

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALVIN P. KRAMER,  
Appellant,  
vs.  
WASTE MANAGEMENT OF NEVADA,  
Respondent.

No. 58755

FILED

OCT 10 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting a motion to dismiss in a contract action. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

Respondent filed a collections complaint against several corporations and individual defendants, including appellant, as officers of the corporations, to collect a \$19,863.20 debt for waste disposal services provided to an apartment complex. Appellant answered the complaint and filed a countersuit alleging claims for "financial loss," "emotional distress and time loss," and "frivolous lawsuit." When respondent failed to answer appellant's countersuit, appellant obtained a default judgment in the amount of \$60,617.50. Respondent moved the district court to set aside the default judgment under NRCP 60(b), arguing that it had reached a settlement with the corporate defendants and mistakenly thought that the default judgment hearing had been taken off the calendar in light of the settlement. The district court granted respondent's motion to set aside the default judgment, and respondent answered appellant's complaint. Respondent thereafter filed a motion to

dismiss appellant's countersuit and a motion to dismiss its own complaint against appellant. The district court granted respondent's motions, and this appeal followed.

The district court's order concluded that appellant failed to state a claim for relief, and therefore his countersuit should be dismissed pursuant to NRCP 12(b)(5).<sup>1</sup> This court reviews de novo an order granting an NRCP 12(b)(5) motion to dismiss, accepting all factual allegations in the complaint as true and drawing all inferences in the plaintiff's favor. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). We have reviewed the record and appellant's civil proper person appeal statement, and we conclude that dismissal was appropriate.

A complaint must "set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought." Western States Constr. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992). Appellant's countersuit failed to set forth sufficient facts to demonstrate the necessary elements for any claim for relief, and included only general allegations that appellant should not have been named in the lawsuit and

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<sup>1</sup>Appellant also challenges the district court's dismissal of respondent's complaint. The district court's order concluded that appellant had provided no legal basis as to why a voluntary dismissal of respondent's complaint against appellant was not proper under NRCP 41(a)(2). As appellant's countersuit had been dismissed and the case had been settled as to all other defendants, we perceive no error in the district court's order dismissing respondent's complaint pursuant to NRCP 41(a)(2).

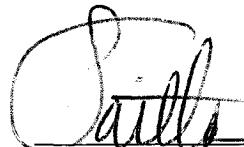
that being so named was a nuisance to appellant. Accordingly, the district court did not err in granting respondent's motion to dismiss appellant's countersuit.


Appellant also contends that the district court abused its discretion in granting respondent's motion to set aside the default judgment. NRCP 60(b)(1) provides that the district court may set aside a judgment based on mistake, inadvertence, surprise, or excusable neglect. The motion must be made within a reasonable time and, if based upon the grounds in NRCP 60(b)(1), not more than six months after the notice of judgment was served. See NRCP 60(b). The district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion. Cook v. Cook, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996). Additionally, in the context of default judgments, this court has embraced a policy of having cases decided on their merits. See Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 155, 380 P.2d 293, 295 (1963) (stating that an appellate court is more likely to affirm a lower court ruling setting aside a default judgment than it is to affirm a refusal to do so).

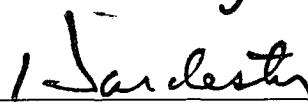
We conclude that the district court did not abuse its discretion in granting respondent's motion to set aside the default judgment. The record shows that respondent was involved in settlement negotiations with the corporate defendants at the time of the hearing on appellant's default judgment, which resulted in a settlement that included all of the named corporate officers, and respondent's attorneys indicated that there was confusion about the hearing because of the ongoing settlement

negotiations. Further, respondent filed a motion to set aside the default judgment well within the six-month time limit under NRCP 60(b)(1). Under these circumstances, and considering the policy of deciding cases on their merits, we find that the district court did not abuse its discretion in granting respondent's motion to set aside the default judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

\_\_\_\_\_, J.  
Saitta

\_\_\_\_\_, J.  
Pickering

\_\_\_\_\_, J.  
Hardesty

cc: Hon. Leon Aberasturi, District Judge  
Alvin P. Kramer  
Phillips, Harper & Harper, LLC  
Law Offices of Charles R. Zeh, Esq.  
Lyon County Clerk

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<sup>2</sup>We conclude that all other arguments made in appellant's appeal statement lack merit, and therefore, do not warrant reversal.