IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE ESTATE OF FRANCESCO PERALTA, DECEASED; BY VICTORIA PERALTA, AS SPECIAL ADMINISTRATOR OF THE ESTATE, INDIVIDUALLY AND AS HEIR,
Appellant,
vs.
BLUE VALLEY APARTMENTS, INC., D/B/A CANYON POINTE APARTMENT HOMES,
Respondent.

No. 71417

ORDER OF AFFIRMANCE

The Estate of Francesco Peralta and Victoria Peralta appeal from a final judgment in a tort action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Senior Judge.[1]

The Estate of Francesco Peralta and Victoria Peralta (the "Estate") filed a complaint for injuries that Francesco, Victoria's husband, allegedly suffered from cutting his foot on a deteriorated metal carpet strip within one of Blue Valley Apartments, Inc.'s ("Blue Valley") properties, which ultimately led to his death. Blue Valley moved for summary judgment and served this motion on the Estate on May 16, 2016, including a notice that the hearing on this motion would be held on June 14, 2016.

[1]Judge Bell granted Blue Valley Apartments, Inc.'s motion for summary judgment; Senior Judge Hardcastle denied the Estate of Francesco Peralta and Victoria Peralta's motion to set aside judgment.

17-901931

However, on May 11, 2016, the Estate's original counsel withdrew. The Estate retained new counsel, who filed his notice of appearance on May 18, 2016.

On June 6, 2016, the Estate's new counsel prepared a stipulation to vacate and reset in the ordinary course the June 14 hearing. Blue Valley's counsel consented to and signed this stipulation, but the district court never received the stipulation nor issued an order vacating the hearing. On June 14, the district court continued the hearing sua sponte as no party or counsel appeared. The district court reset it for July 12, 2016, the date of a previously scheduled hearing on another motion in this case.

Upon realizing the court had not issued an order to vacate the June 14 hearing, Blue Valley's counsel called the clerk's office and learned that the hearing was continued to July 12, 2016. Shortly thereafter, Blue Valley's counsel informed the Estate's counsel via e-mail that the hearing was continued to July 12, 2016.

No representative or counsel appeared on behalf of the Estate at the July 12 hearing, yet counsel for Blue Valley did appear. Further, the Estate did not file any written opposition to Blue Valley's motion for summary judgment as of July 12, 2016. Consequently, the district court granted Blue Valley's summary judgment motion as unopposed.

The Estate filed a motion to set aside the district court's judgment on the ground that this judgment was void for lack of proper notice. It argued Blue Valley failed to provide formal notice of the July 12 hearing in compliance with NRCP 5(b), EDCR 2.20(b), and EDCR 2.22(b). The district court denied this motion.

On appeal, the Estate makes the same argument—Blue Valley's failure to provide proper notice of the July 12 hearing renders the district court's judgment void—to assert that the district court erred both in granting Blue Valley's motion for summary judgment and in denying the Estate's motion to set aside that judgment. We find this argument unpersuasive.

The district court did not abuse its discretion in denying the Estate's motion to set aside the judgment

The district court has "wide discretion" in deciding a motion to set aside a judgment under NRCP 60(b). *Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 307 (1993). This court will not disturb a district court's decision to grant or deny a motion to set aside a judgment under NRCP 60(b) "absent an abuse of discretion." *Id.*

Under NRCP 60(b)(4), a party may seek to set aside a judgment that is "void." "For a judgment to be void, there must be a defect in the court's authority to enter judgment through either lack of personal jurisdiction or jurisdiction over the subject matter in the suit." *Gassett v. Snappy Car Rental*, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995), *superseded by rule on other grounds as stated in Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 654-56, 6 P.3d 982, 984-85 (2000); *see also Misty Mgmt. Corp. v. First Judicial Dist. Court*, 83 Nev. 180, 182, 426 P.2d 728, 729 (1967).

Defective service of process renders a district court's personal jurisdiction invalid and so any judgment against an improperly served party will be void. *See Gassett*, 111 Nev. at 1419, 906 P.2d at 261; *see also In re Estate of Black*, 132 Nev. ___, ___, 367 P.3d 416, 418 (2016) ("[D]efective service of process deprives a court of personal jurisdiction

. . . ."). Further, "any 'special' motion involving judicial discretion that affects the rights of another, as contrasted to motions 'of course,' *must* be made on notice even where no rule expressly requires notice to obtain the particular order sought." *Maheu v. Eighth Judicial Dist. Court*, 88 Nev. 26, 34, 493 P.2d 709, 714 (1972) (emphasis added) (quoting *Pratt v. Rice*, 7 Nev. 123, 126, (1871)). It is "fundamental that although an order's subject matter would lie within the court's jurisdiction if properly applied for, it is void if entered without required notice." *Id.*

Still, *Maheu* and its progeny do not establish an exacting, punitive standard whereby any failure to provide formal notice of each and every hearing or changed hearing on a motion deprives a district court of jurisdiction to decide a matter. *See id.* Rather, this line of cases requires only the moving party to give notice to the nonmoving party of *the motion itself*. *See id.* Thus, under *Maheu*, so long as Blue Valley provided proper notice of its motion for summary judgment, the district court's jurisdiction and judgment were proper. *See id.*

