IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDI ABTS, AN INDIVIDUAL,
Appellant,
vs.
CYNTHIA ARNOLD-ABTS, AN INDIVIDUAL,
Respondent.

No. 87222-COA

ORDER OF AFFIRMANCE

Brandi Abts appeals from a final judgment following a short bench trial. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

This appeal involves proceedings following remand in *Abts v. Arnold-Abts*, Docket No. 83595-COA, 2023 WL 2229677, (Nev. Ct. App. Feb. 24, 2023) (Order of Reversal and Remand), wherein we reversed and remanded the district court's order granting respondent Cynthia Arnold-Abts' motion to set aside a default judgment. In doing so, we directed the district court to "fully address the appropriate considerations for granting or denying NRCP 60(b) relief from a default judgment . . . and issue explicit, detailed findings of fact and conclusions of law, preferably in writing, to support its decision with respect to [Cynthia's motion]." *Id* at *3.

On remand, the court held an evidentiary hearing wherein the parties addressed the issue of whether Brandi had properly served Cynthia with the summons and complaint in the underlying case. Following the

evidentiary hearing, the district court again granted Cynthia's motion to set aside the default judgment against her, on the grounds that (1) it considered Cynthia's testimony that she only became aware of this case in 2018 credible; (2) there are multiple discrepancies between Brandi's filings, sworn affidavits, and testimony at the evidentiary hearing; (3) it appears that Brandi only attempted to personally serve Cynthia twice before filing her motion for service by publication, which does not support a finding of due diligence; (4) Brandi's affidavit of due diligence is not supported by the evidence as she "under oath conceded that she did not perform the tasks stated in the Affidavit" and "failed to provide any details and/or documentation to support the allegation that she performed such tasks;" and (5) the order for service by publication was entered days after the 120 day service deadline had expired.

In light of these findings, the district court concluded that the decision to allow service by publication was clearly erroneous under "the facts and circumstances and the totality of the evidence presented at the evidentiary hearing" and that the default judgment was void under NRCP 60(b)(4) as the summons and complaint were never served upon Cynthia, violating Cynthia's due process rights. In doing so, the district court relied on *Price v. Dunn*, an opinion wherein the supreme court reversed and remanded an order denying a motion to set aside a judgment terminating parental rights that was served by publication, holding that the respondent's "failure to exercise due diligence in locating [appellant's] whereabouts before making service upon him through publication violated the Nevada Rules of Civil Procedure as well as [the appellant's] due process

rights." 106 Nev. 100, 105, 787 P.2d 785, 788 (1990). Alternatively, the court found that, by falsifying the information on her due diligence affidavit, Brandi committed extrinsic fraud upon the court, excusing the six-month time limit under NRCP 60(b)(3). For these reasons, the district court set aside the default judgment and reinstated the orders vacated by this court's prior order of reversal and remand, including the judgments entered during the short trial after the initial decision to set aside the default judgment. Brandi now appeals.

On appeal, Brandi presents numerous arguments challenging the district court's order. However, many of these arguments, including her arguments (1) that she was not served with Cynthia's exhibit book for the evidentiary hearing; (2) that she did not have time to serve written discovery on Cynthia before the evidentiary hearing; (3) that Cynthia was allowed to place her exhibits on a zip drive; and (4) addressing scheduling issues with the department prior to the evidentiary hearing, were not raised in the district court below and are therefore waived on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.")

With regard to Brandi's remaining arguments, namely that the district court failed to properly consider the evidence at the evidentiary hearing, and that the default judgment was appropriate because Brandi completed service by publication—we have considered them and conclude that they do not provide a basis for relief. To the extent that Brandi argues that the district court failed to properly consider the evidence presented at

the evidentiary hearing, Brandi does not provide any cogent argument or explanation to rebut the district court's conclusion that "the evidence of [Brandi's] unsuccessful attempts to serve [Cynthia] by mail or [at] erroneous addresses do not support due diligence," other than to simply express disagreement with the conclusions set forth in the district court's order. Thus, we need not consider her argument in this regard. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued). And even if she had developed this point, it is well established that this court will not reweigh witness credibility or evidence on appeal. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). Thus, these arguments do not provide grounds to reverse the district court's decision to set aside the default judgment.

Moreover, Brandi does not mention or challenge the district court's analysis and application of *Price*, wherein it found that Brandi's failure to exercise due diligence prior to resorting to service by publication violated the NRCP and Cynthia's due process rights, and thus supported setting aside the default judgment. *See Price*, 106 Nev. at 105, 787 P.2d at 788 (concluding that the failure to exercise due diligence is an appropriate ground for setting aside a default judgment under NRCP 60). As a result, she has waived any challenge to this determination. *See Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983.

