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NRCP 6-(b)(1) MOTIONS AND THE *YOCHUM* FACTORS

Summary

In an opinion drafted by Justice Hardesty, the Nevada Supreme Court considered whether district courts must apply the *Yochum* factors when determining if an NRCP 60(b)(1) motion has established, by a preponderance of the evidence, that sufficient grounds exist to set aside a final judgment, order, or proceeding.² The Court concluded that the *Yochum* factors must be applied to any NRCP 60(b)(1) motion, not just those involving a default judgment, to determine if the movant established excusable neglect.

Background

This case arose out of cause of actions regarding the alleged breach of a lease agreement for a commercial property in Reno between appellant Mr. Willard and respondents Berry-Hinckley Industries and Mr. Jerry Herbst. Willard's legal counsel, Brian Moquin, failed to comply with NRCP 16.1 disclosure requirements, discovery requests, and court orders during litigation.³ Based on these violations, the district court dismissed Willard's claims with prejudice and granted Respondents' motion for sanctions.

Willard subsequently retained new counsel and filed the NRCP 60(b)(1) motion and argued that Moquin's alleged psychological disorder justified NRCP 60(b)(1) relief based on excusable neglect. Willard's argument was based on the four factors announced in *Yochum*.⁴ In *Yochum*, the Court held that a district court must apply four factors when deciding on a NRCP 60(b)(1) motion to determine whether the movant has met its burden of proof: "(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith."⁵

The district court ultimately denied Willard's NRCP 60(b)(1) motion and stated that the *Yochum* factors were only applicable to NRCP 60(b)(1) motions that concerned relief from a default judgment, not relief from an order.

Discussion

The Court acknowledged that appellate courts generally give district courts wide discretion in ruling on NRCP 60(b)(1) motions; however, a district court abuses that discretion when it disregards established legal principles.⁶ Here, to determine whether the district court abused its

¹ By Julia Standish.

² NRCP 60(b)(1).

³ See *In re Discipline of Moquin*, Docket No. 78946 (Order Approving Conditional Guilty Plea Agreement and Enjoining Attorney From Practicing Law in Nevada, Oct. 21, 2019).

⁴ *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982).

⁵ *Id.*

⁶ *McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. 610, 617, 310 P.3d 555, 559 (2013).

discretion, the Court first looked at the plain meaning of the statute. NRCP 60(b)(1) provides that a district court may “relieve a party or its legal representative from a *final judgment, order, or proceeding*” based on a finding of “mistake, inadvertence, surprise, or excusable neglect.”⁷ The Court determined the plain language does not differentiate between relief from a “final judgment, order, or proceeding” as the district court in this case claimed.⁸

The Court then found that the caselaw reviewing district courts’ NRCP 60(b)(1) determinations also does not differentiate between relief from a final judgment, order, or proceeding when determining whether to apply the *Yochum* factors.⁹ Based on these findings, the Court explicitly held that district courts are required to issue explicit factual findings, preferably in writing, on all four *Yochum* factors when determining NRCP 60(b)(1) motions. Therefore, because the four *Yochum* factors were not applied with regard to Willard's NRCP 60(b)(1) motion, the Court concluded the district court abused its discretion in denying that motion.

Conclusion

The Court concluded that district courts must issue explicit and detailed findings, preferably in writing, with regard to the four *Yochum* factors in order to facilitate the appellate review of NRCP 60(b)(1) determinations for an abuse of discretion. The Court determined that the district court abused its discretion when it failed to address the *Yochum* factors, and therefore, the Court reversed the district court's order denying the NRCP 60(b)(1) motion and remanded the case to the district court for further consideration.

⁷ NRCP 60(b)(1) (emphasis added).

⁸ *Id.*

⁹ *Kahn v. Orme*, 108 Nev. 510, 513, 835 P.2d 790, 792 (1992).