IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCI BEAUTY, LLC, A NEVADA DOMESTIC LIMITED-LIABILITY COMPANY,
Appellant,
vs.
SHLOMI ROT,
Respondent.

No. 87422-COA

FILED

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Marci Beauty, LLC appeals from a district court order denying an NRCP 60(b) motion to set aside a default judgment in a business dispute. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

In August 2019, respondent Shlomi Rot filed a complaint against Marci Beauty and two individuals, Shaul Rappaport and Marc Delao, alleging causes of action for breach of contract and breach of fiduciary duties and seeking damages. Rot alleged that he, Rappaport, and Delao formed Marci Beauty in 2017 and that their operating agreement specified that Rot and Rappaport each owned 40 percent of the company while Delao owned 20 percent. Rot further alleged that, in August 2018, Rappaport and Delao improperly and involuntarily withdrew him as a member, and he did not receive his share of Marci Beauty's fair market value when he was withdrawn. Rot later amended his complaint to additionally seek declaratory relief.

After being unable to locate Rappaport, who was Marci Beauty's registered agent, and Delao, Rot filed affidavits of due diligence from a licensed private investigator, and the district court permitted Rot to serve the parties by publication. He later filed affidavits of publication for Rappaport, Delao, and Marci Beauty.

In August 2020, after defendants failed to respond to the complaint despite the completion of service by publication, Rot filed a three-day notice of intent to take default against the defendants. In November 2021, the district court entered an order concluding that service by publication for each defendant was completed, and a clerk's default was entered. Rot subsequently applied for a default judgment, alleging that he sustained $4,611,070.50 in damages, which was based on 40 percent of Marci Beauty's $11,520,000 in estimated earnings since August 2018 and $3,070.50 in attorney fees.

The district court held a prove-up hearing for damages. Rot testified that he believed the value of Marci Beauty was around $11 million, based on his 17 years in the beauty industry, a letter from the owner of a comparable company who outlined "exactly how much average this company can sell in a year," and the markup on Marci Beauty's products. At the conclusion of the hearing, the district court noted that Rappaport, Delao, and Marci Beauty were properly served but had not answered the complaint and, consequently, there was no discovery conducted. The court stated that it would grant a default judgment and that the damages would be based on Rot's knowledge and expertise in the industry. The court later

entered a written order granting a default judgment against Rappaport, Delao, and Marci Beauty for $4,611,070.50.

Within six weeks, Marci Beauty and Rappaport[1] filed a motion to set aside the default judgment pursuant to NRCP 60(b), which Rot opposed. The district court held a hearing on the motion to set aside and heard arguments by the parties. Rappaport and Marci Beauty argued that the default judgment should be set aside given that they timely moved to set aside the judgment after becoming aware of it, Nevada has a policy of deciding cases on the merits, and the $4.6 million judgment should be heard on the merits because Rot had no involvement with the company for several years. They also argued that the factors set forth in *Yochum v. Davis*, 98 Nev. 484, 486 653 P.2d 1215, 216 (1982), *overruled on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997), weighed in favor of setting aside the judgment.

Rot argued that Rappaport listed his personal address as the registered agent's address on the Secretary of State's website and failed to update that address until 2020, so Marci Beauty did not have a registered agent to serve, and Marci Beauty had a duty to update their registered agent information with the Secretary of State. Additionally, Rot argued the court had ruled that the defendants were properly served, so there was no basis to set aside the default.

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[1]Delao did not file a motion to set aside and has not appeared in the case.

After hearing arguments, the district court granted the motion to set aside with respect to Rappaport individually, noting that he was not personally served and did not appear to have notice of the suit. However, the court denied the motion with respect to Marci Beauty, stating that it was "very troubled by the Marci Beauty, LLC issue. Because as a business entity registered in the State of Nevada, they have obligations to the public and to the Secretary of State to comply with all the rules and regulations governing, providing notice to consumers, anybody who might want to sue them . . . ." The court stated that it took seriously the fact that there was no way for anyone to serve Marci Beauty via a registered agent, and Rappaport chose not to update the address. Because there was no way to serve Marci Beauty, the court found that was "pretty serious" and it did not "see any way around that." It concluded that failing to update the registered agent address was not mistake or inadvertence but instead was "a very deliberate thing to not update that information." In orally resolving the motion, the court did not make findings regarding or otherwise address or acknowledge the *Yochum* factors.

