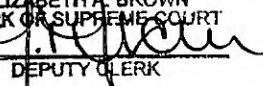


IN THE SUPREME COURT OF THE STATE OF NEVADA

QIANJING CAO, AN INDIVIDUAL,
Appellant,
vs.
JIE SHEN AN INDIVIDUAL; AND
GUANGXIAO LYU AN INDIVIDUAL,
Respondents.

No. 85443
FILED

SEP 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court amended order granting summary judgment. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Appellant Qianjing Cao and respondents Jie Shen and Guangxiao Lyu executed three investment agreements in October 2019. Under the first investment agreement, in exchange for the payment of \$300,000, Shen and Lyu were to receive a fixed monthly income of \$7,500 over the course of a 12-month investment period, for a total of \$90,000. On October 17, 2019, Shen and Lyu made a wire transfer to Cao's personal bank account in the amount of \$300,000. The remaining agreements provided that in exchange for each payment of \$20,000, Shen and Lyu would receive \$200 per month during a 29-month investment period, for a total of \$5,800. On October 22, 2019, Shen and Lyu made the first wire transfer of \$20,000 to Cao's personal bank account. On October 23, 2019, Shen and Lyu made the second \$20,000 wire transfer to Cao's personal bank account.

During the first few months of the investment periods, Cao made approximately \$25,800 in monthly income payments to Shen and Lyu. Thereafter, Cao made no monthly income payments to Shen and Lyu.

Between January 2020 and July 2020, Shen and Lyu made several demands for the return of their investment capital. However, Cao either ignored these demands or made excuses as to why she was unable to return their investment capital or make any interest payments. As a result, in July 2020 Shen and Lyu filed a complaint against Cao asserting claims under an alter ego theory for (a) fraud, (b) breach of contract, (c) breach of the implied covenant of good faith and fair dealing, (d) conversion, (e) unjust enrichment, (f) constructive trust, and (g) declaratory relief. Cao retained counsel¹ and filed an answer to the complaint in August 2020.

In May 2021, Shen and Lyu filed a motion for summary judgment, which was supported by several exhibits including, in relevant part, (a) declarations by Shen and Lyu, (b) the investment agreements, (c) interest checks from Cao's personal bank account, and (d) funds transfer authorization forms. Because Cao was no longer represented by counsel at that time and had not registered for electronic service, Shen and Lyu's counsel served Cao with the summary judgment motion via first class mail at her last known address provided in a January 2021 order granting her counsel's motion to withdraw. After Cao failed to file an opposition, Shen and Lyu filed a notice of non-opposition and served it on Cao at the same address. In July 2021, the district court issued a minute order granting summary judgment to Shen and Lyu as to Cao's liability and scheduling a proveup hearing regarding damages. Cao did not receive the minute order, and consequently did not appear at the proveup hearing. On July 22, 2021, the district court entered an order granting summary judgment and

¹Cao's counsel withdrew from the case in January 2021 and Cao did not obtain new counsel until after the notice of entry of judgment was served on her.

awarding Shen and Lyu damages and attorney fees, which was served via mail at Cao's address. On August 8, 2021, the district court entered a judgment on the order awarding Shen and Lyu essentially the same amounts, which was also served via mail at Cao's last known address.²

After Shen and Lyu made efforts to collect on the judgment, Cao retained new counsel, who filed a notice of appearance and, thereafter, filed an NRCP 60(b) motion to set aside the judgment. In June 2022, the district court entered an order granting in part and denying in part Cao's motion. The court determined that summary judgment was appropriate as to Cao's liability, but set a new hearing on damages, as Cao denied receiving notice of the previous proveup hearing. Thereafter, on August 12, 2022, the district court held a new hearing solely on the issue of damages, at which Cao testified through an interpreter. On September 11, 2022, the district court entered its findings of fact and conclusions of law, and an amended judgment in favor of Shen and Lyu. The court awarded Shen and Lyu roughly \$451,000 in compensatory damages (representing their \$340,000 original investment, plus interest), \$100,000 in punitive damages, and roughly \$27,000 in attorney fees.

Cao argues on appeal that the district court abused its discretion by denying in part her motion to set aside the amended order granting summary judgment to Shen and Lyu. Cao claims she was never served with a notice of a proveup hearing on Shen and Lyu's motion for summary judgment. Cao further argues that the district court erred in

²This order appears to have been unnecessary, *see Campos-Garcia v. Johnson*, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014) (observing that "superfluous judgments are unnecessary" because they "confuse appellate jurisdiction"), but it nonetheless constitutes another document that was served by mail on Cao.

finding liability and awarding compensatory and punitive damages to Shen and Lyu.³

Shen and Lyu contend that the district court did not abuse its discretion by denying in part Cao's motion to set aside because Cao failed to file an opposition to their motion for summary judgment after being served by mail. Additionally, Shen and Lyu assert that the district court did not err in finding liability and awarding damages because liability and damages were supported by competent evidence. We agree.

