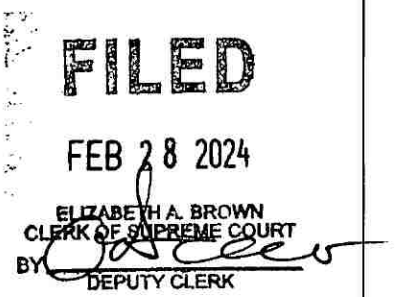
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EMILE BOUARI, AN INDIVIDUAL,
Appellant,
vs.
PAUL S. PADDA, AN INDIVIDUAL,
Respondent.

No. 82428-COA



ORDER OF AFFIRMANCE

Emile Bouari appeals from a district court order denying a motion to set aside a default judgment under NRCP 60(b) in a tort action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Respondent Paul S. Padda filed a complaint against Bouari in March 2015 alleging defamation, false light, and civil conspiracy. Bouari was served with the original complaint via substitute service on Dave Tully, a security guard at the guard gate of the gated residential community where he lived (Silver Oak address). Bouari did not answer the original complaint or otherwise appear, and Padda obtained a clerk's default against him in June 2015. Padda subsequently filed a motion for declaratory relief, requesting the district court find that Bouari had been properly served with the original complaint and the district court granted that motion.

In December 2015, Padda filed an amended complaint alleging the same causes of action but added Bouari's name to two claims that had previously named a different defendant.[1] The certificate of service reflected

[1]The original complaint listed three defendants, including Bouari. One of the other defendants was later dismissed and the third never

that Bouari was served with the amended complaint by mail at the Silver Oak address pursuant to NRCP 5(b).

When Bouari failed to appear or answer, Padda filed a notice of intent to apply for a default judgment and then an application for default judgment. Thereafter the case languished for almost two years before the district court eventually conducted a prove-up hearing and entered both a default and a default judgment against Bouari in June 2018.

Bouari thereafter filed a motion to set aside the default judgment under NRCP 60(b), alleging that he had not been served with the amended complaint under NRCP 4. Padda opposed the motion, asserting that in addition to mailing the amended complaint Bouari had been properly served under NRCP 4 in the same manner as the original complaint—via substitute service on a guard at the guard gate of his gated community.[2] Padda claimed that, due to an oversight, proof of service for the amended complaint was never filed in the district court. He attached to his opposition a proof of service, dated December 24, 2015, from Ermias Mekonnen, who averred that on December 18, 2015, he served Bouari through substitute service by leaving a copy of the summons and amended complaint with Tully, after identifying himself and being denied entry to

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appeared in the case. Bouari is the only defendant who is a party to the instant appeal.

[2]The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Accordingly, we cite the prior version of the rules, which governed at the time of service in the underlying case.

the guard gated community. Bouari subsequently filed a reply, asserting—for the first time—that he was living in Florida at the time service was effectuated. Padda subsequently filed a second proof of service for the amended complaint, dated January 15, 2016, from David Blakeman, who similarly purported to have served the complaint via substitute service by leaving the summons and amended complaint with Tully, with service being completed on January 9, 2016.

The district court conducted a seven-day evidentiary hearing during which time Bouari participated and was able to challenge the service of process of the amended complaint. After the hearing, the district court entered a written order denying Bouari's motion to set aside the default judgment. This appeal followed.

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). Moreover, we will not disturb the district court's factual findings if they are supported by substantial evidence, unless they are clearly erroneous. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 486, 117 P.3d 219, 223 (2005). Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Where the parties present conflicting evidence, it is for the trier of fact to resolve the conflicts and judge witness credibility. *Dieleman v. Sendlein*, 99 Nev. 768, 770, 670 P.2d 578, 579 (1983).

Under NRCP 60(b)(4), a party may file a motion to set aside a final judgment on grounds that "the judgment is void."[3] Personal service or legally provided substitute service must occur in order for the district court to obtain jurisdiction over a party. *C.H.A. Venture v. G.C. Wallace Consulting Eng'rs, Inc.*, 106 Nev, 381, 384, 794 P.2d 707, 709 (1990). And a default judgment not supported by valid service of process is void because due process requires defendants to be subject to the court's jurisdiction. *See Browning v. Dixon*, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998); *Tandy Computer Leasing v. Terina's Pizza*, 105 Nev. 841, 843, 784 P.2d 7, 7 (1989). Therefore, absent valid service of process, district courts are without jurisdiction to enter default judgments, which can be challenged under NRCP 60(b)(4). *Sawyer v. Sugarless Shops*, 106 Nev. 265, 269-70, 792 P.2d 14, 17 (1990).

With respect to the service issue, NRCP 4(d)(6) provides that the summons and complaint must be served by delivering a copy of each to the defendant personally or by leaving copies at the defendant's abode with a person of suitable age and discretion then residing therein. NRS 14.090(1)(a) permits substitute service on a person residing in a residence accessible only through a gate by leaving a copy of service of process with a

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[3]We note that Bouari's motion to set aside the default judgment under NRCP 60(b) was filed before March 1, 2019, the effective date of the amended rules of civil procedure. However, Bouari filed a supplement under the newly amended rules and the district court made its decision on the motion to set aside the default after the effective date of the amended rules. Therefore, while we apply the pre-2019 rules of civil procedure to the service issue, we apply the amended NRCP 60 to address the district court's order denying the motion to set aside the default pending before us on appeal.

guard if a guard is posted at the gate and denies access to the residence for service of process.

