FILED
10/28/2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATHLEEN ZACKS,
Appellant,
vs.
DAVID BURCIAGA,
Respondent.

No. 91842-COA

ORDER OF AFFIRMANCE

Kathleen Zacks appeals from a district court order dismissing a complaint and denying a post-judgment motion for relief. Eighth Judicial District Court, Clark County; Hon. Tina Talim, Judge.

In 2025, Zacks filed a complaint against her brother, respondent David Burciaga, asserting he had abused his position as attorney-in-fact under a power of attorney for their elderly mother and engaged in a campaign of harassment against Zacks. Specifically, Zacks asserted that between 2023 and 2024, she provided 24/7 care for their elderly mother, who suffered from Alzheimer's disease and/or dementia. And in August 2024, Burciaga allegedly "kidnapped" their mother, removed her to a memory home in California, and evicted Zacks from their mother's home. Accordingly, Zacks sought to remove Burciaga as attorney-in-fact for their mother and additionally asserted he engaged in elder abuse.

Burciaga moved to dismiss, arguing Zacks' allegations had been rejected in prior proceedings, and sought an order declaring Zacks a

vexatious litigant. Burciaga attached various exhibits which revealed the parties had previously litigated similar allegations across three guardianship proceedings as well as a 2024 civil complaint and that courts had consistently dismissed or otherwise rejected Zacks' claims. Following a hearing, the district court dismissed the complaint, finding the allegations concerning elder abuse and issues concerning the power of attorney must be brought in a probate matter. Further, the district court found Zacks lacked standing to assert any claims on her mother's behalf.

Zacks subsequently filed an amended complaint and a motion to set aside the judgment, arguing the district court indicated she could file a new civil complaint raising claims that belonged to her. The court denied the motion, without holding a hearing, determining Zacks did not demonstrate she was entitled to relief under NRCP 60. Zacks now appeals.

An order granting a motion to dismiss pursuant to NRCP 12(b)(5) is "subject to a rigorous standard of review on appeal." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227, 181 P.3d 670, 672 (2008) (internal quotation marks omitted). Accordingly, a court must accept all factual allegations as true and the complaint should only be dismissed if it "appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Id.* at 228, 181 P.3d at 672. This court reviews the district court's legal conclusions de novo. *Id.* And we review a district court's decision "to grant or deny a motion to set aside a judgment under NRCP 60(b)" for an abuse of discretion. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

On appeal, Zacks does not challenge the merits of the underlying orders and instead argues the district court violated the Nevada Code of Judicial Conduct Rules 2.6(A) and (B).[1] Rule 2.6(A) provides that a judge should permit any person who has a legal interest in the proceeding the right to be heard "according to law." And Rule 2.6(B) directs that although a judge may encourage the parties to settle, the judge shall not coerce any party into a settlement.

Having reviewed the record, and assuming but not deciding if the Nevada Code of Judicial Conduct can control the disposition of an appeal, we conclude that Zacks has not established a basis for reversal. Thus, we affirm the dismissal of Zacks' complaint and denial of her motion to set aside. Here, Zacks filed a written opposition to the motion to dismiss, and the court held a hearing on the motion. And although the court did not hold a hearing on Zacks' motion to set aside, the court is permitted to resolve a motion without a hearing. *See* EDCR 2.23(c) (permitting a judge to "consider [a] motion on its merits at anytime with or without oral argument"). Here, the court did not violate the Nevada Code of Judicial Conduct because it provided Zacks the right to be heard, both at a motion hearing and by considering her filings. *See J.D. Constr., Inc. v. IBEX Int'l Grp., LLC,* 126 Nev. 366, 377, 240 P.3d 1033, 1041 (2010) (holding a

[1]Because Zacks does not challenge the merits of the district court's orders, she has forfeited the ability to do so. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (providing that issues not raised on appeal are forfeited).

litigant's due process rights are satisfied when the party receives an "opportunity to be heard" (internal quotation marks omitted)). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Tina Talim, District Judge
Kathleen Marie Zacks
Clement Law Offices
Eighth District Court Clerk