The district court did not abuse its discretion by denying, in part, Cao's motion to set aside the judgment

A district court's decision to "deny a motion to set aside a [final] judgment under NRCP 60(b) [is reviewed] for an abuse of discretion." *Ford v. Branch Banking & Tr. Co.*, 131 Nev. 526, 528, 353 P.3d 1200, 1202 (2015) (internal quotation marks omitted). When reviewing for an abuse of discretion, this court will uphold a district court's decision that falls within a broad range of permissible conclusions. *See Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014) ("An abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances.").

NRCP 60(c)(1) provides that "[a] motion under Rule 60(b) must be made within a reasonable time . . . no more than 6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later." Here, Cao was served with the

³Cao also seemingly assigns error to the district court's award of attorney fees and costs but makes no argument in this regard. Thus, we do not consider this claim. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently presented or lacks the support of relevant authority).

notice of entry of judgment via mail on August 9, 2021, and Cao filed her motion to set aside 8 months later, on April 13, 2022. Consequently, Cao's motion to set aside was filed outside the 6-month period required under NRCP 60(c)(1), and we conclude that the district court acted within its discretion by partially denying Cao's request for relief on that basis.⁴

We further reject Cao's argument that the judgment was void due to lack of notice, which would allow her to file a motion to set aside outside NRCP 60(c)(1)'s 6-month time period. Cao claims she did not receive notice that a proveup hearing was scheduled until after the district court awarded summary judgment as to liability, thus rendering the judgment void. However, this argument ignores the fact that the district court's finding of liability was based on Cao's failure to file an opposition to the motion for summary judgment. We note that Cao was sent a copy of the motion for summary judgment, as well as a notice of non-opposition to the motion for summary judgment, via first class mail to her last known address. Thus, Cao has not and cannot present any colorable argument that the summary judgment order was void. Moreover, the district court granted in part Cao's motion by scheduling a new proveup hearing. Therefore, we conclude that the district court cured any issues concerning Cao's alleged lack of notice concerning the proveup hearing.

The district court did not err in awarding compensatory damages in favor of Shen and Lyu

An award of compensatory damages will be affirmed "unless the award is so excessive that it appears to have been given under the influence

⁴We note that Cao was mailed a copy of the order granting summary judgment and the notice of entry at her last known address, as set forth in the district court's order allowing her previous counsel to withdraw from the case.

of passion or prejudice,” or is not supported by competent evidence. *Bongiovi v. Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006).

The district court awarded Shen and Lyu \$410,000 in compensatory damages, broken down as \$340,000 in principal investments made under the agreements, plus \$70,000 in remaining interest payments as provided under the agreements—\$95,800 due, minus the \$25,800 in payments made by Cao. Despite Cao’s arguments to the contrary, the testimony in the record supports the district court’s compensatory damages award. Because the damages were supported by competent evidence, we conclude that the district court did not err in awarding compensatory damages. We therefore affirm the district court’s award in that respect.

The district court did not err in awarding punitive damages in favor of Shen and Lyu

Cao also contends that the district court erred in awarding \$100,000 in punitive damages to Shen and Lyu because they did not introduce evidence that Cao acted with fraud, oppression, or malice, as required under NRS 42.005 to support an award of punitive damages. This contention is without merit.

NRS 42.005 states a plaintiff may recover punitive damages “where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice.” An award of punitive damages will be upheld “if it is supported by substantial evidence of oppression, fraud, or malice.” *Bongiovi*, 122 Nev. at 581, 138 P.3d at 451. The reviewing court will “assume that the [factfinder] believed all the evidence favorable to the prevailing party and drew all reasonable inferences in [that party’s] favor.” *Id.* (second alteration in original).

Here, the district court found, based on clear and convincing evidence presented to the court, that Cao’s actions exceeded mere

recklessness or gross negligence, amounting to fraud. This finding is supported by substantial evidence in the record and complies with the requirements of NRS 42.005. As such, we conclude that the district court did not err in awarding punitive damages. We therefore affirm this award.

Accordingly, we ORDER the judgment of the district court AFFIRMED.



_____, J.
Herndon



_____, J.
Lee



_____, J.
Parraguirre

cc: Hon. Veronica Barisich, District Judge
James A. Kohl, Settlement Judge
Hatfield & Associates, Ltd.
Skylar Williams PLLC
Eighth District Court Clerk