Additionally, because motions to set aside a judgment as void under NRCP 60(b)(4) are not subject to the time limits of NRCP 60(c)(1) (setting a six-month time limit for motions to set aside under NRCP

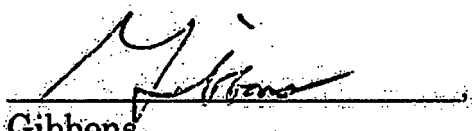
60(b)(1), (2) or (3)), Brandi's argument that Cynthia's motion to set aside the default was untimely does not provide a basis for reversing the challenged order.

Finally, Brandi argues that reversal is appropriate because the district court was biased against her. We conclude that relief is unwarranted on this point because Brandi has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and its decisions did not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification").

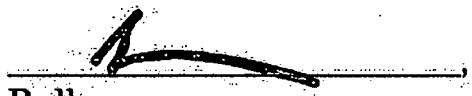
Thus, for the reasons set forth above, we conclude that the district court did not abuse its discretion when it found that the default judgment should be set aside under NRCP 60(b)(4). *See Willard v. Berry-Hinckley Indus.*, 139 Nev., Adv. Op. 52, 539 P.3d 250, 255 (2023) (reviewing a district court order granting an NRCP 60 motion to set aside for an abuse of discretion). And because Brandi does not challenge or otherwise address

the district court's resulting reinstatement of the previously entered short trial judgment and the order resolving her request for a new trial, any arguments related to those decisions are waived. *See Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]



_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Joseph Hardy, Jr., District Judge
Brandi Abts
Patricia A. Marr, Ltd.
Eighth District Court Clerk

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[1]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

NEOJ
PATRICIA A. MARR, LLC
PATRICIA A. MARR, ESQ.
Nevada Bar No. 008846
2470 St. Rose Parkway, Suite 304
Henderson, Nevada 89074
(702) 353-4225 (telephone)
(702) 912-0088 (facsimile)
patricia@marrlawlv.com
Attorney for Defendant
Cynthia Arnold-Abts

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BRANDI ABTS, an individual, Plaintiff, v. CYNTHIA ARNOLD-ABTS, an individual, Defendant.	Case No.: A-16-738307-C Dept. No. 28 **NOTICE OF ENTRY OF ORDER AND FINAL JUDGMENT**

PLEASE TAKE NOTICE that the *Order and Final Judgment* was entered in the above-entitled matter on the 30th day of August, 2023, a copy of which is attached hereto.

DATED this 30th day of August, 2023.

PATRICIA A. MARR, LLC

/s/Patricia A. Marr, Esq.

PATRICIA A. MARR, ESQ.
Nevada Bar No. 008846
2470 St. Rose Parkway, Suite 304
Henderson, Nevada 89074
(702) 353-4225 (telephone)
(702) 912-0088 (facsimile)
patricia@marrlawlv.com
Attorney for Defendant
Cynthia Arnold-Abts

Appendix B

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of NOTICE OF ENTRY OF ORDER AND FINAL JUDGMENT was served via E-Service, email, and/or First-Class Mail, postage prepaid on the 30th day of August, 2023, to the following:

Brandi Abts
brandiabts@yahoo.com
Plaintiff in Pro Per

/s/ Theresa D. Luciano

An employee of Patricia A. Marr, LLC

Appendix B

ELECTRONICALLY SERVED
8/30/2023 3:31 PM

Electronically Filed
08/30/2023 3:29 PM
CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

BRANDI ABTS, an individual, Plaintiff, v. CYNTHIA ARNOLD-ABTS, an individual, Defendant.	Case No.: A-16-738307-C Dept. No. 28 **ORDER AND FINAL JUDGMENT** Date of Hearing: July 27, 2023 Time of Hearing: 11:00 a.m.

This matter came on for evidentiary hearing pursuant to the Nevada State Court of Appeal's February 23, 2023 Order. Specifically, the Court of Appeal's Order reversed and remanded in part the District Court's April 4, 2018 Order that set aside Plaintiff's default judgment. The Court of Appeals directed the District Court to properly and fully address the appropriate considerations for granting or denying NRCP 60(b) relief from a default judgment as outlined in the February 23, 2023 Order and issue explicit, detailed findings of fact and conclusions of law to support its decision with respect to Defendant's Motion to set aside. Appellant, Brandi Abts appeared in person for the evidentiary hearing and Respondent, Cynthia Arnold-Abts, appeared via the BlueJeans App with her counsel, Patricia A. Marr, Esq. of Patricia A. Marr, LLC. The Court, having heard the testimony of the parties and witnesses, having reviewed the pleadings on file herein, including the multitude of filings in this case, and the transcripts and briefs, hereby issues its Findings of Fact, Conclusions of Law and Order as follows.

