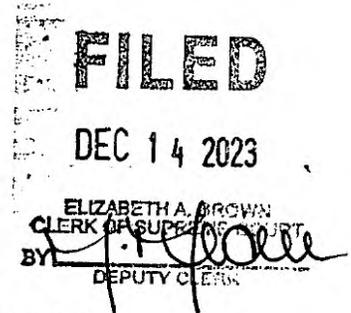


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PRAVESHKA KENDAR, LLC, A
FOREIGN LIMITED LIABILITY
COMPANY,
Appellant,
vs.
ROMA HILLS OWNERS'
ASSOCIATION, A NEVADA NON-
PROFIT CORPORATION,
Respondent.

No. 85573-COA



ORDER OF REVERSAL AND REMAND

Praveshika Kendar, LLC (Kendar) appeals from a default judgment; an order denying a motion to set aside the default judgment and granting a countermotion for contempt; an order denying a motion to set aside, reconsider, and/or vacate an order; and an order granting attorney fees.¹ Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Kendar is a Nevis limited liability company with its principal place of business in Clark County.² Kendar owns real estate including a house located in Henderson. A prior co-defendant, Nanveet N. Sharda, resides at the house. The house is located within the jurisdiction of the Roma Hills Owners' Association (Roma Hills). Roma Hills requires that all improvements or alterations to the property be approved by an established Design Review Committee.

¹The Honorable Bonnie A. Bulla, Judge, voluntarily recused herself from participation in the decision of this matter.

²We recount the facts only as necessary for our disposition.

Sometime around 2012, Sharda installed a three-dimensional design featuring the Hindu symbol “OM” on the house without the approval of the Design Review Committee.³ Sometime before 2017, several different designs were painted on the house as well, also without the approval of the Design Review Committee.

In August 2017, Roma Hills sent Kendar a letter informing it of the alleged violations, that a hearing would occur later in the month, and that a fine of \$100 per violation could be assessed at the hearing with an additional fine of \$100 per violation assessed every seven days that Kendar failed to comply with the design and review process and kept the property in its unapproved altered condition. This letter was mailed to Kendar in Santa Monica, California, and to the subject property in Henderson.⁴ Kendar did not attend the hearing and was assessed a \$100 fine for keeping the property in its altered state. Kendar was given 14 days to conform the property, after which a \$100 fine would be assessed for every seven days that the property remained uncorrected from its altered state. Kendar still did not comply, and Roma Hills sent Kendar 24, periodic, notices of the fines that were accruing to the property in Henderson. By July 2021, Kendar had accrued \$36,200 in fines.

Roma Hills attempted to resolve the situation through a state mediation program in 2020, but Kendar did not appear, so the matter was considered closed by the Department of Business and Industry Real Estate Division, Common-Interest Communities and Condominium Hotels

³The “OM” symbol is a sacred symbol in Hinduism and other religions chiefly of India. *Om*, Encyclopedia Britannica, <https://www.britannica.com/topic/Om-Indian-religion> (last visited November 13, 2023).

⁴The record is unclear why the letter was mailed to California.

Program. In September 2020, Roma Hills filed a complaint in the district court against Kendar and Sharda asserting that a restrictive covenant was violated and requesting declaratory judgment. Roma Hills failed to serve Sharda even though he was living in the subject home.

Roma Hills served Kendar through its registered agent listed on the Nevada Secretary of State's website in September 2020. During the ensuing 14 months, Kendar did not respond. Therefore, in April 2021, Roma Hills served a three-day notice of intent to take default against Kendar through Kendar's registered agent listed on the Nevada Secretary of State's website. Kendar failed to respond, so the clerk of the court entered a default as to Kendar in May 2021. In November 2021, Roma Hills requested that a default judgment be entered against Kendar. Roma Hills specifically requested that the court order Kendar to remove the unauthorized alterations, to return the property to its original condition, and to award Roma Hills \$43,833.99 in fines and fees and \$9,411.40 in attorney fees. A prove up hearing was held in January 2022, which Kendar did not attend. It does not appear that the request for a default judgment or notice of the prove up hearing were served on Kendar.⁵

