

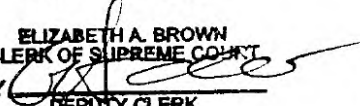
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HENRY CROCKETT, II D/B/A STATE
FARM,
Appellants,
vs.
2960 ST. ROSE PARKWAY, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 87699-COA

FILED

NOV 07 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Henry Crockett, II D/B/A State Farm appeals from an order denying a motion for relief from judgment in a landlord-tenant contract dispute. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

In December 2020, respondent 2960 St. Rose Parkway, LLC (St. Rose) filed a complaint against Crockett, alleging various contract-related claims. The complaint alleged that Crockett signed a lease with St. Rose for a premises. Although the lease ended on May 31, 2020, St. Rose alleged that Crockett discontinued paying rent around April 1, 2020, and remained in possession of the premises through August 31, 2020, resulting in over \$15,000 in damages. Crockett disputed the allegations, and the parties engaged in extensive motion practice with Crockett contesting the amount of money he owed St. Rose.

St. Rose thereafter filed a renewed motion for summary judgment based on Crockett's failure to respond to its requests for

admission, rendering the requests admitted under NRCP 36(a)(3).¹ Based on those admissions, St. Rose argued that there were no genuine issues of material fact with respect to its claims. St. Rose argued that it set forth its claim for damages in a supplement to one of its motions in June 2021, which contained a declaration of its property manager and a breakdown of the amount due. While Crockett disputed the amount of damages, St. Rose contended that he failed to provide any admissible evidence to rebut its calculation and failed to participate in the discovery process. Crockett responded to the motion, contesting the allegations in the complaint and the amount of damages.

Following a hearing that Crockett failed to attend—ostensibly for medical reasons—the district court entered a written order granting St. Rose’s renewed motion for summary judgment based on St. Rose’s unanswered requests for admission, which it deemed admitted pursuant to NRCP 36(a)(3), and entered judgment in favor of St. Rose.

Following the grant of summary judgment, Crockett filed a motion to set aside the judgment, requesting a new hearing and again challenging the amount of damages. St. Rose opposed the motion, and Crockett filed a reply. The district court denied the motion to set aside.

Rather than appealing that order,² Crockett filed a second motion seeking to set aside the grant of summary judgment “[p]ursuant to

¹NRCP 36(a)(3) provides that, once a request for admission is served, “[the] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.”

²Crockett filed two unsuccessful appeals attempting to challenge the district court’s “decision to grant settlement judgment,” but our supreme

Federal Rule of Civil Procedure 60(b)(2), (b)(3) and (b)(6).” He argued that newly discovered evidence demonstrated that St. Rose obtained the judgment based on fraud, misrepresentation, or other misconduct. Relying on the declaration from St. Rose’s property manager, Crockett claimed he had recently discovered that St. Rose submitted falsified information to the court to support its claims, knowingly filed incorrect billing statements, and failed to utilize his security deposit. Crockett contended that the evidence was not available to him previously “due to no trial” and St. Rose’s “intentional concealment.” He also argued that he was unable to present his “suspicion” of fraud and other misconduct, that the misconduct prevented him from fully presenting his case, and that it was in the interest of justice to grant him relief from the judgment. St. Rose opposed the motion and Crockett filed a reply.

The district court entered a written order denying Crockett’s second motion to set aside the judgment, concluding that summary judgment was appropriately granted. The court found that the motion should have been brought under the Nevada Rules of Civil Procedure, rather than the federal rules, but that, regardless, Crockett’s motion relied upon evidence which was not newly discovered and had been available earlier in the proceedings during discovery, but Crockett failed to participate in the discovery process (NRCP 60(b)(2)). The court further found that Crockett failed to establish that the judgment was based on

court dismissed each appeal because they were filed before the district court entered written orders denying Crockett’s initial motion to set aside. See *Crockett v. 2960 St. Rose Pkwy, LLC*, No. 85601, 2023 WL 1770304 (Nev. Feb. 3, 2023) (Order Dismissing Appeal) and *Crockett v. 2960 St. Rose Pkwy, LLC*, No. 86453, 2023 WL 3574689 (Nev. May 19, 2023) (Order Dismissing Appeal).

fraud (NRCp 60(b)(3)), and that there was no justification for relief under NRCp 60(b)(6). The court also found that Crockett failed to establish mistake, inadvertence, surprise, or excusable neglect (NRCp 60(b)(1)), although Crockett did not rely upon that provision in his motion. This appeal followed.³

On appeal, Crockett's arguments largely focus on the district court's grant of summary judgment, rather than the denial of his second motion to set aside that judgment, and his contention that there is an ongoing dispute over the amount he owed St. Rose. He asks that this court set aside the district court's grant of summary judgment so that he has the opportunity to be heard at trial.

The district court has wide discretion to grant or deny a motion to set aside a judgment, and its determination will not be disturbed on appeal absent an abuse of that discretion. *Vargas v. J Morales Inc.*, 138 Nev. 384, 387, 510 P.3d 777, 780 (2022). Here, this appeal involves Crockett's second motion to set aside the court's grant of summary judgment, and in that motion, he alleged that newly discovered evidence showed that St. Rose obtained the judgment by fraud, misrepresentation, or misconduct. As discussed above, the district court rejected that contention, finding—among other things—that Crockett's motion failed to establish that relief was warranted under NRCp 60(b), and that the

³Crockett also purported to challenge the district court's order granting the renewed motion for summary judgment as part of this appeal, but the supreme court dismissed that part of his appeal because the notice of appeal was untimely as to that order. *See Crockett v. 2960 St. Rose Parkway, LLC*, Docket No. 87699 (Order Dismissing Appeal in Part, January 10, 2024). Thus, only the denial of Crockett's second motion to set aside the grant of summary judgment is before us in this appeal.

evidence on which Crockett relied was available during discovery, which Crockett failed to participate in, and was, therefore, not newly discovered.


On appeal, Crockett does not address NRCP 60(b) or any of the associated bases for the district court's order or explain how he believes the court abused its discretion in denying his motion to set aside. As a result, he has waived any argument challenging the court's decision in this regard. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").

Under these circumstances, we cannot conclude that the district court abused its discretion by denying Crockett's second motion to set aside the grant of summary judgment to St. Rose. *See Vargas*, 138 Nev. at 387, 510 P.3d at 780. We, therefore,

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

⁴To the extent Crockett raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 14
Henry Crockett, II
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP/Las Vegas
Eighth District Court Clerk