

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES MILOSLAVICH,
Appellant,
vs.
TJL FAMILY LIMITED PARTNERSHIP,
A NEVADA LIMITED LIABILITY
PARTNERSHIP,
Respondent.

No. 39569

FILED

OCT 15 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order setting aside a default judgment under NRCP 60(b). Eighth Judicial District Court, Clark County; Ronald D. Parraguirre, Judge.

Appellant contends that the district court abused its discretion in granting respondent's motion to set aside the default judgment because the motion was untimely, and respondent's claims of mistake, inadvertence, and/or excusable neglect were unpersuasive.

NRCP 60(b)(1) provides that the district court may set aside a judgment based on mistake, inadvertence, surprise, or excusable neglect. The court may consider the moving party's prompt action, lack of intent to delay the proceedings, lack of knowledge of the procedural requirements, and good faith.¹ The motion must be made within a reasonable time and, if based upon the grounds in NRCP 60(b)(1), not more than six months after the judgment was entered.² The district court has broad discretion

¹See Stoecklein v. Johnson Electric, Inc., 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).

²See NRCP 60(b).

in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b).³ The court's determination will not be disturbed on appeal absent an abuse of that discretion.⁴ Additionally, in the context of default judgments, this court has embraced a policy of having cases decided on their merits.⁵

“Because of this policy, the general observation may be made that an appellate court is more likely to affirm a lower court ruling setting aside a default judgment than it is to affirm a refusal to do so. In the former case a trial upon the merits is assured, whereas in the latter it is denied forever.”⁶

We conclude that the district court did not abuse its discretion in granting respondent's motion to set aside the default judgment. Jose Lozano, respondent's general and sole managing partner, was attempting to follow the procedural requirements on behalf of the respondent partnership. Lozano filed an answer to the complaint, and filed a motion to set aside the default judgment just inside the six-month time limit under NRCP 60(b)(1). However, because Lozano is not a licensed attorney, he could not represent the partnership in the legal proceeding.⁷ Nevertheless, Lozano obtained counsel, who filed a supplement to the

³See id.

⁴See id.


⁵See Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

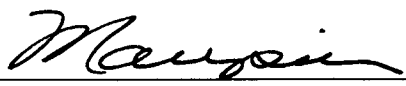
⁶Id. at 155-56, 380 P.2d at 295.

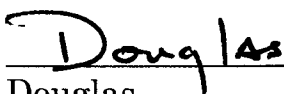
⁷See Guerin v. Guerin, 116 Nev. 210, 993 P.2d 1256 (2000); Salman v. Newell, 110 Nev. 1333, 885 P.2d 607 (1994).

motion, two and one-half months after the six-month time limit. Under these circumstances, and considering the policy of deciding cases on their merits, we affirm the district court's order.

It is so ORDERED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Ronald D. Parraguirre, District Judge
Liborius I. Agwara
Charles Miloslavich
TJL Family Limited Partnership
Clark County Clerk