⁵We note that Roma Hills would likely have only been required to serve notice of the request for a default judgment to be entered if Kendar had participated in the litigation. See NRCP 55(b)(2) (stating "[i]f the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing"); *Gazin v. Hoy*, 102 Nev. 621, 624, 730 P.2d 436, 438 (1986) (explaining that "[a] plaintiff must give written notice of an application for a default judgment to any defendant that has appeared in the action"). We need not further discuss this matter in light of our disposition. See *Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 315 n.1, 774 P.2d 1047, 1048 n.1 (1989) (declining to resolve an issue in light of the court's disposition).

On January 20, 2022, the district court entered default judgment against Kendar and ordered Kendar to remove the unauthorized alterations and return the property to its original condition. The district court also awarded Roma Hills \$43,833.99 in fines and fees and \$9,411.40 in attorney fees. The default judgment and the notice of entry of the default judgment were not served on Kendar.

On April 1, 2022, Kendar filed a motion to set aside the default judgment and argued that it had never been properly served with the complaint. Specifically, Kendar argued that the “fraudsters” identified in a lawsuit filed in 2015 had fraudulently domesticated Kendar in Nevada in 2020 and assigned a fraudulent registered agent to the LLC.⁶ Kendar furthered argued that the fraudulent registered agent was served, not a real agent of Kendar, so Kendar had no way to know about the lawsuit and thus the default judgment should be set aside. Roma Hills opposed the motion and filed a countermotion asking the district court to hold Kendar in contempt for not removing the additions to the home. The district court, without an evidentiary hearing, denied Kendar’s motion and held Kendar in contempt in July, but further contempt proceedings were stayed by a court order pending the outcome of the present appeal. The district court found that Kendar was aware that the fraudsters had fraudulently domesticated the company since at least 2015, that Kendar had not promptly moved to set aside the judgment, that Kendar had deliberately delayed litigation, that Kendar had not met its burden to show it lacked

⁶In 2015, Sharda and Kendar filed a lawsuit against these same alleged fraudsters and averred that they intended to obtain control of Sharda’s and Kendar’s assets for their own gain. This case is set for a bench trial in December 2023.

knowledge of the procedural requirements of this action, and that Kendar's failure to respond was in bad faith.

In July 2022, Roma Hills filed a motion requesting attorney fees and Kendar filed a motion to reconsider or vacate the July 2022 order, once again arguing that service was improper. Both motions were opposed by the other party. The district court, without an evidentiary hearing, granted Roma Hills' motion and denied Kendar's motion. Kendar now appeals the order granting default judgment; the order denying Kendar's motion to set aside default judgment and granting Roma Hills' countermotion to hold Kendar in contempt; the order denying Kendar's motion to set aside, reconsider, and/or vacate the order of contempt; and the order granting Roma Hills' motion for attorney fees.

On appeal, Kendar argues that the district court erred in finding that Kendar was properly served with the complaint because the record shows that a fraudster was served. Kendar also contends that the district court abused its discretion in not setting aside the default judgment because Kendar promptly moved to set aside the default and because the district court failed to consider the *Yochum*⁷ factors. Additionally, Kendar argues that the district court abused its discretion when it found Kendar in contempt, because (1) the notice of entry of judgment did not have a certificate of service attached to it, (2) Roma Hills failed to provide affidavits or evidence to support its motion, (3) the default judgment is too vague to be enforced, and (4) the district court was required to recuse itself. Kendar also contends that the district court erred in awarding Roma Hills

⁷*Yochum v. Davis*, 98 Nev. 484, 653 P.2d 1215 (1982), *overruled on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997).

\$43,833.99 in the default judgment order for fines and fees.⁸ Finally, Kendar argues that the district court abused its discretion in awarding Roma Hills attorney fees. We agree in part with Kendar and therefore reverse and remand.