FINDINGS OF FACT

The Court finds that the relief sought by Defendant is pursuant to NRCP 60(b)(3) and NRCP 60(b)(4); and the Court further

FINDS that this Court finds that the Honorable Ronald J. Israel previously considered the timeliness and whether extrinsic fraud existed in the April 4, 2018 Order that set aside

the default judgment, although those considerations were not fully and expressly articulated to the extent that the Court of Appeals required; and the Court

FURTHER FINDS that this Court also considers whether Defendant's request was timely and whether Plaintiff's conduct rose to the level of extrinsic fraud on the court thereby excusing the time limitations imposed pursuant to the Rule; and the Court

FURTHER FINDS that this Court has gone above and beyond accommodating Plaintiff's inability to listen and obey the Court's directives during the evidentiary proceeding. Plaintiff exhibited poor conduct in the presence of the Court; nevertheless, the Court listened to Plaintiff for hours during the hearing; and notwithstanding Plaintiff repeatedly interrupting the Court and Plaintiff's inability to listen to the Court during the Court's oral ruling, the Court considers and rules on the merits of the Motion to set aside and the evidentiary hearing; and the Court

FURTHER FINDS that it was necessary to remove Plaintiff from the courtroom because she failed to comply with the Judge's warnings that she stop interrupting him when he was speaking; and the Court

FURTHER FINDS that due process, notice and the opportunity to be heard, is vitally important. Also vitally important as acknowledged by the Court of Appeals, and set forth by Judge Israel's order setting aside the default judgment, is Nevada's strong policy for trial on the merits, although the issue on remand involved whether service was proper upon Defendant; and the Court

FURTHER FINDS that service was <u>not</u> properly performed. The Honorable Douglas W. Herndon's (hereinafter "Judge Herndon") decision to allow service by publication was clearly erroneous under the facts and circumstances and the totality of evidence presented at the evidentiary hearing today; and the Court

FURTHER FINDS that there was never a written extension to serve in the October 20, 2016 Order that erroneously provided for service by publication, albeit Judge Herndon verbally provided such an extension; and the Court

FURTHER FINDS that it was incumbent upon Plaintiff to accurately prepare the October 20, 2016 Order, and to include all of Judge Herndon's rulings; however, Plaintiff failed to include the ruling for an extension of time in the Order, despite Judge Herndon's explicit directive to Plaintiff to do so; and the Court

FURTHER FINDS that the Court overruled objections of defense counsel to the Court potentially providing Plaintiff with advice more than it should during the evidentiary proceeding given the self-representation of Plaintiff; and the Court

FURTHER FINDS that there was no evidence that Plaintiff performed a skip-trace, retained an investigator to determine Defendant's location, or retained a professional process server. Although Plaintiff retained the Sheriff's Office on one (1) occasion to attempt service, there were not any "stake outs" at the house or anything of the nature that a Plaintiff normally has to perform prior to the grant of service by publication; and the Court

FURTHER FINDS that the Sheriff's attempt clearly failed, as evidenced by the related Affidavit because that attempt was at a location where Defendant did not reside. The second attempt at service performed by Plaintiff's friend also failed and from its face, the Affidavit is woefully insufficient; and the Court

FURTHER FINDS that the Judgment obtained by Plaintiff was well less than one (1) year old when Defendant filed her Motion to set it aside, again, supporting the Order to set the Judgment aside; and the Court

FURTHER FINDS that the Department of Motor Vehicle ("DMV") documentation provided by Plaintiff at the evidentiary hearing in support of the service by publication was dated *subsequent* to the entry of the default judgment and did not support Judge Herndon's grant of service by publication, which was clearly erroneous and void pursuant to NRCP 60(b)(4); and the Court

FURTHER FINDS that the Court considered the testimony of the witnesses and parties, the exhibits admitted, the briefs that were filed and the transcripts; and the Court

FURTHER FINDS that the Court found Defendant Cynthia Abts credible when she testified that she never lived at the address where the single attempt at personal service was

made, 4116 Erinbird Avenue, North Las Vegas, Nevada 89084, and a key document admitted, Exhibit CC, was a change of address confirmation for Cynthia Abts; and the Court

