

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY M. HANSON,  
Appellant,  
vs.  
LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT,  
Respondent.

No. 38420

**FILED**

FEB 04 2002

JANETTE M. BLOW,  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order denying a motion to set aside a default judgment in a civil forfeiture action. “[A] trial court’s exercise of discretion in granting or denying a motion to set aside a default judgment will not be disturbed on appeal absent an abuse of discretion.”<sup>1</sup> But “[a] default judgment not supported by proper service of process is void and must be set aside.”<sup>2</sup>

NRCP 4(e)(1)(i) allows service by publication only when the defendant “resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service.” Here, appellant Gregory Hanson was being held in the Clark County Detention Center when respondent Las Vegas Metropolitan Police Department (“LVMPD”) moved to effectuate service by publication. Thus, the only NRCP 4(e)(1)(i) factor that would permit service by publication is that Hanson, “after due diligence,” could not be found within Nevada.

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<sup>1</sup>Gassett v. Snappy Car Rental, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995) (quoting Minton v. Roliff, 86 Nev. 478, 481, 471 P.2d 209, 210 (1970)).

<sup>2</sup>Browning v. Dixon, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998).

“[T]here is no objective, formulaic standard for determining what is, or is not, due diligence.”<sup>3</sup> Rather,

“[d]ue diligence must be tailored to fit the circumstances of each case. It is that diligence which is appropriate to accomplish the end sought and which is reasonably calculated to do so.”<sup>4</sup>

We conclude that LVMPD failed to exercise due diligence in locating Hanson before resorting to service by publication. LVMPD knew - on the date it moved the district court for service by publication - that Hanson had been taken into federal custody. But LVMPD apparently made no attempt to locate Hanson in federal custody. Further, LVMPD knew, apparently before completing service by publication, precisely where Hanson was being detained by federal authorities, given that LVMPD personally served Hanson in the Clark County Detention Center with a forfeiture complaint and summons in a different case. Service by publication is ineffective if the defendant’s location is discovered before publication is completed.<sup>5</sup>

That Hanson apparently learned of the instant forfeiture case from the individual serving the complaint and summons in the other forfeiture case is of no moment. “[A]ctual notice of a suit is not an effective substitute for service of process.”<sup>6</sup> Thus, without proper service, “the default judgment was void due to a failure of jurisdiction.”<sup>7</sup>

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<sup>3</sup>Abreu v. Gilmer, 115 Nev. 308, 313, 985 P.2d 746, 749 (1999).

<sup>4</sup>Id. (quoting Parker v. Ross, 217 P.2d 373, 379 (Utah 1950)).

<sup>5</sup>Mason-Jares, Ltd. v. Peterson, 939 P.2d 522 (Colo. Ct. App. 1997).

<sup>6</sup>Abreu, 115 Nev. at 314 n.5, 985 P.2d at 749 n.5.

<sup>7</sup>Gassett, 111 Nev. at 1420, 906 P.2d at 261.

NRCP 60 provides a remedy for the entry of a void default judgment. Subsection (b) provides:

On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (3) the judgment is void.<sup>8</sup>

A motion under this provision must be made within “a reasonable time” after entry of the default judgment.<sup>9</sup> Even assuming that Hanson’s five-month delay in contesting the default judgment was unreasonable under NRCP 60 subsection (b), subsection (c) gave Hanson six months to contest the default judgment:

When a default judgment shall have been taken against any party who was not personally served with summons and complaint, . . . and who has not entered his general appearance in the action,<sup>[10]</sup> the court, after notice to the adverse party, upon motion made within six months from the date of rendition of such judgment, may vacate such judgment and allow the party . . . to answer to the merits of the original action.<sup>11</sup>

Under this subsection, Hanson established a prima facie case to set aside the default judgment: he was not personally served, and he timely moved to set aside the judgment.<sup>12</sup> Consequently, the district court

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<sup>8</sup>NRCP 60(b).

<sup>9</sup>Id.

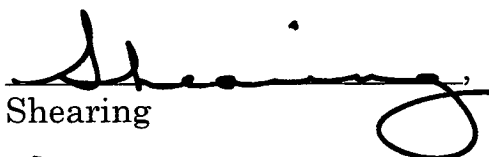
<sup>10</sup>Hanson’s Motion to Stay Proceedings primarily addressed service of process issues. LVMPD did not argue below, and does not argue before this court, that Hanson’s stay motion constituted a general appearance.

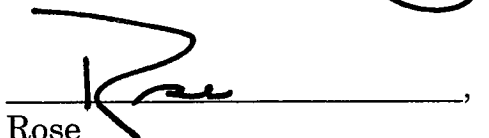
<sup>11</sup>NRCP 60(c) (emphasis added).


<sup>12</sup>Basf Corp. v. Jafbros, Inc., 105 Nev. 142, 144, 771 P.2d 161, 162 (1989), overruled on other grounds by Epstein v. Epstein, 113 Nev. 1401, 950 P.2d 771 (1997).

was entitled to exercise its discretion to deny Hanson's motion only if LVMPD demonstrated "circumstances which would make granting the motion inequitable."<sup>13</sup> LVMPD only argued that Hansen knew his property would be forfeited, based on his presence at its initial seizure and LVMPD's telephone call. These circumstances do not demonstrate that LVMPD would have suffered any inequity if the default judgment had been set aside. Therefore, the district court erred by denying Hanson's motion to set aside the default judgment.

Accordingly, we reverse the district court's order and remand this matter to the district court with instructions to set aside the default judgment.<sup>14</sup>

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Allan R. Earl, District Judge  
Gregory M. Hanson  
Clark County District Attorney  
Clark County Clerk

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<sup>13</sup>Id.

<sup>14</sup>Although Hanson has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered his proper person documents. We deny as moot Hanson's proper person motions for leave to file briefs, for enlargement of time, and for document disclosure.