IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARLENE ROGOFF, AN INDIVIDUAL,
Appellant,
vs.
JAMES MARSH,
Respondent.

No. 80767-COA

FILED

MAR 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Marlene Rogoff appeals from a district court order denying a motion to set aside a judgment. Eighth Judicial District Court, Clark County; Trevor L. Atkin, Judge.

Rogoff sued respondent James Marsh for breach of contract and unjust enrichment. The case proceeded to court-annexed arbitration, and on August 9, 2019, the arbitrator entered an award finding in favor of Marsh and against Rogoff. Later, on September 4, 2019, Rogoff traveled to the clerk's office for the Eighth Judicial District Court and attempted to file and serve her request for trial de novo. However, Rogoff failed to file her request for trial de novo, and instead e-served the request to Marsh and the arbitrator without actually filing it. As no request for trial de novo was filed with the court before the 30-day deadline under NAR 18(A) expired, the district court entered a final judgment in favor of Marsh in accordance with NAR 19(A) on September 23, 2019.

After receiving the final judgment, Rogoff filed several motions seeking to set aside the judgment under NRCP 60. In these motions, Rogoff

alleged that she was unaware that the request had not been filed as a district court clerk helped her file and serve her request at the self-service kiosk. Rogoff further stated that this clerk scanned and entered all of the information into the file and serve kiosk on her behalf. As the request was only served and not filed, Rogoff contended that the clerk must have made a mistake by not selecting "file and serve" at the kiosk, resulting in the failure to file the request for trial de novo. Accordingly, Rogoff moved for NRCP 60(b) relief on the grounds of mistake, and asked the district court to vacate the final judgment and allow her to file her request for trial de novo.

After conducting two evidentiary hearings on the issue, the district court found that Rogoff was "solely responsible for the failure to file a timely request for trial de novo." As the failure to timely file a request for trial de novo is jurisdictional, the district court also concluded that it lacked jurisdiction to set aside the final judgment under NRCP 60(b). Accordingly, the district court denied Rogoff's motions to set aside the judgment. Rogoff now appeals.

On appeal, Rogoff raises many of the same arguments she raised below, and argues that the district court should have set aside the judgment on the basis of mistake and allowed her to file her request for trial de novo.

We review the denial of an NRCP 60(b)(1) motion for an abuse of discretion. *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018), *holding clarified by Willard v. Berry-Hinckley Indus.*, 136 Nev., Adv. Op. 53, 469 P.3d 176, 180 n.6 (2020). We give wide discretion to the trial court in ruling on NRCP 60(b)(1) motions. *Id.*

Having considered Rogoff's arguments and the record on appeal, we conclude that the district court did not abuse its discretion when it denied Rogoff's motions to set aside the judgment on the arbitration award. Under NAR 18(A), a party has 30 days after an arbitration award is issued to "file with the clerk of the court and serve on the other parties and the commissioner a written request for trial de novo." Likewise, if a party fails to file a timely request for trial de novo under NAR 18(A), the district court may enter a final judgment on the arbitration award on behalf of the prevailing party. NAR 19(A). Once a final judgment is filed, the district court only has the authority to correct clerical errors or other mistakes in judgment, and "no other amendment of or relief from a judgment entered pursuant to this rule shall be allowed." NAR 19(C).

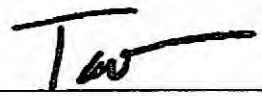
Here, the district court determined, after two hearings on the matter, that Rogoff alone is responsible for failing to timely file her request for trial de novo. *See Keife v. Logan*, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003) ("[T]his court will not disturb a district court's findings of fact if they are supported by substantial evidence."). And regardless, given the jurisdictional nature of Rogoff's failure to timely file a request for trial de novo, NAR 18(A), and the limitation on available remedies once a final judgment had been entered as set forth in NAR 19(C), the district court correctly determined that it lacked jurisdiction to grant Rogoff her

requested relief. Accordingly, we conclude that the district court did not abuse its discretion in denying Rogoff's motions to set aside the judgment.[1]

Therefore, for the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

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[1]We recognize that our supreme court recently determined that a district court's failure to address and make express written findings regarding the factors set forth in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in part by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997), in denying a request for NRCP 60(b) relief necessitates the reversal of that decision. *See Willard*, 136 Nev., Adv. Op. 53, 469 P.3d at 178. But here, a reversal on this basis would be futile, as such relief is unavailable in light of NAR 18 and 19. Under these circumstances, and given that Rogoff failed to present any argument urging reversal for failure to address or make findings regarding these factors, *see Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived), we decline to reverse the challenged order on this basis.

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

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 8
Marlene Rogoff
The Galliher Law Firm
Eighth District Court Clerk