FURTHER FINDS that Cynthia Abts was also credible when she testified that in or about April, 2016, she rented her home known as 6238 Palmona Street, North Las Vegas, Nevada 89031 after her husband passed away and moved in with a friend at 2109 Alamo Heights Avenue; and the Court

FURTHER FINDS that Cynthia Abts testimony as to when she actually became aware of the instant case, December 2017 / January, 2018, is also credible; and the Court

FURTHER FINDS that after actual notice of the instant action, Defendant retained counsel relatively quickly and counsel filed Defendant's Motion to set aside relatively quickly after being retained; and the Court

FURTHER FINDS that many of Plaintiff's statements regarding her service of certain documents are unfortunately, a layperson not understanding the term of art of "service" as it relates to service of process upon a defendant; and the Court

FURTHER FINDS that Plaintiff's "mailings" of the Summons and Complaint, whether certified mail or not, is woefully insufficient to properly effectuate service, in addition to mailing such documents to an address that Defendant never resided at; and the Court

FURTHER FINDS that it was clearly erroneous to find that Plaintiff met any due diligence standard related to personal service pursuant to Nevada authority such that service by publication would be lawful under these factual circumstances; and the Court

FURTHER FINDS that Plaintiff clearly did not contact any relative(s) of Defendant to discover where Defendant may have been residing and the statement in her September 28, 2016 Affidavit for Service by Publication is not supported by any evidence or testimony at the evidentiary hearing; and the Court

FURTHER FINDS that at no time was Defendant evading service; and the Court

FURTHER FINDS that the Default Judgment is void as it was clearly erroneous to grant service by publication; and the Court

FURTHER FINDS that the there is no evidentiary support in Plaintiff's September 28, 2016 Affidavit of Due Diligence that she performed the actions attested to therein and Plaintiff under oath conceded that she did not perform the tasks stated in the Affidavit. Further, it is Plaintiff's burden to demonstrate that service was proper and in the Affidavit of Due Diligence Plaintiff also failed to provide any details and/or documentation to support the allegation that she performed such tasks therein; and the Court

FURTHER FINDS that the erroneous by publication was nine (9) days late; and the Court

FURTHER FINDS that Plaintiff did not perform due diligence, that service was not proper and therefore the Default Judgment is void pursuant to NRCP 60(b)(4); and the Court

FURTHER FINDS that were numerous discrepancies in Plaintiff's various filings, many of the documents had blanks where pertinent information was required and it is very questionable as to whether the documents were properly and/or mailed at various points of time; and the Court

FURTHER FINDS that the subject of the July 21, 2016 "Not Found Affidavit" signed by the Deputy Sheriff was clearly not Defendant, but a tenant for the residence that the Deputy Sheriff spoke to because at that time Defendant did not reside there, and Plaintiff failed to engage in due diligence thereafter; and the Court

FURTHER FINDS that the September 28, 2016, Affidavit/Declaration of Service claims that Defendant's last known address was 4116 Erinbird Avenue, Las Vegas, Nevada 89054, however, Plaintiff admitted she had no basis to believe that Defendant resided there other than her daughter resided at that address. Therefore, any attempted service or mailing, although improper, does not support a claim for due diligence; and the Court

FURTHER FINDS that the September 28, 2016, Affidavit is not notarized and is not a sworn Declaration; and the Court

FURTHER FINDS that Plaintiff's testimony at the evidentiary hearing contradicts many of the pleadings filed by Plaintiff and/or do not support her position; and the Court

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FURTHER FINDS that Defendant certainly could have been found if Plaintiff had performed any modicum of due diligence; and the Court

FURTHER FINDS that the February 5, 2018 Motion to Set Aside was clearly timely based upon the circumstances pursuant to NRCP 60(c)(1), NRCP 60(b)(3), and/or NRCP 60(b)(4).

CONCLUSIONS OF LAW

Without proper service of process a default judgment is void and must be set aside as void. *Browning v. Dixon*, 114 Nev. 213 (1998). In this case, service of process was not proper because Plaintiff did not perform due diligence prior to obtaining an Order for service by publication. *See also*, *McNair v. Rivera*, 110 Nev. 463 (1994) (A default judgment is supported by a finding that the judgment is "legally dead" if the judgment is entered without proper service.) As in *McNair*, the evidence of Plaintiff's unsuccessful attempts to serve the Defendant by mail or erroneous addresses do not support due diligence. Here, the evidence demonstrated that Plaintiff only made two (2) failed attempts for service at erroneous addresses, those attempts do not support a finding of due diligence, are inadequate, and would not allow service by publication pursuant to NRCP 4(e)(1)(i). *McNair* also supports that the default judgment in this case be set aside.

