

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDY REILLY,
Appellant,
vs.
SUZANNE G. MILLER, D/B/A LYNN
HOUSE MOVING, A SOLE
PROPRIETORSHIP,
Respondent.

No. 48034

FILED

MAR 13 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal challenging a district court default judgment in an action to foreclose a mechanic's lien. First Judicial District Court, Storey County; Michael R. Griffin, Judge.

Respondent Suzanne G. Miller, d/b/a Lynn House Moving, a sole proprietorship, filed a complaint in the district court against respondent Sandy Reilly, seeking, among other things, to foreclose a mechanic's lien and to recover damages for breach of contract. Reilly did not respond to the complaint, and on October 12, 2005, a default was entered against her. Three days later, Reilly filed for bankruptcy. Reilly's debts, with the exception of the mechanic's lien, were discharged by the Bankruptcy Court. Thereafter, the Bankruptcy Court issued an order approving the sale of the house at issue here owned by Reilly, with \$35,000 from the sale set aside pending resolution of the mechanic's lien dispute.

Miller then filed a motion for default judgment. Reilly opposed the motion and filed cross-motions to set aside the default based on excusable neglect and to dismiss all of Miller's claims for relief listed in

the complaint, except the mechanic's lien, in light of the bankruptcy discharge. In her cross-motion to set aside the default, Reilly argued that her failure to file an answer was excusable because at the time when she was served with Miller's complaint to enforce the mechanic's lien, Reilly was preparing to file a Chapter 7 bankruptcy proceeding that was intended to stop the mechanic's lien proceeding. Reilly also argued that her neglect in litigating the mechanic's lien action was excusable because she was challenging Miller's mechanic's lien claim before the Nevada State Contractors' Board under the belief that the contractors' board had the authority to remove the lien. After a hearing, which Reilly did not attend in person, the district court denied Reilly's motions to set aside the default under NRCP 55(c), and entered a default judgment against Reilly on Miller's claim to foreclose on the mechanic's lien, awarding Miller \$20,628 plus interest, as well as \$3,990 in attorney fees and \$740.84 in costs, and dismissing Miller's remaining claims for relief based on Reilly's bankruptcy discharge. This timely appeal by Reilly followed.

On appeal, Reilly argues that the district court abused its discretion in denying her motion to set aside the default and by entering a default judgment because the affidavit and exhibits she supplied to the court demonstrated mistake or excusable neglect in failing to file a responsive pleading to Miller's complaint. Reilly also argues that Miller failed to demonstrate that she is entitled to a default judgment on her mechanic's lien claim because the contractors' board had determined that Miller acted beyond the scope of her license, and therefore res judicata principles precluded the district court from finding Miller's mechanic's lien valid.

Miller responds that the district court did not abuse its discretion in denying Reilly's motion to set aside the default because Reilly failed to show that her failure to answer the complaint was excusable. Further, Miller argues that Reilly's res judicata argument is, at best, an affirmative defense that she waived by not answering Miller's complaint. Thus, Miller argues, the district court did not abuse its discretion in finding Miller's mechanic's lien valid and entering a default judgment. Arguing that Reilly lacked good faith in bringing her motion to set aside the default, Miller points out that Reilly did not personally appear at two hearings on Miller's application for a default judgment, even though the contentions in Reilly's motion to set aside the default and her supporting affidavit were contested, and that it was Reilly's burden to demonstrate that her neglect in litigating this matter was excusable.

A motion to set aside a default is addressed to the district court's sound discretion and will not be disturbed on appeal unless there has been an abuse of discretion.¹ NRCP 55(c) reads as follows: "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60." As used in NRCP 55(c), the phrase "good cause shown" includes mistake, inadvertence, surprise or excusable neglect.² Thus, a motion to set aside an entry of default under NRCP 55(c) can be considered under the same grounds on which the district court may set aside a default

¹Lukey v. Thomas, 75 Nev. 20, 22, 333 P.2d 979, 979 (1959).

²Tahoe Village Realty v. DeSmet, 95 Nev. 131, 590 P.2d 1158 (1979), abrogated on other grounds by Ace Truck v. Kahn, 103 Nev. 503, 746 P.2d 132 (1987).

judgment under NRCP 60(b)(1).³ The “good cause” standard under NRCP 55(c), however, may be somewhat broader than the standard for setting aside a default judgment under NRCP 60(b).⁴ Factors relevant to the district court’s NRCP 60(b)(1) determination include whether the defaulting party (1) promptly moved to set aside the judgment; (2) lacked an intent to delay the proceedings; (3) demonstrated that it lacked knowledge of procedural requirements; and (4) brought the motion to set aside in good faith.⁵ The district court must also “give due consideration to the state’s underlying basic policy of resolving cases on their merits whenever possible.”⁶ The burden of proof is on the party seeking relief.⁷

Having reviewed the record and considered the parties’ briefs, we conclude that the district court did not abuse its discretion when it denied Reilly’s request for NRCP 55(c) relief and entered a default judgment against her. Reilly’s actions, and lack thereof, could reasonably be interpreted by the district court as a failure to demonstrate good faith or as indicating intent to delay the proceedings. In particular, Reilly

³Id.

⁴Intermountain Lumber v. Glens Falls, 83 Nev. 126, 129, 424 P.2d 884, 886 (1967).

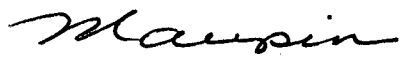
⁵Kahn v. Orme, 108 Nev. 510, 513, 835 P.2d 790, 792-93 (citing Yochum v. Davis, 98 Nev. 484, 653 P.2d 1215 (1982)); cf. Epstein v. Epstein, 113 Nev. 1401, 950 P.2d 771 (1997) (eliminating a prior mandate, which required the party moving to set aside the default to also show a meritorious defense).

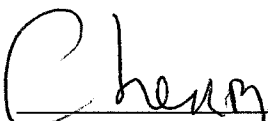
⁶Kahn, 108 Nev. at 513, 835 P.2d at 793 (quoting Yochum, 98 Nev. at 487, 653 P.2d at 1217).

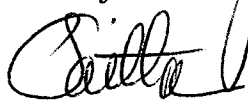
⁷Id., 108 Nev. at 513, 835 P.2d at 793.

deliberately chose to not respond to the district court proceedings as part of her strategy for pursuing her federal bankruptcy claim. Accordingly, because the district court is afforded wide discretion in determining a motion to set aside a default under NRCP 55(c), and nothing in the record suggests that the court abused its discretion in not finding Reilly's neglect excusable,⁸ we affirm the district court's judgment.

It is so ORDERED.⁹


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

⁸Tahoe Village Realty, 95 Nev. at 134, 590 P.2d at 1160 (explaining that, although a party might demonstrate neglect, the district court is not bound to find that neglectful conduct excusable).

⁹We have considered Reilly's argument that the contractors' board decision had a res judicata effect on Miller's district court action, and conclude that it lacks merit. See University & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 983-84, 103 P.3d 8, 16 (2004) (providing the circumstances under which res judicata or issue preclusion applies and indicating that once it is determined that res judicata is available, the decision to apply it is left to the district court's discretion); see also Hamlett v. Reynolds, 114 Nev. 863, 866-67, 963 P.2d. 457, 459 (1998) (stating that district courts should have "broad discretion" in determining how to conduct prove-up hearings).

cc: First Judicial District Court Dept. 1, District Judge
John W. Hawkins, Settlement Judge
John S. Bartlett
Law Offices of John P. Schlegelmilch, Ltd.
Storey County Clerk