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Vargas v. J. Morales, 138 Nev. Adv. Op. 38 (June 2, 2022)

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**CIVIL PROCEDURE: RELIEF FROM JUDGMENT UNDER NRCP 60(b) IS
GENERALLY UNJUSTIFIED AFTER 14 MONTHS OF INACTIVITY.**

Summary

The Nevada Supreme Court reversed the district court's order granting respondent NRCP 60(b)(1) and (6) relief from a prior judgment and remanded for proceedings consistent with the reversal. The Court held that (1) an NRCP 60(b)(1) motion is untimely when 14 months have elapsed since the judgment was entered and (2) that relief under NRCP 60(b)(6) is unjustified where it would have been available under NRCP 60(B)(1) if timely.

Facts and Procedural History

The respondent, and owner of the property where the incident alleged by the appellant occurred, was sued in a premise liability action. The complaint in the action was filed and served in February of 2018, and despite acknowledging receipt of the complaint, the respondent failed to respond, appear, or participate in the action until his bank account was garnished pursuant to a judgment of default two years later.

In October 2020, the respondent moved to have the judgment set aside and execution stayed under NRCP 60(b). The respondent attributed the failure to respond to the complaint to 'mistake or excusable neglect' under NRCP 60(b)(1), claiming he relied on the faulty advice of his insurance agent that since he was not the premises owner at the time of the alleged incident, he was not liable for the injury or the damage. In the interim, the respondent sought relief under NRCP 60(b)(6) on "any justifiable grounds".

The District Court granted the respondent's motions under NRCP 60(b)(1) and (6). The appellant appealed.

Discussion

This court has jurisdiction over this appeal

In a de novo review, the Supreme Court of Nevada determine whether the lower court erred in granting the respondent's motions for relief from judgments under NRCP 60(b)(1) and (6).

On appeal, the respondent challenged the jurisdiction of the Court, citing *Adams v. Fallini*², arguing that the instant appeal was from a non-appealable order. Contrary to this assertion, however, the Court distinguished the facts of the present case *Fallini*, pointing out the case's exclusive discussion about fraud which was not at issue here. Additionally, the Court

¹ Candace Mays.

² Est. of Adams By & Through Adams v. Fallini, 132 Nev. 814, 386 P.3d 621 (2016) (holding that an order for relief from judgment on the grounds of fraud is non-appealable).

added, it had jurisdiction over NRCP motions granted more than 60 days after the entry of judgment, pursuant to NRAP 3A(b)(8).

The district court abused its discretion in granting NRCP 60(b) relief

The Court noted that a district court’s decision on motions shall not be disturbed unless for an abuse of discretion. Citing *Willard v. Berry-Hinckley Industries*,³ the Court identified a decision that disregards legal principles as an abuse of discretion.

JMI’s NRCP 60(b)(1) motion was untimely

As to the respondent’s substantive claims related to entitlement to relief under NRCP 60(b)(1) and (6), the Court determined that the claim for relief due to mistake or excusable negligence exceeded the ‘reasonable’ amount of time prescribed by the statute.⁴ The Court did not suggest that a timely motion under the provision would have been unsuccessful.

NRCP 60(b)(6) relief was unavailable

The Court, citing its recent decision in *Byrd v. Byrd*⁵, further determined that relief under NRCP 60(b)(6) was also improper as “any *other* reason” relates to those reasons not already enumerated in the statute.

Conclusion

The Court ultimately held that the district court erred in granting the respondent’s NRCP 60(b)(1) motion, filed 14 months after entry of the default judgment because it was untimely, and that the lower court erred in granting the NRCP 60(b)(6) motion because the statute was impermissibly applied as a subterfuge to circumvent the time limits that apply to a request for relief based on NRCP 60(b)(1).

The case was reversed and remanded for proceedings in accordance with the opinion.

³ *Willard v. Berry-Hinckley Industries*, 136 Nev. 467, 469, 469 P.3d 176, 179 (2020).

⁴ NRCP 60(c)(1) sets forth a 6-month limit on NRCP 60(b) motions.

⁵ *Byrd v. Byrd*, 137 Nev. Adv. Op. 60, 501 P.3d 458, 462 – 463 (Nev. App. 2021).