In *McNair*, the Plaintiff tried to portray Defendant as trying to evade service as the Plaintiff tried to do in this case, however, the evidence presented at the evidentiary hearing does not support this assertion by Plaintiff. This Court characterizes the efforts of Plaintiff for due diligence as those of the Plaintiff in the *McNair* case – anemic at best.

NRCP 4(d)(6) is applicable in this case, the Rule provides for personal service upon individuals. Specifically, "in all other cases regarding service of process, the defendant must be served with a copy of the summons and complaint personally, or by leaving copies thereof at defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

Plaintiff did not perform service of the summons and complaint pursuant to NRCP 4(d)(6) in this case.

NRCP 4(e)(1) provides for service by publication, particularly when the person upon whom service is to be made resides out of state, or has departed from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid the service of the summons. Here, the Plaintiff did not perform due diligence and the evidence demonstrated that Defendant did not conceal herself to avoid service of the summons and complaint, which Defendant demonstrated by a preponderance of the evidence.

In *Price v. Dunn* 106 Nev. 100 (1990), a defendant appealed from an order of the trial court that denied Defendant's motion to set aside a default judgment. The Supreme Court held that the Plaintiff's failure to exercise due diligence violated the Rules of Civil Procedure, as well as the Defendant's due process rights. This Court finds that Plaintiff's failure to exercise due diligence in this case also violated the Rules of Civil Procedure as well as Defendant's due process rights. Here, Defendant was unaware of the publication and quite understandably did not respond to the Summons and Complaint. As in *Price*, the Defendant in this case filed a Motion to Set Aside the default judgment. After evidentiary hearing in this case, it is clear that the default judgment was improperly granted whereas the motion to set aside was properly granted.

The *Price* case further noted Plaintiff's failure to exercise other methods in locating the defendant. Similarly here, Plaintiff could have exercised multiple other efforts in locating Defendant; however, Plaintiff did not do so and therefore did not exercise due diligence.

Further, and as also in *Price*, Defendant in this case certainly demonstrated during the evidentiary hearing why she did not file a response prior to the entry of default judgment and further, as also confirmed in *Price*, there is an underlying strong policy in Nevada to hear cases on their merits. Judge Israel previously made that conclusion of law and this Court confirms that conclusion after the evidentiary hearing.

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NRCP 60(b)(3) holds that extrinsic fraud is held to exist when an unsuccessful party is kept from the court by such conduct as prevents a real trial upon the issues involved or any other act or omission which procures the absence of the unsuccessful party at the trial. In this case, the Court's primary conclusion of law is that the default judgment is void pursuant to NRCP 60(b)(4). However, and alternatively, the Court does find extrinsic fraud here pursuant to NRCP 60(b)(3), by which Plaintiff prevented Defendant from appearing and defending the action until after the default judgment was set aside.

Given that the default judgment in this case was void, having been entered without any notice of a prove-up hearing following an erroneous Order to allow service by publication, the default judgment was properly set aside.

Further, in *NC-DSH, Inc. v. Garner*, 125 Nev. 647 (2009), the Supreme Court performed an analysis of extrinsic fraud and intrinsic fraud and held that the labels put on pleadings are not necessarily what are considered; rather, the substance in the pleadings is considered. Further, the *Garner* Court also held that bringing a motion to aside a judgment based upon fraud is the preferred remedy and that in some cases, a motion may be brought even years after the entry of the judgment. The *Garner* Court holds the general proposition that a judgment, particularly a default judgment, may be set aside under the proper circumstances, which is what occurred in this case and is now confirmed post-evidentiary hearing, with the evidence being clear; and good cause appearing therefore, it is hereby

ORDERED that it is proper as a matter of law and fact to grant Defendant's Motion to Set Aside the default judgment for all of the reasons set forth herein; and

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ORDERED that with the motion to set aside now being upheld, the Court also hereby upholds and/or reinstates (1) the substantive Findings of Fact and Conclusions of Law filed herein on March 11, 2020, (2) the Judgment filed on May 20, 2020, and (3) the Order Regarding Plaintiff's Motion for New Trial filed on September 7, 2021.

