IN THE SUPREME COURT OF THE STATE OF NEVADA

TAYLOR JOHNSON, AN INDIVIDUAL,
Appellant,
vs.
BRITTNAY MELENDEZ, AN INDIVIDUAL,
Respondent.

No. 86754

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to set aside a default judgment and to enforce a settlement in a tort action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

The present dispute arises from a car accident involving Taylor Johnson and Brittnay Melendez. Following the accident, Melendez accepted a private settlement from GEICO, Johnson's insurer. Despite this settlement, Melendez filed suit against Johnson for damages from the car accident. Melendez attempted to serve Johnson by searching for Johnson's address through the DMV, voter registration records, Clark County Assessor's Office, Clark County Recorder's Office, Nevada Secretary of State, Clark County, city of Las Vegas, and North Las Vegas business license records, Clark County District Court, Clark County Family Court, Clark County Detention Center, city of Las Vegas Jail, city of Henderson Jail, and the Nevada Department of Corrections. Nevertheless, Melendez was unable to find a workable address for Johnson. Melendez was also unable to reach Johnson through seven personal attempts at service. Johnson had moved and failed to update his address with the DMV. After failing to locate Johnson, Melendez served by alternative means through the DMV under NRS 14.070.

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Johnson, apparently unaware of the lawsuit, failed to file an answer. The district court entered a default judgment against Johnson. After entry of the judgment, Melendez contacted GEICO for payment.

Johnson then moved to set aside the default judgment and to enforce the original settlement. The district court denied Johnson's motion and Johnson appealed.

This court reviews the denial of a motion to set aside a default judgment for an abuse of discretion. *Hotel Last Frontier Corp. v. Frontier Props., Inc.*, 79 Nev. 150, 153, 380 P.2d 293, 294 (1963). We conclude the district court abused its discretion by failing to apply relevant precedent and failing to consider all relevant factors for setting aside a default judgment.

First, this court clarified in *Browning v. Dixon*, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998), reasonable efforts a plaintiff should undertake before resorting to alternative service. In *Browning*, this court noted that

> [a]lthough Dixon made 'routine checks' to locate Browning, he made no apparent attempt to locate Browning through Browning's employer or insurer, both of which were known to him. In so doing, Dixon ignored other reasonable methods for locating Browning and failed, under the circumstances, to apprise Browning of the action pending against him.

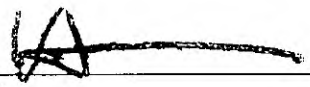
Id. The facts here are indistinguishable. Although Melendez took certain efforts to locate Johnson, Melendez made no apparent attempt to locate Johnson through GEICO, his known insurer with whom Melendez had contact. Due diligence does not require plaintiffs to pursue every conceivable path but does require pursuing reasonable steps that may lead to proper personal service and eliminate the need for alternative service.

Contacting a known insurer is such a step. *See id.* Thus, we conclude the district court abused its discretion by failing to set aside the default judgment based on Browning's clearly applicable precedent. *See id.* ("A default judgment not supported by proper service of process is void and must be set aside.").

Second, when considering whether to set aside a judgment, "district courts must issue explicit and detailed findings, preferably in writing, with respect to the four *Yochum* factors to facilitate this court's appellate review . . . for an abuse of discretion." *Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 471, 469 P.3d 176, 179-80 (2020). The district court failed to do so here. The *Yochum* factors, which counsel in favor of setting aside a judgment, are "(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith." *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled on other grounds in Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997). Though no party here addressed the *Yochum* factors to the district court, this does not diminish the district court's duty to consider such factors. We conclude, the district court abused its discretion by failing to fulfill this duty.

Considering the district court's abuse of discretion in failing to apply *Browning* or *Yochum*, we necessarily must reverse the district court's denial of Johnson's motion to set aside the default judgment. We also note there is an issue regarding the impact of the settlement between Melendez and Geico on the underlying matter that should be considered by the district court on remand as part of the *Yochum* analysis. Accordingly, we

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



_____, J.
Herndon

_____, J.
Lee

_____, J.
Bell

cc: Hon. Kathleen E. Delaney, District Judge
Paul M. Haire, Settlement Judge
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP/Las Vegas
Hanks Law Group
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Eighth Judicial District Court Clerk