Bouari contends that the district court abused its discretion by finding he was properly served because the substitute service of the amended complaint did not comply with NRS 14.090, which required him to be served at his actual residence. To that end, Bouari asserts that the evidence showed he lived in Florida at the time of the alleged service and that the evidence the district court relied on to find he had been properly served was not credible.

We conclude that substantial evidence supports the district court's conclusion that Bouari was properly served pursuant to NRCP 4 and NRS 14.090 at his Nevada residence. *See Sheehan & Sheehan*, 121 Nev. at 486, 117 P.3d at 223. The parties presented conflicting evidence regarding service of process. And due to the competing evidence, the district court, as the trier of fact, was required to resolve the conflicts and assess witness credibility. *Rowland v. Lepire*, 99 Nev. 308, 312, 662 P.2d 1332, 1334 (1983) (noting that it is exclusively within the province of the trier of fact to weigh evidence and pass on credibility of witnesses and their testimony).

After hearing the evidence, the district court concluded that the documentary evidence demonstrated Bouari was properly served with the amended complaint. In support of this conclusion, the court found that Bouari was still using the Silver Oak address on his Nevada driver's license at the time of service and noted that the evidence Bouari relied on to support his contention that he resided in Florida, rather than at the Silver Oak address, at the time service took place was inconsistent as to when or if Bouari had actually moved out of the Silver Oak address. The court further found that it was "remarkabl[e]" that Bouari did not assert that he had

moved out from the Silver Oak address in his initial filings seeking to set aside the judgment, and did so "only in his [r]eply . . . without [a] supporting affidavit."

The court further found that Mekonnen's affidavit of service averred that he was provided the name "Dave Tully" when effecting service at the guard gate for the community in which the Silver Oak address was located and that Mekonnen could not control what he was told by the guard. The court also found that Tully's name could have been used by the other security guards for referencing a service file. The district court determined, however, that a guard was in fact served with the amended complaint. In addition, the district court found that the failure to file proofs of service did not affect the validity of service under NRCP 4(g) (providing that "[f]ailure to make proof of service shall not affect the validity of the service").

Further, the district court's findings were supported by Mekonnen's affidavit, which stated that he served Bouari at his last known address—the Silver Oak address—and that he left a copy of the summons and amended complaint with "Dave Tully" after being denied access to the gated community and identifying himself as a process server for a law firm. *See* NRS 14.090(1)(a). Mekonnen further averred that he asked whether Bouari resided in the community and was not provided a denial to that question. Although Bouari presented evidence indicating that Tully no longer worked as a security guard for the community in December 2015, Padda's investigator testified that his investigation revealed Tully had been responsible for accepting service and the other guards could have used that name when accepting service, supporting the court's finding that the "Dave

Tully" name "could have been used for a referencing a service file" in light of his lengthy employment with the community.[4]

The court's finding that service was properly accomplished is further supported by Padda's investigator's testimony that Bouari maintained the Silver Oak address on his driver's license until 2018. While Bouari presented evidence to support his position that he had not been served, the district court ultimately did not believe that evidence. *See Dieleman*, 99 Nev. at 770, 670 P.2d at 579. In particular, the court was unpersuaded by Bouari's evidence purporting to show that he had moved out of state, noting that his Silver Oak lease ended in March 2015, but provided for a month-to-month lease to continue thereafter while Bouari testified he moved out in April 2015, as well as the fact that he did not raise the alleged move until his reply in support of his motion to set aside—and did so without a supporting affidavit. The court also concluded that Bouari's various other documents submitted in support of this argument did not preclude the conclusion that he had multiple residences and that he was properly served at his Nevada residence.

Thus, although Bouari disagrees with the district court's conclusion regarding service, its determination was supported by substantial evidence and, to the extent the evidence was conflicting or inconsistent, we do not reweigh the evidence on appeal or disturb the district court's credibility determinations. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244 (explaining that appellate courts will not reweigh witness

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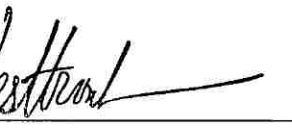
[4]The court applied the same rationale—that the "Dave Tully" name could have been used to reference the service file—in briefly discussing Blakeman's proof of service for January 16, 2016, which was after Tully had passed away.

credibility); *see also Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (providing that appellate courts will not reweigh evidence). Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.[5]

_____, J.
Bulla



_____, J.
Westbrook

cc: Hon. Mark R. Denton, District Judge
Melanie Hill Law PLLC
Reisman Sorokac
Milan's Legal
Pitaro & Fumo, Chtd.
Eighth District Court Clerk

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[5]Insofar as Bouari raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

The Honorable Michael P. Gibbons, Chief Judge, did not participate in the decision in this matter.