The district court abused its discretion when it denied the motion to set aside the default judgment and found that Kendar was properly served

The district court has wide discretion to deny a motion to set aside a default judgment and we review the district court's decision for an abuse of discretion. *Vargas v. J Morales Inc.*, 138 Nev., Adv. Op. 38, 510 P.3d 777, 780 (2022). A district court abuses its discretion when its decision is clearly erroneous. *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). A district court also abuses its discretion when it disregards established legal principles. *Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 469, 469 P.3d 176, 179 (2020).

Kendar first argues that the district court erred when it found that Kendar was properly served because Kendar presented evidence that showed that a fraudster had domesticated the LLC in Nevada, so Kendar's actual agents never received any of the filings. Roma Hills argues that the district court did not abuse its discretion because Kendar was served and had a responsibility to ensure that the information on the Nevada Secretary of State website was accurate.

The district court found that Kendar was properly served because Kendar's registered agent listed on the Nevada Secretary of State's website was served. The court also found that Kendar was aware that a fraudster had registered the LLC since 2015 but chose not to correct the

⁸In light of our disposition, we need not address this issue. See *Johnson*, 105 Nev. at 315 n.1, 774 P.2d at 1048 n.1.

problem to ensure it would receive notice. We will set aside a district court's findings of fact if they are not supported by substantial evidence. See generally *OneWest Bank FSB v. Borgert*, No. 72139, 2018 WL 4191865, at *1 (Nev. Ct. App. Aug. 27, 2018) (Order Vacating Decision and Remanding) (citing *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013)).

It is undisputed that Kendar's registered agent according to the Nevada Secretary of State's website was served. However, Kendar was not domesticated in Nevada until March 2020 despite filing a lawsuit against the alleged fraudster in 2015. Therefore, the district court's finding that Kendar was aware that a fraudster had registered the LLC since 2015 but chose not to correct the problem is clearly erroneous. In 2022, Kendar corrected its listing on the website but did not change the name of the registered agent or the address of the registered agent. Accordingly, we conclude that the evidence demonstrates a dispute of fact whether proper service was accomplished and an evidentiary hearing is necessary on remand. See *Nelson v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 82, 521 P.3d 1179, 1185 (2022) (stating that "[g]enerally, evidentiary hearings should be utilized where 'factual questions are not readily ascertainable'") (quoting *United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 858 (9th Cir. 1999)).

Next, Kendar argues that the district court abused its discretion because the motion to set aside default judgment was prompt and that the district court failed to consider the *Yochum* factors. Roma Hills responds that Kendar's motion was not prompt and that Kendar fails to satisfy any of the *Yochum* factors. We address this argument because it is interconnected with the improper service argument.

A district court must issue express factual findings on the *Yochum* factors when deciding an NRCP 60(b)(1) motion to set aside. *Willard*, 136 Nev. at 468, 469 P.3d at 178. The *Yochum* factors are “(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.” 98 Nev. at 486, 653 P.3d at 1216. A motion to set aside must be filed within six months, but six months “represents the extreme limit of reasonableness.” *Union Petrochemical Corp. of Nev. v. Scott*, 96 Nev. 337, 339, 609 P.2d 323, 324 (1980) (internal quotation marks omitted). We will not set aside a district court’s findings of fact if they are supported by substantial evidence. *See, e.g., OneWest Bank FSB*, No. 72139, 2018 WL 4191865, at *1.

The district court did consider and make express findings on the *Yochum* factors. It just relied on a different case to identify those factors in its order. The district court found that, while “Kendar sought to set aside the judgment 3-and-half months after it was entered,” that Kendar’s failure to monitor potential listings meant that, for approximately seven years, Kendar assumed the risk that opposing litigants would serve the fraudulent agent. The court went on to find that Kendar failed to act promptly even though the motion to set aside was filed within six months. The district court found that Kendar was not diligent because it was aware of the fraudster since 2015 and took no action to correct the fraudulent registration until 2022.