Under NRCP 5(a) (entitled "Service: When Required"), a moving party must serve the nonmoving party with its "written motion" when filed, except when filing ex parte motions. No mention is made of the hearing on that motion, let alone a continued hearing. *See id.* Under EDCR 2.20(b), "[a]ll motions must contain a notice of motion setting the same for hearing . . . [and] must include the time, department, and location where the hearing will occur." However, again, no mention is made of continued hearings. *See id.*

The Estate does not contest that it received proper notice of Blue Valley's motion for summary judgment when it was filed. Further, the record demonstrates that Blue Valley complied with NRCP 5 and

EDCR 2.20(b): Blue Valley filed and served its written motion for summary judgment on the Estate and provided therein notice of the date, time, department, and location of the hearing on that motion. Consequently, under *Maheu* and in consideration of NRCP 5(a) and EDCR 2.20(b), the district court's judgment cannot be void. *See Maheu*, 88 Nev. at 34, 493 P.2d at 714.[2]

Still, the Estate argues that EDCR 2.22(b) required Blue Valley to provide additional, formal service of the July 12 hearing. EDCR 2.22(b) requires a party to file a stipulation and order to vacate or continue a noticed hearing on a moti oon. It states, in relevant part, that "[a] hearing date *which has been vacated or continued by stipulation and order* may only be reset by stipulation and order or with a new notice of motion." *I* EDCR 2.22(b) (emphasis added). In this way, EDCR 2.22(b) governs only hearings vacated or continued *by stipulation*, not those continued by judicial fiat. Thus, the Estate can no more rely on EDCR 2.22(b) than it could *Maheu*, NRCP 5, or EDCR 2.20(b).[3]

---

[2]In *Wagoner v. Tillinghast*, the Nevada Supreme Court concluded that the district court's approval of a master's report was void under *Maheu* because the appellant "did not receive notice of the motion for the ex parte approval of the master's final report, nor did he have an opportunity to be heard, in spite of the prior objections which had been filed." 102 Nev. 385, 387, 724 P.2d 197, 198 (1986). By contrast, in the present case, the Estate had notice of Blue Valley's motion, had two opportunities to be heard on that motion, did not appear at either opportunity, and filed no opposition to the motion.

[3]Moreover, EDCR 2.22(b) allows a party to file a written stipulation to vacate or continue a hearing on a motion as late as "1 full judicial day before the hearing date" or a party may appear and present a stipulation orally. Accordingly, the Estate had almost a full month to re-file its

continued on next page . . .

Consequently, relief under NRCP 60(b)(4) is not warranted in this case. As a result, we conclude the district court did not abuse its discretion in denying the Estate's motion to set aside the judgment.[4]

Summary judgment was permissible as the nonmoving party did not oppose the motion

Having determined that the district court properly denied the Estate's motion to set aside, we turn now to the district court's order granting Blue Valley's motion for summary judgment.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate when the pleadings and all other evidence demonstrate that no genuine issue of material fact exists and the moving party is entitled to a judgment as a matter of law. *Id.* When reviewing a motion for summary judgment, this court must view the evidence and any reasonable inferences drawn from that evidence in a light most favorable to the nonmoving party. *Id.*

. . . continued

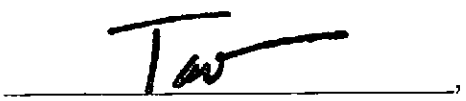
original stipulation to reset the hearing on Blue Valley's motion for summary judgment, but failed to do so. Further, the Estate's counsel did not attend the hearing where it could have orally presented its stipulation.

[4]While the district court denied the Estate's motion to set aside judgment under NRCP 60(b)(1) and NRCP 60(b)(3) rather than NRCP 60(b)(4) as the Estate urged, we conclude the district court reached the proper outcome in denying the motion and so we will affirm its order despite its reliance on the wrong subsections. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("This court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason.").

Here, the Estate filed no opposition of any kind at any time to Blue Valley's motion for summary judgment. Thus, the district court could consider the Estate's failure to oppose Blue Valley's motion as "an admission that the motion . . . is meritorious and a consent to granting the same" and we see no legal error in that decision. *See* EDCR 2.20(e); *cf. King v. Cartlidge*, 121 Nev. 926, 928, 124 P.3d 1161, 1162 (2005); *Nye Cty. v. Washoe Med. Ctr. Inc.*, 108 Nev. 896, 899-900, 839 P.2d 1312, 1314-15 (1992). Thus, summary judgment was appropriate in this case. Accordingly, we

ORDER the judgments of the district court AFFIRMED.

Silver, C.J.



Tao, J.

Gibbons, J.

cc: Hon. Linda Marie Bell, District Judge
Hon. Kathy A. Hardcastle, Senior Judge
Robert F. Saint-Aubin, Settlement Judge
Stovall & Associates
Alverson Taylor Mortensen & Sanders
Eighth District Court Clerk