. We conclude that relief is unwarranted on this point because Brandi has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and its decisions did not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); see *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification").

Thus, for the reasons set forth above, we conclude that the district court did not abuse its discretion when it found that the default judgment should be set aside under NRCP 60(b)(4). See *Willard v. Berry-Hinckley Indus.*, 139 Nev., Adv. Op. 52, 539 P.3d 250, 255 (2023) (reviewing a district court order granting an NRCP 60 motion to set aside for an abuse of discretion). And because Brandi does not challenge or otherwise address

the district court's resulting reinstatement of the previously entered short trial judgment and the order resolving her request for a new trial, any arguments related to those decisions are waived. *See Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Joseph Hardy, Jr., District Judge
Brandi Abts
Patricia A. Marr, Ltd.
Eighth District Court Clerk

¹Insofar as the parties raise 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.