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### Arce v. Sanchez, 138 Nev. Adv. Op. 83 (Dec. 22, 2022)

Joe Coronel

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**NAR 19(C) PREVENTS A DISTRICT COURT FROM USING NRCP 60(B) TO GRANT POST-JUDGMENT RELIEF IN THE FORM SETTING ASIDE ARBITRATION AWARD.**

**Summary**

Judge Stiglich issued the opinion. The issue was of first impression and asked if under NRCP 60(b) a District court could set aside a judgment, confirming a court-annexed arbitration award.<sup>2</sup> This would go against Nevada Arbitration Rule (NAR) 19(C) limiting post-judgment relief only to that which corrects clerical mistakes and errors.<sup>3</sup> The court held NAR 19(C) prevents a district court from granting post-judgment relief under NRCP 60(b) in the form of setting aside a judgment confirming an arbitration award. Thus, the court remanded and reversed the district court's judgment and gave instructions to reinstate the arbitration award.

**Background**

Patricia Sanchez sued Juan Arce for damages resulting from a car accident. The district court moved the case to the court-annexed arbitration program. The program was adopted to expedite certain disputes, like the present case. As a result, Sanchez was awarded nothing from the arbiter. Sanchez's counsel subsequently negotiated a settlement with Arce's insurance company, where the insurance company would pay \$10,000 for Sanchez's forfeiture of her right to request trial de novo.

However, the attorney representing Arce's insurance company had concerns over the settlement and wrote to Sanchez's attorney to schedule a de novo date while the insurance company assessed how it would like to proceed. Once the deadline to request trial de novo passed, the insurance company expressed it would not accept the settlement as it felt the deal was negotiated in violation of the Rules of Professional Conduct. The company then obtained a judgment that upheld the arbitration award, where Sanchez was given nothing.

Sanchez subsequently moved to have the judgment set aside under NRCP 60(b) and to enforce the settlement. NRCP 60(b) allows for void judgments to be set aside.<sup>4</sup> The district court enforced the settlement and set aside the arbitration agreement under NRCP 60(b). Arce then appealed.

**Discussion**

The issue before the court is whether NAR 19(C) bars a district court from applying NRCP 60(b) to set aside a judgment confirming an arbitration award. On appeal Arce argued that NAR 19(C) bars the district court from setting the judgment which confirmed the arbitration award of no damages to Sanchez. NAR 19(C) only allows for post-judgment relief to be granted to remedy clerical errors or omissions, while explicitly preventing any other form of relief.<sup>5</sup>

Sanchez countered, arguing that NAR 19(C) did not bar the court from setting aside the judgment under NRCP 60(b). Sanchez claimed that the court mistakenly entered a judgment that confirmed the arbitration award. This is argued because of the already established settlement agreement. Specifically, Sanchez argued that because Arce's insurance company obtained the

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<sup>1</sup> By Joe Coronel.

<sup>2</sup> NEV. R. CIV. P. 60(b).

<sup>3</sup> NEV. ARB. RULE. 19(c).

<sup>4</sup> NEV. R. CIV. P. 60(b).

<sup>5</sup> NEV. ARB. RULE. 19(c).

judgment with the knowledge of the already existing agreement, the judgment should be *void ab initio*.

### ***Standard of Review***

The court used a de novo standard of review because the case presented questions of law<sup>6</sup>. Specifically, the relationship between NAR 19(C) and NRCP 60(b).

### ***NAR 19(C) bars post-judgment relief under NRCP 60(b)***

The court used statutory construction to understand the meaning of NAR 19(c). The court held when interpreting the statute, words are given their plain meaning unless this would violate the spirit of the rule.<sup>7</sup> The court focused on the final section of the rule, which stated no other form of relief aside from errors and omissions would be allowed. The court then applied statutory construction to NRCP 60(b). Here the court focused on NRCP 60(b)(4), which allows a court to set aside a judgment when the judgment is void.<sup>8</sup>

The court held that NAR 19(c) barred NRCP 60(b) relief allowing for a judgment to be set aside. The court felt that even if the arbitration award was void—which would be grounds for relief under NRCP 60(b)—this is still barred by NAR 19(c).<sup>9</sup> This decision was reached specifically because of the word “correct” in both statutes.<sup>10</sup> In both statutes, the term “correct” refers to correcting an error or omission in judgment, not setting aside or vacating an entire judgment.<sup>11</sup> Thus, allowing NRCP 60(b) to set aside a judgment not only violates NAR 19(c) but the purpose of the arbitration program.

### **Conclusion**

NAR 19(c) will bar post-judgment relief granted under NRCP 60(b) when that relief does more than correct clerical mistakes or omissions. Clerical errors or omissions do not qualify as NRCP 60(b) grounds for setting aside a judgment. The only post-judgment relief one can receive under NRCP 60(b) is a correction to the judgment, not a vacating or setting aside the judgment.<sup>12</sup> Thus, the court reversed and remanded the case with instructions to reinstate the original judgment, which confirmed the arbitration award of nothing to Sanchez.

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<sup>6</sup> Moon v. McDonald, Carano & Wilson, LLP, 126 Nev. 510, 512, 515-16, 245 P.3d 1138, 1139, 1141 (2010).

<sup>7</sup> Scott v. Zhou, 120 Nev. 571, 573, 98 P.3d 313, 314 (2004).

<sup>8</sup> NEV. R. CIV. P. 60(b).

<sup>9</sup> *Id.*; NEV. ARB. RULE. 19(c).

<sup>10</sup> Savage v. Pierson, 123 Nev. 86, 94, 157 P.3d 697, 702 (2007).

<sup>11</sup> Kirkpatrick v. Temme, 98 Nev. 523, 527-28, 654 P.2d 1011, 1014 (1982).

<sup>12</sup> NEV. R. CIV. P. 60(b).