

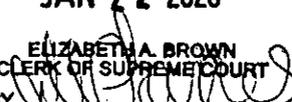
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAVALLI ESTATES HOMEOWNERS
ASSOCIATION,
Appellant,
vs.
ELSINORE, LLC; EQUISOURCE, LLC;
HOME OWNER BENEFIT, LLC;
VESTEDSPEC, INC.; AND KINGFUTTS
PFM, LLC, ON BEHALF OF
THEMSELVES AND AS
REPRESENTATIVES OF THE SUB-
CLASSES HEREIN DEFINED,
Respondents.

No. 86763-COA

FILED

JAN 22 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Savalli Estates Homeowners Association appeals from a district court order denying a motion to set aside default judgment. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

This matter arises out of a lengthy dispute between respondents, on behalf of themselves and as representatives of various subclasses, and numerous homeowners' associations, including Savalli. Between 2011 and June 2013, the parties participated in a mandatory, nonbinding arbitration before the Nevada Department of Business and Industry Real Estate Division. Savalli participated in the arbitration and was represented by counsel. After the arbitrator found in Savalli's favor, respondents filed a class action complaint in the Eighth Judicial District Court on July 25, 2013, which named Savalli and various other homeowners' associations as defendants.

On October 8, 2013, respondents filed an amended complaint. At the time respondents filed the amended complaint, they had yet to

personally serve Savalli with the original complaint. On December 10, 2013, respondents filed a certificate of service which averred that on November 6, 2013, respondents served a copy of the original complaint on Savalli's registered agent, Community Management Group. Notably, respondents never personally served the amended complaint on Savalli. Savalli did not file an answer or otherwise respond following service of the original complaint. On March 18, 2018, respondents filed a notice of intent to take default and served it on Savalli's prior counsel. Counsel contacted respondents and informed them that counsel did not represent Savalli in the underlying litigation.

On May 28, 2019, the other participating parties signed a stipulation to extend NRCP 41(e)'s five-year rule deadline. Savalli, which had not appeared in the litigation, did not sign the stipulation. On October 9, 2019, the court clerk issued a default against Savalli at respondents' request for failing to file an answer or responsive pleading. On December 29, 2021, respondents filed an application for default judgment against Savalli. A year later, on December 17, 2022, the district court entered default judgment against Savalli and awarded respondents damages.

On February 24, 2023, Savalli filed a motion for relief from judgment pursuant to NRCP 60(b) and alleged it first learned of the litigation in January 2023. Savalli argued the default judgment was void because respondents failed to personally serve the amended complaint and because the judgment was entered after NRCP 41(e)'s five-year deadline expired. Respondents filed an opposition which argued they were not required to personally serve the amended complaint because they served the original complaint and that NRCP 41(e) cannot be used to vacate a

judgment. Savalli filed a reply and the parties then participated in a hearing before the district court.

The district court subsequently entered an order denying the motion and finding that respondents served the original complaint on Savalli's registered agent and, pursuant to NRCP 5(a)(2), was not required to serve the amended complaint. Further, the district court found that NRCP 41(e) cannot be used in conjunction with NRCP 60(b) to vacate a judgment. Savalli now appeals.

We review a district court's order denying a motion to set aside a default judgment for an abuse of discretion. *Price v. Dunn*, 106 Nev. 100, 103, 787 P.2d 785, 787 (1990), *overruled on other grounds by NC-DSH, Inc. v. Garner*, 125 Nev. 647, 651 n.3, 218 P.3d 853, 857 n.3 (2009). In doing so, we will not disturb factual findings that are supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). However, we review purely legal questions de novo. *L. Offs. of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008).

On appeal, Savalli argues the district court abused its discretion by failing to set aside the default judgment because respondents failed to personally serve the amended complaint. We agree. "A default judgment not supported by proper service of process is void and must be set aside." *Browning v. Dixon*, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998). Here, the district court found that because respondents served Savalli's registered agent with the complaint, and the amended complaint asserted no new claims, respondents were not required to personally serve the

amended complaint pursuant to the current version of NRCP 5(a)(2).¹ However, NRCP 5 governs the service of all pleadings and papers *following* proper service of the complaint and summons. See NRCP 5(a) (providing that “every pleading subsequent to the original complaint . . . shall be served upon each of the parties”). And because the complaint was not properly served at the time the amended complaint was filed, as respondents concede, the district court erred by relying on NRCP 5(a) to conclude service of the amended complaint was unnecessary.

