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Rodriguez v. Fiesta Palms LLC, 134 Nev. Adv. Op. 78 (Oct. 4, 2018)

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CIVIL APPEAL: RELIEF UNDER NRCP 60(b)(1)

Summary

The Court determined that relief under NRCP 60(b)(1) is appropriate when litigants: (1) promptly apply to remove judgement, (2) not intend to delay proceedings, (3) lack knowledge of procedural requirements; and (4) act in good faith. Further, the Court concluded that a district court must consider the relevant facts, including the difficulties faced by pro se litigants, when determining to grant or deny NRCP 60(b)(1) relief.

Background

Enrique Rodriguez won a judgement for \$6,051,589.38 against Fiesta Palms, LLC, for injuries he sustained in 2006 at the Fiesta Palms sportsbook. In 2014, the Court reversed the judgment and remanded for a new trial. Subsequently, Rodriguez's counsel moved to withdraw from representation and the district court granted the motion. The district court granted two continuances for Rodriguez to secure counsel.

After Rodriguez secured counsel, the district court granted two more continuances, one to accommodate Rodriguez and the other to accommodate Fiesta Palms. Rodriguez's new counsel moved to withdraw a month before trial and the district court granted the motion. The district court then pushed the trial date to allow Rodriguez to secure new counsel.

Rodriguez failed to file responses to Fiesta Palm's numerous pretrial motions, including a motion to dismiss. At a hearing on a motion in limine filed by Fiesta Palms, Rodriguez appeared pro se and requested a six-month continuance to secure new counsel. The district court denied the motion and warned Rodriguez to abide by future procedural requirements and respond to motions filed by Fiesta Palms with or without representation. Rodriguez filed nothing before the next motion hearing and again requested a continuance to secure counsel. In April 2016, the district court granted Fiesta's motion to dismiss.

In October 2016, five months and three weeks later, Rodriguez moved to set aside the district court's order pursuant to NRCP 60(b) alleging various medical issues and difficulty of obtaining counsel. After considering the factors set forth in *Yochum v. Davis*,² the district court denied Rodriguez's NRCP 60 motion. Rodriguez appealed.

Discussion

The Court reviewed whether the district court abused its discretion when it denied Rodriguez's motion to set aside the judgment under NRCP 60(b). NRCP 60(b)(1) states that a district court "may relieve a party or a party's legal representative from a final judgement order, or proceeding" on the grounds of "mistake, inadvertence surprise, or excusable neglect."³ The Court used the four-factor framework from *Yochum* to analyze whether the district court abused its discretion in denying Rodriguez's motion for NRCP 60(b)(1) relief:

¹ By Khaylia DeCaires.

² 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982).

³ Nev. R. Civ. P. 60.

Whether Rodriguez acted promptly

A motion for NRCPC 60(b)(1) relief must be filed within a reasonable period and not more than six months after the order was served.⁴ The six-month marker represents the “extreme limit of reasonableness.”⁵ Since Rodriguez’s motion was filed just before the six-month time limit, the Court found that the district court was more fit to determine whether Rodriguez’s delay was excusable. The Court further concluded the record supports the district court’s determination that the delay was not excusable.

Whether Rodriguez intended to delay the proceedings

The district court did not make a finding as to whether Rodriguez intended to delay the proceedings. However, the Court found an inference of an intent to delay because of Rodriguez’s numerous requests for continuances to secure counsel and his refusal to proceed without representation.

Whether Rodriguez lacked knowledge of the procedural requirements

The Court agreed with the district court’s finding that Rodriguez was aware of the procedural requirements imposed upon him. Notices of the legal requirements were mailed to Rodriguez’s home address. Rodriguez personally witnessed the district court grant Fiesta Palm’s motions because he failed to file written oppositions. Further, Rodriguez filed a motion before without assistance of counsel, so he was capable of filing oppositions without assistance of counsel. The Court noted that ignorance of the law cannot protect pro se litigants from the consequences of failing to abide by procedural requirements.

Whether Rodriguez acted in good faith

The district court made no finding whether Rodriguez acted in “good faith.” Thus, the Court declined to consider the fourth *Yochum* factor.

Conclusion

The Court acknowledged that it affords wide discretion to the district court to make determinations relating to NRCPC 60(b)(1) motions. Here, the Court found that the district court did not abuse its discretion. Accordingly, the Court affirmed the district court’s decision based on *Yochum* factors, which favored denial of Rodriguez’s NRCPC 60(b)(1) relief.

⁴ Union Petrochemical Corp. of Nev v. Scott, 96 Nev. 337, 339, 609 P.2d 323, 324 (1980).

⁵ *Id.*