Kendar is correct that it timely filed its motion to set aside. We therefore conclude that substantial evidence does not support the finding that Kendar was not diligent in filing the motion to set aside. The district court found that the motion was not filed for “3-and-half months” (105 days)

when it was actually filed 70 days after the judgment and the notice of entry of judgment were filed. Further, neither the judgment nor notice of entry was served on Kendar. Additionally, as previously explained, the district court's factual finding that Kendar was not diligent because it was aware of the fraudster since 2015 and took no action to correct the fraudulent registration until 2022 was inaccurate because the LLC was domesticated in 2020 not 2015. Finally, it appears from that record that Sharda emailed his attorney in March 2022 once he realized a default judgment had been entered against Kendar. In this email, Sharda stated that he had been fighting with Roma Hills about the unauthorized alteration for 10 years but had largely been ignoring Roma Hills since the house was owned by Kendar and Kendar had not been served. In the same email, Sharda stated that he was aware that Roma Hills used the information on the Nevada Secretary of State website to serve Kendar but that the agent that was served was registered by the fraudster. The motion to set aside the default judgment was filed less than a month after this email. Therefore, the district court's finding of an absence of a prompt application to remove the judgment was clearly erroneous on multiple grounds and not supported by substantial evidence.

Next, the district court found that Kendar intended to delay the proceedings. Substantial evidence does not support this finding in light of the district court's misunderstanding of the timeline. Although one of Kendar's managing members, Sharda, admitted that he had been aware of Roma Hills' problems with the alterations made to the house and was deliberately ignoring Roma Hills because he did not believe they would be able to legally serve Kendar, this fact, standing alone, is insufficient to conclude the motion to set aside the default judgment was untimely. The

default judgment was not served on Kendar; rather, only on Roma Hills' attorneys. Yet the motion to set aside was filed a mere 70 days after entry of the judgment. Thus, because of the original service issue, and the lack of later service, Sharda's actions are insufficient to find intent to delay by Kendar.

The district court also found that Kendar had failed to show that it lacked knowledge of the procedural requirements. Specifically, the court found that Kendar had participated in a previous Nevada legal proceeding, and that it could not claim that it was unaware of the action's existence. While Kendar has participated in litigation in Nevada before, substantial evidence does not support the court's finding that Kendar was aware of its obligation to respond to the complaint. As discussed above, it is not clear that Kendar was properly served. If Kendar was not properly served, then Kendar would not have been aware of its obligation to respond to the complaint. Accordingly, substantial evidence does not support the district court's finding.

Finally, the district court found that Kendar's failure to respond was not in good faith because Kendar had been aware of the fraudulent registration and intentionally failed to correct it. As discussed above, substantial evidence does not support that Kendar was aware of a fraudulent registration since 2015. Kendar was apparently aware of the conflict with Roma Hills for a substantial time, but that does not equate to awareness of a lawsuit. Further, once Kendar unequivocally had knowledge of the lawsuit because of the default judgment, it immediately made efforts to update the registration. The efficacy of this update should be resolved at an evidentiary hearing.

Overall, because the district court erred in its findings as to the *Yochum* factors, we cannot conclude that the same result would have been reached absent the errors, regardless of the outcome of the service issue. *See In re B.A.A.R.*, 136 Nev. 494, 500, 747 P.3d 838, 844 (Ct. App. 2020). Therefore, we conclude that the district court abused its discretion when it denied the motion to set aside the default judgment. Accordingly, we reverse and remand the district court's order denying the motion to set aside the default judgment.

