IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATMOWN, INC.; AND ALEX PORTELLI
Appellant,
vs.
SEAN SPICER,
Respondent.

No. 81406-COA

FILED

SEP 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Matmown, Inc. appeals from a district court order denying an NRCP 60(b) motion to set aside a default judgment in a breach of contract action.[1] Eighth Judicial District Court, Clark County; James Crockett, Judge.

Matmown executed a promissory note for $35,000 in favor of respondent Sean Spicer and allegedly failed to pay on the note.[2] Spicer subsequently sued Matmown for damages in the district court. He alleges he was unable to properly serve Matmown through its registered agent and officer, Alex Portelli. Spicer eventually resorted to delivering a copy of the summons and complaint to the Nevada Secretary of State in order to effectuate service on Matmown. Matmown failed to answer the complaint.

[1]The initial suit below included an additional claim on a $75,000 promissory note executed in favor of Spicer and personally assumed by Alex Portelli. A stipulation and order voluntarily dismissing the claims against Portelli was filed in the district court on October 2020, after this appeal was filed. Thus, Portelli is not an aggrieved party and we dismiss the appeal as to Portelli. *See* NRAP 3A(a) (providing that only a party who is aggrieved by an appealable judgment may appeal from the judgment).

[2]We do not recount the facts except as necessary for our disposition.

A few months later, Spicer filed a motion for default judgment against Matmown, as well as Portelli, who Spicer had also initially sued for a separate promissory note not at issue in this appeal. Spicer later filed an amended motion for default judgment only against Matmown. The district court granted a default judgment against Matmown in the amount of $252,626.95. Matmown subsequently moved to set aside the default judgment pursuant to NRCP 60(b)(1). Matmown alleged that it was not properly served with the summons and complaint, even though Spicer knew its correct business address because the address had been updated by Matmown in one of its annual filings with the Nevada Secretary of State. Matmown conceded that it mistakenly failed to update the address of its registered agent because it did not realize this required a separate filing.

The district court denied Matmown's motion to set aside the default judgment pursuant to NRCP 60(b), concluding that Matmown failed to show "good cause" to set aside the default judgment. However, in its order, the court failed to include any findings regarding the merits of Matmown's request to set aside the default pursuant to NRCP 60(b)(1), or its claim that service of the summons and complaint was improper. In the court's minutes, the district court expressed its frustrations with Matmown's failure to provide a proper address for service of process and noted that "while [Matmown] claims to have meritorious defenses, [it] makes not even the slightest pretense about enumerating what those defenses (or any of them) might be." The district court, however, did not explain its reasoning for the denial in its order. This appeal followed.

On appeal, Matmown contends that the district court abused its discretion when it denied its motion to set aside and failed to issue any findings of fact related to the factors set forth in *Yochum v. Davis,* 98 Nev.

484, 486, 653 P.2d 1215, 1216 (1982), *overruled on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997).[3] Spicer counters that the district court need not make express findings for each *Yochum* factor as long as the district court *considers* each factor; alternatively, he argues that if the court finds bad faith under factor four of *Yochum*, such as by Matmown in evading service, it need not necessarily analyze each of the other three *Yochum* factors in its order. We conclude that the district court abused its discretion when it failed to *consider* the *Yochum* factors by including the relevant analyses of these factors in its order.

The district court has broad discretion in deciding whether to grant or deny a motion to set aside a default judgment under NRCP 60(b), 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). Under NRCP 60(b)(1), the district court may relieve a party from a final judgment or order on grounds of "mistake, inadvertence, surprise, or excusable neglect." When determining whether there are grounds for NRCP 60(b)(1) relief, the court must consider four factors: "(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith." *Yochum*, 98 Nev. at 486, 653 P.2d at 1216.

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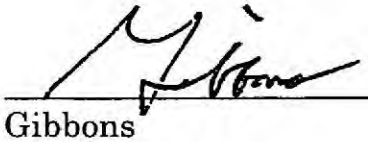
[3]Matmown also argues that to the extent that the district court considered any purported lack of meritorious defense by Matmown as a basis for denial, this was an abuse of discretion. We need not reach this argument, however, given our conclusion that the district court's failure to consider the *Yochum* factors requires reversal. Nevertheless, we emphasize that "[a] party need not show a meritorious defense in order to have a court set aside a default judgment." *Epstein*, 113 Nev. at 1405, 950 P.2d at 773.

As the Nevada Supreme Court recently held in *Willard v. Berry-Hinckley Industries*, "district courts must issue explicit and detailed findings, preferably in writing, with respect to the four *Yochum* factors to facilitate this court's appellate review of NRCP 60(b)(1) determinations." 136 Nev. 467, 471, 469 P.3d 176, 180 (2020). The appellate courts' review of NRCP 60(b)(1) determinations "necessarily requires district courts to issue findings pursuant to the pertinent factors in the first instance." *Id.* at 470, 469 P.3d at 180 (citing *Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011)). "Without an explanation of the reasons or bases for a district court's decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation." *Jitnan*, 127 Nev. at 433, 254 P.3d at 629.

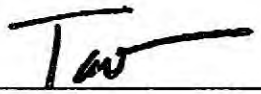
Here, we recognize that at the time the district court decided Matmown's motion it did not have the benefit of *Willard* for guidance, including that it was required to render explicit factual findings for each of the *Yochum* factors. However, even prior to *Willard*, the court was required to at least *consider* the four *Yochum* factors, which it does not appear to have done, either contemporaneously on the record or in its order. Critically, in its order, the district court did not discuss a single *Yochum* factor, nor cite to *Yochum* or to any of the parties' arguments regarding *Yochum*. Thus, we conclude that reversal and remand is required and instruct the trial court to reconsider Matmown's motion for NRCP 60(b)(1) relief, in compliance with *Willard*, by analyzing and issuing factual findings for each of the *Yochum* factors.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[4]



_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 24
Alexis Brown Law, Chtd.
Las Vegas Legal Solutions
Caldwell Law Firm, PC
Eighth District Court Clerk

[4]To the extent that the parties raise arguments not addressed in this order, we have considered them and conclude that they should be addressed by the district court in the first instance on remand.