Dated this 30th day of August, 2023

Joe Hardy

CE3 76D 9939 6D4B
Joe Hardy
District Court Judge

Hon. Joe Hardy
District Court
Department XV

Appendix B

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Brandi Abts, Plaintiff(s)	CASE NO: A-16-738307-C
vs.	DEPT. NO. Department 28
Cynthia Arnold Abts, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 8/30/2023

brandi abts	brandiabts@yahoo.com
Patricia Marr	patricia@marrlawlv.com
Front Desk	office@marrlawlv.com
William Killip	wrk@killiplaw.com
Brandi Abts	Brandiabts@yahoo.com
Patricia Grassbough	PG@marrlawlv.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 8/31/2023

Richard Reed	626 S. Third Street Las Vegas, NV, 89101

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDI ABTS, AN INDIVIDUAL,
Appellant,
vs.
CYNTHIA ARNOLD-ABTS, AN INDIVIDUAL,
Respondent.

No. 87222

FILED
MAR 05 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B(a), (g).

It is so ORDERED.[1]

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Bell, J.
Bell

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Lee, J.
Lee

cc: Hon. Joseph Hardy, Jr., District Judge
Brandi Abts
Patricia A. Marr, Ltd.
Eighth District Court Clerk

[1]The Honorable Douglas Herndon, Chief Justice, did not participate in the decision in this matter.

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDI ABTS, AN INDIVIDUAL,
Appellant,
vs.
CYNTHIA ARNOLD-ABTS, AN INDIVIDUAL,
Respondent.

No. 87222-COA

FILED

JAN 23 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(a), (h).

It is so ORDERED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Joseph Hardy, Jr., District Judge
Brandi Abts
Patricia A. Marr, Ltd.
Eighth District Court Clerk

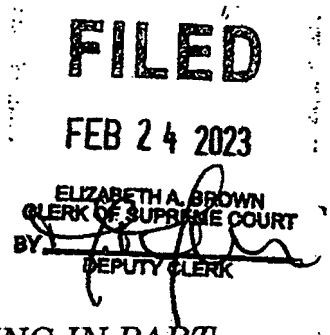
25-03471

Appendix D

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDI ABTS, AN INDIVIDUAL,
Appellant,
vs.
CYNTHIA ARNOLD-ABTS, AN INDIVIDUAL,
Respondent.

No. 83595-COA



ORDER REVERSING IN PART, VACATING IN PART AND REMANDING

Brandi Abts appeals from a final judgment following a short bench trial and a post-judgment order denying a motion for new trial. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Brandi sued her stepmother, respondent Cynthia Arnold-Abts, asserting claims based on her allegations that Cynthia alienated her from her father, wrongfully possessed her property, and defamed her. After Brandi allegedly encountered difficulties serving her complaint on Cynthia, she obtained leave to serve Cynthia by publication. Shortly after service by publication was completed, Brandi filed an addendum to her complaint, which largely reiterated the allegations in the complaint and included several exhibits regarding her personal property that Cynthia purportedly retained. Eventually, after Cynthia failed to file an answer or otherwise appear in this case, Brandi obtained a clerk's entry of default and default judgment. Approximately ten months later, Cynthia moved to set aside the default judgment pursuant to NRCP 60(b)(3) and (4), arguing that Brandi fraudulently concealed her ability to effect personal service when she sought leave to serve Cynthia by publication and that the addendum to Brandi's

complaint constituted an amended complaint, which Brandi failed to properly serve. Following a hearing, the district court granted Cynthia's motion over Brandi's opposition, finding that "there [we]re concerns regarding service of process" and citing Nevada's policy in favor of trials on the merits.

Cynthia then moved to dismiss Brandi's complaint pursuant to NRCP 12(b)(5), arguing that Nevada does not recognize a claim for alienation from a family member, that the statute of limitations had run on Brandi's claim for the return of personal property, and that her allegations were insufficient to state a claim for defamation. Following a hearing, the district court entered an order which dismissed Brandi's claims for alienation from a family member and return of personal property but granted her leave to file an amended complaint concerning her defamation claim.[1]

After Brandi filed her amended complaint and Cynthia filed an answer, the case was assigned to Nevada's court-annexed arbitration program, and the arbitrator eventually found in favor of Cynthia. Brandi then filed a timely request for a trial de novo, and the matter was set for a bench trial as part of Nevada's short trial program. Following the trial, the judge pro tempore issued a proposed judgment, finding in favor of Cynthia on Brandi's defamation claim. Brandi did not file an objection to the proposed judgment, but instead, moved for a new trial. The district court