The district court subsequently entered a written order that reflected the above. Like the court's oral decision, the written order resolving the motion to set aside the default judgment fails to make findings regarding or otherwise address the *Yochum* factors. The court later certified this order as final and found that there was no just reason for delay pursuant to NRCP 54(b). This appeal followed.

We review the denial of an NRCP 60(b)(1) motion for an abuse of discretion and the district court has wide discretion in resolving such

motions. *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018), *holding modified by Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 470-71 n.6, 469 P.3d 176, 180 n.6 (2020). Nevertheless, the district court abuses its discretion when it disregards established legal principles. *McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. 610, 617, 310 P.3d 555, 559 (2013).

Under NRCP 60(b)(1), the district court may relieve a party from a final judgment on grounds of "mistake, inadvertence, surprise, or excusable neglect." "NRCP 60(b)(1) operates as a remedial rule that gives due consideration to our court system's preference to adjudicate cases on the merits, without compromising the dignity of the court process." *Willard*, 136 Nev. at 469, 469 P.3d at 179. In *Yochum*, the supreme court held that, when a district court determines whether grounds for NRCP 60(b)(1) relief exist, the district court must apply four factors: "(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*, 98 Nev. at 486, 653 P.2d at 1216. The district court must also consider Nevada's bedrock policy to adjudicate cases on their merits whenever feasible in resolving an NRCP 60(b)(1) motion. *Rodriguez*, 134 Nev. at 657, 428 P.3d at 257.

Our supreme court has emphasized "that our ability to review a district court's NRCP 60(b)(1) determination for an abuse of discretion necessarily requires district courts to issue findings pursuant to the [*Yochum*] factors in the first instance." *Willard*, 136 Nev. at 470-71, 469 P.3d at 180. Thus, " 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 of NRCP 60(b)(1) determinations." *Id.* at 471, 469 P.3d at 180. A district court abuses its discretion when it makes an NRCP 60(b)(1) determination without reviewing all of the *Yochum* factors. *Id.*

On appeal, Marci Beauty argues the district court abused its discretion by failing to make explicit findings as to the *Yochum* factors and consider Nevada's policy of adjudicating cases on the merits when it denied Marci Beauty's NRCP 60(b) motion to set aside the default judgment. In response, Rot argues that the challenged order could be read to apply to some of the *Yochum* factors, but contends that, if reversal is necessary, then the district court should be directed to make the proper findings on remand in the first instance.

As detailed above, the district court failed to consider and make findings regarding the *Yochum* factors or Nevada's policy of adjudicating cases on the merits either contemporaneously on the record or in its written order. Critically, the written order does not address a single *Yochum* factor, nor cite to *Yochum* or address any of the parties' arguments regarding *Yochum*, much less make the explicit findings as required by *Willard*, 136 Nev. at 470-71, 469 P.3d at 180. Under these circumstances, we reject Rot's assertion that we should nonetheless "read" the district court's order as applying certain of the *Yochum* factors and conclude the district court abused its discretion in denying the motion to set aside as to Marci Beauty without addressing the required factors.

"Without an explanation of the reasons or bases for a district court's decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation." *Boonsong Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011). Because the district court abused its discretion when it did not address the *Yochum* factors, we conclude that reversal and remand is required. *See Willard*, 136 Nev. at 471, 469 P.3d at 180. On remand, the district court shall reconsider Marci Beauty's motion for NRCP 60(b)(1) relief, in compliance with *Willard* and *Yochum*, by making the required explicit findings relating to all four factors as well the general policy in favor of deciding cases on the merits.

It is so ORDERED.[2]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[2]Insofar as Marci Beauty 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.

We note, however, that because we are not setting aside the default judgment, vacating the attorney fees awarded as part of the default judgment is not proper at this stage in the proceedings and instead should be revisited by the district court on remand.

cc: Hon. Gloria Sturman, District Judge
Janet Trost, Settlement Judge
Saul Ewing Arnstein & Lehr, LLP/Miami
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