

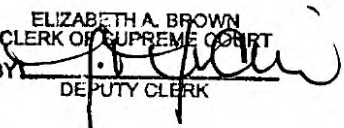
IN THE SUPREME COURT OF THE STATE OF NEVADA

FAI WONG, A/K/A WONG FAI,
Appellant,
vs.
VENETIAN MACAU LTD.,
Respondent.

No. 85504

FILED

MAR 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to set aside a default judgment. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Fai Wong appeals from a district court order denying his motion to set aside a default judgment entered in favor of Venetian Macau, Ltd., for Wong's gambling debt. Wong executed two credit instruments with Venetian Macau, Ltd. These instruments contained a forum-selection clause stating that any disputes would be "subject to the exclusive jurisdiction of the courts of the Macau S.A.R.," although that clause did not "preclude the institution of legal proceedings . . . in the Courts of any other jurisdiction." When Wong failed to pay, Venetian Macau sued him in Nevada to recover the balance and attempted to serve Wong at Nevada and California addresses associated with him. The process server averred that the summons and complaint were left at the California address with an adult "who resides therein." Wong did not respond, and Venetian Macau sought a default. An attorney then contacted Venetian Macau's counsel on Wong's behalf to ask for more time, stating that Wong was severely ill and in the hospital.

Wong still did not respond. The district court then entered a default judgment, which Wong moved to set aside. Wong argued he did not know of the lawsuit until after the default was entered and that he had not been served. He contended the default was void for lack of personal jurisdiction and ineffective service of process. Wong moved to set aside the default and the district court ordered jurisdictional discovery. Despite receiving accommodations from the district court, Wong resisted participating in discovery until after the district court found him in contempt. The court thereafter denied the motion to set aside the default.

Wong appeals, raising arguments regarding jurisdiction, service of process, and extraordinary circumstances under NRCP 60(b)(6). The district court's denial of the motion to set aside a default judgment is reviewed for abuse of discretion. *Rodriguez v. Fiesta Palms, LLC*, 134 Nev 654, 656, 428 P.3d 255, 257 (2018). But subject matter jurisdiction and personal jurisdiction are questions of law for which de novo review applies. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009) (subject matter jurisdiction); *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014) (personal jurisdiction). Likewise, a district court's interpretation of the Nevada Rules of Civil Procedure is reviewed de novo. *Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611, 618, 218 P.3d 1239, 1244 (2009). This court reviews a decision to dismiss for failure to effect timely service of process for an abuse of discretion. *Abreu v. Gilmer*, 115 Nev. 308, 312-13, 985 P.2d 746, 749 (1999). And we defer to a district court's factual findings when those findings are supported by substantial evidence. *Catholic Diocese, Green Bay v. John Doe 119*, 131 Nev. 246, 249, 349 P.3d 518, 520 (2015).

Subject matter jurisdiction

Wong first argues that the forum-selection clause in his contract with Venetian Macau contains mandatory language, depriving Nevada courts of subject matter jurisdiction. Although we have previously considered whether a forum-selection clause was mandatory or permissive following a district court's grant of a motion to dismiss for lack of subject matter jurisdiction, *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739-43, 359 P.3d 105, 106-08 (2015), we have never held that a forum-selection clause can deprive a Nevada court of subject matter jurisdiction where it is otherwise appropriate. And a forum-selection clause defense is properly characterized as a challenge to venue rather than jurisdiction. *See, e.g., Marra v. Papandreou*, 216 F.3d 1119, 1123 (D.C. Cir. 2000) (“[W]hile the forum-selection clause defense is a creature that has evaded precise classification, most courts and commentators have characterized it as a venue objection[.]”). Because Wong failed to challenge venue below, he cannot do so now. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).

General personal jurisdiction

Wong argues that the district court erred when it found that it had general personal jurisdiction over him. The district court concluded that it had general personal jurisdiction over Wong because Wong's contacts with Nevada were continuous and systematic. *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 375, 328 P.3d 1152, 1156-57 (2014). The paradigm forum for the exercise of personal jurisdiction over an individual defendant is the

individual's place of domicile. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358-59 (2021).