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[1]While the district court did not specifically address Brandi's claim for alienation from a family member, it implicitly dismissed the claim by granting Brandi leave to file an amended complaint concerning only her defamation claim. *Cf. Randono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984) (explaining that an amended complaint is a distinct pleading that supersedes the original complaint).

then entered final judgment in favor of Cynthia, and later, denied Brandi's motion for a new trial. This appeal followed.[2]

On appeal, Brandi first challenges the district court's order setting aside the default judgment, arguing that she diligently attempted to personally serve Cynthia and that she properly served the summons and complaint by publication upon being granted leave to do so. Moreover, Brandi asserts that Cynthia's motion to set aside the default judgment was untimely, that it was unsupported by any evidence, and that Cynthia was incorrect in arguing that Brandi's addendum to the complaint constituted an amended complaint that needed to be separately served in accordance with NRCP 4. Cynthia only responds to these arguments insofar as she characterizes several issues presented in Brandi's informal brief as "ramblings" and baldly asserts that the issues are not supported by the record or any evidence and are not properly before this court.

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[2]Brandi previously filed several appeals challenging the district court's decisions in this matter, which Nevada's appellate courts dismissed for lack of jurisdiction. *See Abts v. Arnold-Abts*, Nos. 81296 & 81297, 2020 WL 4039066 (Nev. Jul. 16, 2020) (Order Dismissing Appeals); *Abts v. Arnold-Abts*, No. 76506, 2018 WL 4189564 (Nev. Aug. 30, 2018) (Order Dismissing Appeal); *Abts v. Arnold-Abts*, No. 75423, 2018 WL 1870734 (Nev. Apr. 16, 2018) (Order Dismissing Appeal); *Abts v. Arnold-Abts*, No. 81298-COA, 2021 WL 3878926 (Nev. Ct. App. Aug. 30, 2021) (Order Dismissing Appeal). Brandi now asks this court to review the dismissal of her various appeals. However, this court cannot overrule the supreme court's dismissal of Brandi's prior appeals, *see Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (observing that stare decisis "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court"), nor can we reconsider our dismissal of one of her prior appeals in the context of this appeal, *see Hsu v. Cty. of Clark*, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007) (explaining that, under the law of the case doctrine, "the law or ruling of a first appeal must be followed in all subsequent proceedings, both in the lower court and on any later appeal").

While this court cannot review the dismissal of Brandi's prior appeals as discussed above, *see supra* note 2, the arguments in her informal brief concerning the order setting aside the default judgment are reviewable in the context of the present appeal from the final judgment in the underlying case. *See Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (providing that, although the district court's interlocutory orders are not independently appealable, they are reviewable in the context of an appeal from the final judgment).[3]

Although Cynthia arguably failed to specifically address Brandi's arguments regarding the district court's inadequate order setting aside her default judgment on appeal, even without the deficiency in Cynthia's briefing, we cannot fully evaluate the propriety of the district court's decision to set aside the default judgment. A default judgment may only be set aside in accordance with NRCP 60(b), which sets forth specific grounds for granting relief from a final judgment and is subject to specific timing requirements. *See* NRCP 55(c) (authorizing the district court to set aside a final default judgment pursuant to NRCP 60(b)); NRCP 60(c)(1), (d) (explaining the timing requirements for NRCP 60(b) motions); *see also Greene v. Eighth Judicial Dist. Court*, 115 Nev. 391, 395, 990 P.2d 184, 186 (1999) ("Once a judgment is final, it should not be reopened except in conformity with the [NRCP]."). Here, Cynthia sought relief under NRCP

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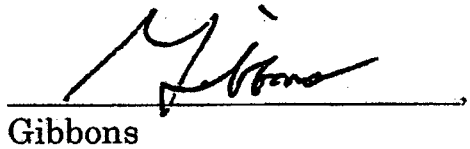
[3]Insofar as Brandi presents arguments in her informal brief regarding other decisions that she challenged in her prior appeals, we have likewise considered those arguments since they concern interlocutory orders that are reviewable in the context of her present appeal from the final judgment. *See Consol. Generator-Nev., Inc.*, 114 Nev. at 1312, 971 P.2d at 1256; *see also* NRAP 3A(b) (listing appealable determinations). In light of our resolution of this matter, however, we need not address the merits of these arguments.

