

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ESMERALDA COUNTY, NEVADA,
BOARD OF COMMISSIONERS;
TIMOTHY HIPP; DE WINSOR; AND
RALPH KEYES,
Appellants,
vs.
THE STATE OF NEVADA LOCAL
GOVERNMENT EMPLOYEE
MANAGEMENT RELATIONS BOARD;
AND INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 501,
AFL-CIO,
Respondents.

No. 82247-COA

FILED

NOV 17 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

ORDER OF AFFIRMANCE

The Esmeralda County Board of Commissioners (the Commissioners) appeal from a district court order denying a motion to reconsider or set aside under NRCP 60(b). Fifth Judicial District Court, Esmeralda County; Robert W. Lane, Judge.

After hours, the Commissioners slid a petition for judicial review under the clerk's door in the Fifth Judicial District Court for filing.¹ Approximately ten minutes after sliding the petition under the clerk's door, the Commissioners placed three copies of the petition in a mailbox for service. The State of Nevada Local Government Employee Management Relations Board (the Board) responded to the petition by filing a motion to dismiss with prejudice. The Board's motion relied on an interpretation of NRS 233B.130(5) that requires a petition to be filed *before* it is served. The

¹We do not recount facts except as necessary to our disposition.

Commissioners opposed the Board's motion and alternatively asked the district court for an extension of time to serve the petition.

After reviewing the briefs and hearing arguments on the motion, the district court denied the Commissioners' request for an extension of time to serve the petition and dismissed the case with prejudice. The district court relied on the Board's interpretation of NRS 233B.130(5) in its dismissal, determining that the initial petition had not been properly served and an extension of time to serve was not justified.

After the petition was dismissed, the Commissioners filed a motion to reconsider and to stay and a motion to set aside the judgment dismissing their petition for judicial review. At the hearing on the motion to reconsider, the Commissioners conceded that both the motion to reconsider and the motion to set aside requested relief under the same rule, NRCP 60(b). The district court took the motions under advisement. While under advisement, the Nevada Supreme Court decided *Department of Corrections v. DeRosa*, 136 Nev. 339, 466 P.3d 1253 (2020), which held that service of a petition for judicial review is effectuated pursuant to NRCP 5. After receiving notification of the supreme court's decision in *DeRosa*, the district court ordered the Commissioners and the Board to supplement their briefing regarding what effect, if any, *DeRosa* had on the case. After considering the parties' supplemental briefing, the district court denied the Commissioners' motion for relief under NRCP 60(b). On appeal, the Commissioners argue that the district court abused its discretion by denying its request for NRCP 60(b) relief. We disagree.²

²Because the Commissioners appealed from the order denying NRCP 60(b) relief, instead of the district court's order dismissing the case, our review is strictly limited to whether the court's denial of NRCP 60(b) relief

Denial of NRCP 60(b) relief is within the sound discretion of the district court. *Deal v. Baines*, 110 Nev. 509, 512, 874 P.2d 775, 777 (1994). An order denying a motion for reconsideration or set aside under this rule will not be disturbed on appeal absent an abuse of discretion. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

In this case, the Commissioners have not shown how the district court abused its discretion by denying NRCP 60(b) relief. On appeal, the Commissioners argue that NRCP 60(b)(1) and (b)(2) provide a basis for reconsideration or setting aside the judgment of dismissal. A district court may relieve a party from a final judgment under NRCP 60(b)(1) due to “mistake, inadvertence, surprise, or excusable neglect” and under NRCP 60(b)(2) where there is “newly discovered evidence.” *Id.* The Commissioners interpret “mistake” to include a mistake of law by the district court and newly discovered evidence to include a recent opinion from the Nevada Supreme Court. However, we cannot agree with either interpretation.

The Commissioners cite no authority to support the argument that NRCP 60(b)(1) allows for “mistake” to mean a legal mistake by the district court in applying the law or that a new supreme court decision constitutes newly discovered evidence (and the parties do not argue that any other subsection of Rule 60(b) governs). The evidence that is proffered for this proposition is the supreme court’s opinion in *Department of*

was an abuse of discretion. Thus, because the Commissioners failed to appeal the dismissal order, we do not review the district court’s statutory interpretation of NRS 233B.130(5), as it is not necessary to resolve the instant appeal. *See Molloy v. Wilson*, 878 F.2d 313, 315 (9th Cir. 1989) (“An appeal from a denial of a Rule 60(b) motion brings up only the denial of the motion for review, not the merits of the underlying judgment.”).

Corrections v. DeRosa, 136 Nev. 339, 466 P.3d 1253 (2020). However, the Commissioners again cite no authority that would allow this court, or any other court, to hold that an appellate court's opinion is "newly discovered evidence" within the meaning of the rule.


In fact, that reasoning is not supported by the text of the rule. NRCP 60(b)(2) allows relief from a final judgment if there is "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." The general definition of "evidence" is "[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or nonexistence of a fact." *Evidence, Black's Law Dictionary* (11th ed. 2019). Thus, this court cannot reason that a subsequent appellate court's opinion constitutes "newly discovered evidence" within the meaning of NRCP 60(b)(2). Further, whether intervening legal authority justifies NRCP 60(b) relief is more properly addressed under NRCP 60(b)(5), which has not been argued here. See *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (noting that courts follow the "principle of party presentation" on appeal, which requires the litigants to frame the issues). But we note that "NRCP 60(b)(5) does not allow a district court to set aside judgments solely based on new or changed precedent." *Ford v. Branch Banking & Trust Co.*, 131 Nev. 526, 527, 353 P.3d 1200, 1201 (2015). Based on the foregoing, we cannot conclude that the district court abused its discretion in denying NRCP 60(b) relief.

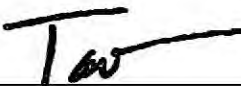
Finally, the Commissioners argue the district court abused its discretion under NRCP 60(b) denying its motion for an extension of time to serve the Board. The district court, relying on *Saavedra-Sandoval v. Wal-*


Mart, 126 Nev. 592, 245 P.3d 1198 (2010), found that the Commissioners failed to timely request an extension of time to serve the petition and, therefore, denied their request. The district court specifically concluded that the Commissioners failed to demonstrate good cause for an extension. On appeal, the Commissioners fail to cite to any section under NRCP 60(b) supporting that the district court abused its discretion under *Saavedra-Sandoval* in denying the extension because the Commissioners' motion to extend was first made after the time for service had expired. We decline to consider arguments that are not cogently argued or supported by proper authority. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

Therefore, because the Commissioners have not shown how the district court abused its discretion in denying NRCP 60(b) relief, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
Esmeralda County District Attorney
Attorney General/Carson City
Attorney General/Las Vegas
The Myers Law Group, APC
Law Office of Hayes & Welsh
Esmeralda County Clerk