IN THE SUPREME COURT OF THE STATE OF NEVADA

KAREN HARWOOD,
Appellant,
vs.
GEARY LEON MANESS,
Respondent.

No. 38237

FILED

JUN 06 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order setting aside a prior default judgment under NRCP 60(b) in an independent action. Appellant Karen Harwood contends that the district court erred (1) in granting relief under NRCP 60(b) because relief was requested more than six months after entry of the default judgment, (2) in purportedly finding fraud upon the court without clear and convincing evidence, and (3) in finding that respondent Geary Leon Maness was not personally served with process in the prior action. We disagree and affirm.

First, NRCP 60(b) provides two methods for obtaining relief from a final judgment: either by a motion or by an independent action.[1] When the statutory six-month period to obtain relief from judgment by motion has expired, an independent action may be brought to obtain

[1]Pickett v. Comanche Construction, Inc., 108 Nev. 422, 836 P.2d 42 (1992).

relief.[2] Thus, the six-month time limit under NRCP 60(b) did not bar Maness's independent action for relief from the judgment.

Second, Harwood's assertion that the district court based its decision on a finding of fraud upon the court is not supported by the record. The district court's June 27, 2001 order specifically states that relief from the default judgment is granted because Maness was not properly served with process and hence the prior judgment was void.

Last, Harwood contends that the district court erroneously found that Maness had not been served with process. A trial court's findings will not be disturbed unless they are clearly erroneous and not based on substantial evidence.[3] It is the role of the fact finder to judge credibility of witnesses, and consequently, this court will not substitute its own evaluation of the evidence for that of the district court when the district court had an opportunity to hear the witnesses and judge their demeanor.[4]

Here, although Harwood's process server and a deputy sheriff testified that Maness was served with the summons and complaint, Maness himself testified that he was not served, or that he was too intoxicated to remember being served. Substantial evidence in the record supports Maness's claim that he was intoxicated at the time of the alleged service. Additionally, there was no evidence that a copy of the summons

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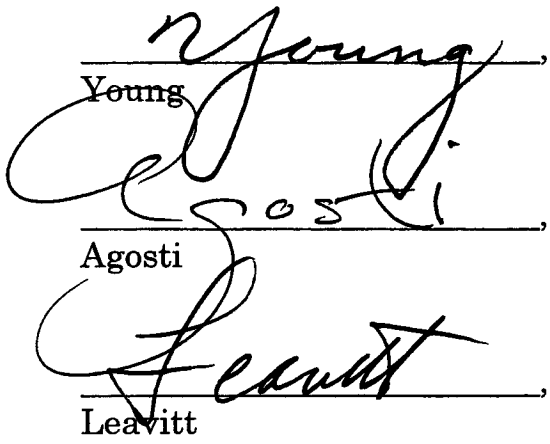
[2]Id. at 426-27, 836 P.2d at 45; Nevada Industrial Dev. v. Benedetti, 103 Nev. 360, 741 P.2d 802 (1987).

[3]See DeLee v. Roggen, 111 Nev. 1453, 907 P.2d 168 (1995).

[4]See Kobinski v. State, 103 Nev. 293, 738 P.2d 895 (1987).

and complaint was returned to Maness upon his release from jail; such evidence would have tended to indicate that he had been previously served. Under the circumstances, the district court's finding of lack of service was not clearly erroneous, and we therefore

ORDER the judgment of the district court AFFIRMED.[5]



_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Lee A. Gates, District Judge
Kenneth L. Hall
Geary Leon Maness
Clark County Clerk

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[5]See Scrimer v. Dist. Ct., 116 Nev. 507, 998 P.2d 1190 (2000) (noting that good public policy dictates that cases be adjudicated on their merits).