There is sufficient evidence in the record to conclude that Wong was domiciled in Nevada at the time of the complaint. Wong resided in Nevada from 2012 to at least 2016. During that time, he owned businesses in Nevada and his main source of income was from Nevada. While he later denied it, Wong stated in an August 2019 divorce petition that his address was in Nevada. Apart from “briefly” owning property in California, Wong has only owned property in Nevada during the last ten years, and still owns and derives income from his Nevada property. And the record does not indicate that Wong changed his domicile before July 2019 when Venetian Macau filed its complaint. Wong stated that California was his principal residence as of May 2019 when he decided to rent out his Nevada properties, but he was not physically present in California at that time. Wong stated that he was present and intended to stay indefinitely in California only as of August 2019—a month after Venetian Macau filed its complaint. Accordingly, we affirm the district court's conclusion that it had general personal jurisdiction over Wong. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (explaining that this court may uphold an order if the district court reached the correct result, even if under an incorrect analysis).

Service of process

Wong next argues that the district court improperly placed the burden on him to show that he was not properly served under NRCP 4. To effectively serve an individual, a party may leave “a copy of the summons and complaint at the individual's dwelling or usual place of abode with a

person of suitable age and discretion who currently resides therein” NRCP 4.2(a)(2). A party may serve an individual outside Nevada in the same way provided for in-state service. NRCP 4.3(a)(1).

Federal cases that interpret the FRCP are “strong persuasive authority” when this court interprets the NRCP. *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002). Although federal courts are split on which party bears the burden of proof concerning effective service of process, we agree with the federal courts that hold that when a defendant has actual notice of the original proceeding but delays responding until after entry of a default judgment, it is the defendant that has the burden to show ineffective service of process. *S.E.C. v. Internet Sols. for Bus. Inc.*, 509 F.3d 1161, 1163 (9th Cir. 2007); *see also Burda Media, Inc. v. Viertel*, 417 F.3d 292, 299 (2d Cir. 2005). Placing the burden on the defendant is fair to the plaintiff in circumstances in which a defendant chooses to delay “put[ting] the plaintiff to its proof.” *See Internet Sols.*, 509 F.3d at 1166; *see also Bally Export Corp. v. Balicar, Ltd.*, 804 F.2d 398, 401 (7th Cir. 1986) (noting, in the context of an NRCP 60(b)(4) motion to set aside for lack of personal jurisdiction, that a defendant’s delay can cause prejudice to the plaintiff because evidence may no longer be available). When there is a signed return of service, which is prima facie evidence of valid service, the burden is on the defendant to show ineffective service of process by “strong and convincing evidence.” *Internet Sols.*, 509 F.3d at 1166.

Here, Wong failed to show ineffective service of process. The process server submitted an affidavit detailing the substitute service on Wong in California. The process server stated that he served the complaint

on Wong in September 2019 by delivering it to a person named Yu Wong who was a “co-occupant/spouse” at Wong’s address in California. In response, Wong declared that he had never been married to Yu Wong, that Yu Wong has never lived at Wong’s California home, and that Wong did not know her. The district court found that Wong “clearly knew of the lawsuit” shortly after the date of service provided in the process server’s affidavit, because an attorney reached out to Venetian Macau’s counsel on Wong’s behalf regarding the lawsuit at that time. Additionally, the court found that Wong did not provide strong or convincing evidence to rebut the affidavit that service had occurred on a co-occupant or spouse. We will not reweigh the evidence on appeal or substitute our judgment for that of the district court’s where the record supports the district court’s decision, *Jackson v. Groenendyke*, 132 Nev. 296, 303, 369 P.3d 362, 367 (2016), and we conclude that under the record facts the district court did not abuse its discretion by refusing to set aside the default judgment based on ineffective service of process.

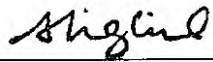
Extraordinary circumstances

Wong did not raise his final argument regarding NRCP 60(b)(6) before the district court and we conclude that it is waived. *Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983. But even if we were to reach this issue, NRCP 60(b)(6) relief cannot be used to seek relief that is available under NRCP 60(b)(1)-(5). *Vargas v. J Morales Inc.*, 138 Nev. Adv. Op. 38, 510 P.3d 777, 781 (2022). During jurisdictional discovery, the district court accommodated Wong’s health needs, including ordering the deposition to take place in California and allowing a written deposition; any other relief

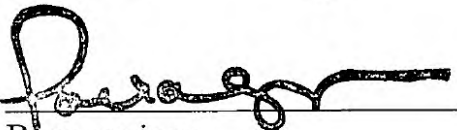
Wong seeks appears to be available under NRCp 60(b)(1)-(5). Thus, Wong's arguments on this point are meritless.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Dana Jonathon Nitz, Settlement Judge
Hutchison & Steffen, LLC/Reno
Hutchison & Steffen, LLC/Las Vegas
The Kircher Law Firm
Semenza Rickard Law
Eighth District Court Clerk