The district court abused its discretion in finding Kendar in contempt

Kendar argues that the district court erred by finding it in contempt because the contempt motion was not supported by an affidavit, as required by NRS 22.030(2). Further, Kendar argues that the district court was required to recuse itself under NRS 22.030(3). Roma Hills does not contest that it did not originally file an affidavit, but it contends that affidavits and documents were ultimately provided to the district court in October 2022, which was after Kendar had been found in contempt.⁹

We review a district court's contempt order for an abuse of discretion. *Detwiler v. Eighth Judicial Dist. Court*, 137 Nev. 202, 206, 486 P.3d 710, 715 (2021). However, "[w]hether a person is guilty of contempt is generally within the particular knowledge of the district court, and the district court's order should not lightly be overturned." *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000). A

⁹We note that Kendar also argues that Roma Hills failed to meet the standard of clear and convincing evidence, and the contempt order is too vague to be enforced. However, we need not reach these arguments because of our conclusion that the district court abused its discretion by finding Kendar in contempt without Roma Hills filing an affidavit. *See Johnson*, 105 Nev. at 315 n.1, 774 P.2d at 1048 n.1.

district court abuses its discretion when it makes an obvious error of law. *See Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 562-63, 598 P.2d 1147, 1149 (1979).

NRS 22.030(2) requires an affidavit to be presented to the court “of the facts constituting the contempt” if the “contempt is not committed in the immediate view and presence of the court.” *See also Dep’t of Health & Human Servs., Div. of Pub. & Behavioral Health v. Eighth Judicial Dist. Court (Aliano)*, 139 Nev., Adv. Op. 28, 534 P.3d 706, 711 (2023) (stating that “[a]n affidavit is required for [finding] indirect contempt”). A sufficient affidavit is needed “before a court can assume jurisdiction to hold a person in contempt.” *Awad v. Wright*, 106 Nev. 407, 409, 794 P.2d 713, 714 (1990), *abrogated on other grounds by Pengilly*, 116 Nev. at 649, 5 P.3d at 571. Roma Hills failed to provide an affidavit until after Kendar had already been held in contempt. Accordingly, we conclude that the district court abused its discretion by holding Kendar in contempt because it acted without jurisdiction.¹⁰ Accordingly, we reverse the district court’s order holding Kendar in contempt.

The district court’s order granting Roma Hills attorney fees is reversed

Kendar argues that the district court abused its discretion when it awarded Roma Hills \$24,572.40 in attorney fees for a default judgment because Roma Hills has failed to show that its fees were

¹⁰Kendar also argues that the district court judge was required to recuse himself under NRS 22.030(3). Kendar goes on to assert that, under NRS 22.030(3), it did not need to request the district court judge to recuse himself. NRS 22.030(3) provides that a judge “shall not preside at the trial of the contempt *over the objection of the person.*” (Emphasis added.) The record does not show that Kendar ever objected. Accordingly, the district court judge was not required to recuse himself, so we conclude there was no error in this regard.

reasonable. Roma Hills responds that the fees were reasonable, supported by an affidavit of counsel, and supported by a detailed itemization of attorney fees.

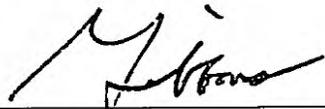
The district court awarded Roma Hills attorney fees under NRS 116.4117(6) (providing that a court may award attorney fees to the prevailing party in lawsuits arising from a failure to comply with the rules of a common-interest community) and section 11.3 of Roma Hills' CC&Rs (providing that the prevailing party is entitled to recover attorney fees). Since we reverse the district court's denial of the motion to set aside the default judgment, along with its finding of contempt, none of the attorney fees awarded are appropriate. Accordingly, we necessarily reverse both awards of attorney fees. *See Halbrot v. Halbrot*, 114 Nev. 1455, 1460, 971 P.2d 1262, 1266 (1998) (reversing the award of attorney fees because the underlying district court order that the award of fees was based on was reversed).¹¹

In sum, we reverse the order denying Kendar's motion to set aside the default judgment; reverse the order holding Kendar in contempt; reverse the order denying Kendar's motion to set aside, reconsider, and/or vacate; and reverse the attorney fees order and remand for an evidentiary hearing on the validity of service.

Accordingly, we

¹¹Insofar as the parties have raised argument 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.

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


_____, C.J.
Gibbons


_____, J.
Westbrook

cc: Hon. Ronald J. Israel, District Judge
Cory Reade Dows & Shafer
Leach Kern Gruchow Anderson Song/Las Vegas
Eighth District Court Clerk