60(b)(3) based on fraud upon the court and pursuant to NRCP 60(b)(4) on grounds that the default judgment was void due to defective service. However, it does not appear from the district court's oral or written findings that the court considered whether those requests were timely, or whether Brandi's conduct rose to the level of extrinsic fraud on the court excusing the time limitations imposed under the rule. Moreover, in granting Cynthia's motion, the district court did not make specific findings that Brandi committed fraud upon the court or that the default judgment was void. Instead, the district court vaguely found that "there [we]re concerns regarding service of process" and referenced Nevada's policy in favor of trials on the merits. Given this dearth of pertinent findings, we cannot say with assurance that the district court granted Cynthia's motion for appropriate reasons. *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (explaining that, even in the context of the district court's discretionary determinations, "deference is not owed to legal error or to findings so conclusory they may mask legal error" (internal citations omitted)).

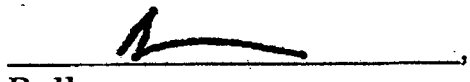
Thus, given the foregoing, we reverse the district court's order setting aside Brandi's default judgment and remand this matter for further proceedings on Cynthia's motion to set aside the default judgment. *See McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. 610, 617, 310 P.3d 555, 560 (2013) (observing that Nevada's appellate courts do not make factual findings in the first instance and reversing a district court order setting aside a default judgment based on the court's failure to make necessary findings), *abrogated on other grounds by Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Cmty. Ass'n*, 137 Nev., Adv. Op. 52, 495 P.3d 492, 498 (2021). In addressing Cynthia's motion on remand, the

district court shall fully address the appropriate considerations for granting or denying NRCP 60(b) relief from a default judgment as outlined in this order and issue explicit, detailed findings of fact and conclusions of law, preferably in writing, to support its decision with respect to that motion. Lastly, we are constrained to vacate the final judgment in favor of Cynthia and order denying Brandi's motion for a new trial, which were predicated on the absence of a default judgment against Cynthia. *Cf. Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 571, 427 P.3d 104, 106 (2018) (holding that, because a portion of the challenged judgment was reversed, the supreme court would "necessarily reverse the attorney fees and costs awarded to the [ ] parties"). We recognize that on remand, the district court will necessarily also have to address the resolution of these issues.

It is so ORDERED.[4]



_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

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[4]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

cc: Hon. Ronald J. Israel, District Judge
Brandi Abts
Patricia A. Marr, Ltd.
Eighth District Court Clerk

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CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

BRANDI ABTS,

Plaintiff,

vs.

CYNTHIA ARNOLD ABTS,

Defendant.

Case No. A-16-738307-C
Dept. No. III

DEFAULT JUDGMENT

IN THE INSTANT MATTER, from a review of the papers and pleadings on file herein, the Court finds:

(1) that the Complaint in this action was filed on June 13, 2016;

(2) that Defendant, CYNTHIA ARNOLD ABTS, was served the Summons and Complaint between October 17, 2016, and November 14, 2016, by Publication;

(3) that no answer was filed or other appearance occurred within the required time and no further time was granted;

(4) that the Default of said Defendant was entered on December 30, 2016, upon application of Plaintiff to the clerk of the court.

THEREAFTER, this matter having come before the court for hearing February 15, 2017, on Plaintiff's Application for Default Judgment, Plaintiff representing herself in proper person, Defendant failing to appear in court, and the Court having reviewed all of the pertinent papers and

Appendix F

exhibits on file and having entertained testimony and argument from Plaintiff in proper person, and for good cause shown, the following orders are entered.

IT IS HEREBY ORDERED that Default Judgment shall be entered against Defendant CYNTHIA ARNOLD ABTS.

IT IS FURTHER ORDERED that Defendant CYNTHIA ARNOLD ABTS shall return the following personal property belonging to Plaintiff:

(1) Any and all photographs and videos that depict Plaintiff in any fashion;

(2) Any roller-skating equipment, uniforms, trophies, videos, photographs, buttons, or other memorabilia associated with Plaintiff;

(3) A "Salty Dog" recording studio jacket with music pins; and

(4) Movie premier and music posters in frames for:

a. (1) "Back to the Future"; (2) "Ghostbusters"; (3) "Firestarter"; (4) "2010 the movie"; (5) "E.T. the Extra Terrestrial"; (6) "Alien"; (7) "Weird Science". (8) "Gremlins" (and stuffed animals from the film); (9) "Terminator"; (10) "Prince, Purple Rain"; (11) "Cyndi Lauper, She's So Unusual"; (12) "Elvira."

IT IS FURTHER ORDERED that $36,000.00 shall be awarded to Plaintiff for her claims of slander and defamation.

DATED this 27 day of March, 2017.

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE
CLERK OF THE COURT

APR 28 2017

Douglas W. Herndon
DISTRICT COURT JUDGE

Appendix F