Instead, the district court, and the parties, should have analyzed whether service of the amended complaint was required pursuant to NRCP 4, which governs the initial service of process on a defendant to an action. An amended complaint is a complete pleading which entirely supersedes the original complaint. *Randono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984). Thus, we conclude that where a plaintiff fails to serve the complaint prior to filing an amended complaint, the plaintiff must serve the amended complaint as required by NRCP 4. See *Morgan v. Savage*, No. 51594, 2009 WL 4279719, at *2 (Nev. Nov. 24, 2009) (Order of Reversal and Remand) (“When a plaintiff files an amended complaint before the defendant makes a general appearance, the plaintiff must personally serve the amended complaint upon the defendant.”); see also *Holman v. Fam. Health Plan*, 596 N.W.2d 358, 362-63 (Wis. 1999) (collecting cases holding default judgment was not supported by proper service when the

¹Although the parties and district court cite to the current version of NRCP 5, we apply the version of NRCP 5 that went into effect on January 1, 2005, which was the version in effect at the time the amended complaint was filed. But our disposition of this appeal would be the same under the current version of NRCP 5, which includes a provision substantively similar to the one set forth above.

moving party failed to serve an amended complaint which superseded the original complaint).

Here, respondents concede that at the time they served the original complaint it was no longer the operative pleading in this case and that they failed to serve the amended complaint, which was the only operative pleading. Thus, personal service was not properly effectuated on Savalli, and the district court erred insofar as it determined that Savalli must demonstrate excusable neglect to obtain relief.² See *Jenkins v. Goldwater*, 84 Nev. 422, 424, 442 P.2d 897, 898 (1968) (holding that NRCP 60(c) does not require a defendant who was not personally served to demonstrate excusable neglect before setting aside a default judgment).

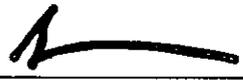
Although respondents admittedly failed to serve the amended complaint, they contend that reversal is not warranted because the amended complaint relates back to the original complaint and the original complaint was properly served, albeit after the amended complaint was filed. However, relation back permits a plaintiff to file an amended pleading after the statute of limitations has expired so long as the plaintiff complies with NRCP 15(c). *Costello v. Casler*, 127 Nev. 436, 440-41, 254 P.3d 631, 634-35 (2011) (discussing relation back). Respondents do not identify, and

²We note that regardless of whether we apply NRCP 4 or NRCP 5, the result is the same. Because respondents had not served Savalli with the original complaint at the time the amended complaint was filed, Savalli could not be in default for failing to appear. See NRCP 12(a)(1)(A)(i) (stating a defendant has 21 days *after* receiving service of the complaint to file an answer). And because Savalli was not in default at the time the amended complaint was filed, respondents would still have been required to serve the amended complaint because NRCP 5(a) did not apply. NRCP 5(a) (stating a party is not required to serve an amended complaint if the opposing party is in default).

indeed we are unaware of any authority holding the relation back principle can cure deficient service of an amended pleading. And we likewise reject respondents' position that because Savalli allegedly had actual notice of the litigation, through the service of the original complaint, they are not required to strictly comply with service requirements. *Browning*, 114 Nev. at 218, 954 P.2d at 744 ("A default judgment not supported by proper service of process is void and must be set aside."); *Morgan*, 2009 WL 4279719, at *2 (reversing a district court order denying a motion to set aside a default judgment because the plaintiff failed to serve the defendant with the amended complaint). Thus, we conclude the district court abused its discretion by failing to set aside the default judgment and remand this matter for the district court to vacate the default judgment.³

Accordingly, we

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



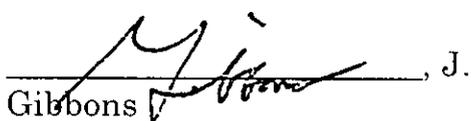
_____, C.J.

Bulla



_____, J.

Westbrook



_____, J.

Gibbons

³In light of our above conclusions, we need not address the parties' alternative arguments. However, we note that because we remand this matter and direct the district court to vacate the default judgment, *Deal v. Baines*, 110 Nev. 509, 874 P.2d 775 (1994), no longer operates as a bar to determining whether this matter must be dismissed pursuant to NRCP 41(e).

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Dana Jonathon Nitz, Settlement Judge
Gibbs Giden Locher Turner Senet & Wittbrodt LLP/Las Vegas
Adams Law Group
Brown Brown & Premsrirut
Eighth District Court Clerk