

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL RYAN HEIGHT,
Appellant,
vs.
AMI BAUTISTA-MAY,
Respondent.

No. 80429-COA

FILED

FEB 18 2022

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

ORDER OF REVERSAL AND REMAND

Michael Ryan Height appeals from an order denying a motion to set aside a stipulated decree of divorce under NRCP 60(b)(1). Eighth Judicial District Court, Family Court Division, Clark County; Denise L. Gentile, Judge.¹

During the underlying proceeding, Height and respondent Ami Bautista-May reached a settlement, which was read into the record in open court and entered in the district court's minutes in the form of an order. The district court subsequently entered a stipulated divorce decree that was prepared by Bautista-May's counsel even though Height refused to sign it. Height then moved to set aside the portion of the divorce decree that

¹Judge Gentile presided over the underlying proceeding, but Height's motion for NRCP 60(b) relief and motion for reconsideration of the order denying such relief were heard by Senior Judge Valorie J. Vega, although Judge Gentile signed the resulting orders.

distributed the parties' community estate under NRCP 60(b)(1), asserting that it was the result of mistake, inadvertence, surprise, or excusable neglect. The district court summarily denied the motion. Height now appeals that decision.

On appeal, Height challenges the denial of his NRCP 60(b)(1) motion, observing that the district court only made limited findings to support its decision. The district court has broad discretion in ruling on NRCP 60(b) motions, and its determination will not be disturbed absent an abuse of discretion. *See Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 469, 469 P.3d 176, 179 (2020). 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 district 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 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).

As the Nevada Supreme Court recently held in *Willard*, "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. at 471, 469


P.3d at 180. Our 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 470-71, 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, the district court did not have the benefit of *Willard*’s explicit findings requirement when it decided Height’s NRCP 60(b)(1) motion. However, even prior to *Willard*, the district 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. Indeed, in his NRCP 60(b)(1) motion, Height discussed the *Yochum* factors by referencing the supreme court’s decision in *Lesley v. Lesley*, 113 Nev. 727, 941 P.2d 451 (1997), which applied the *Yochum* factors. However, the district court did not discuss these factors during the hearing that followed or in its order denying the motion, and its only oral or written finding relevant to the *Yochum* factors was that Height’s motion was timely. *See Yochum*, 98 Nev. at 486, 653 P.2d at 1216 (indicating that when the district court evaluates an NRCP 60(b)(1) motion, it must evaluate whether the moving party promptly applied to remove the judgment and whether he or she intended to delay the proceedings). Thus, we conclude that reversal and remand is

required and instruct the district court to reevaluate Height's motion for NRCP 60(b)(1) relief, in accordance with *Willard*, by analyzing and issuing factual findings for each of the *Yochum* factors.²

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²In reaching this conclusion, we express no opinion with respect to the merits of Height's NRCP 60(b)(1) motion.

³Having considered the parties' remaining arguments, we conclude that they either lack merit or need not be reached given our disposition of this appeal.

cc: Hon. Denise L. Gentile, District Judge, Family Court Division
Hon. Valorie J. Vega, Senior Judge
Larry J. Cohen, Settlement Judge
Page Law Firm
McFarling Law Group
Eighth District Court Clerk