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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

HIGH DESERT HEALING, LLC, *Plaintiff/Appellee*,

v.

CEC 141202761, LLC, *Defendant/Appellant*.

No. 1 CA-CV 25-0653

FILED 08-20-2026

Appeal from the Superior Court in Maricopa County
Nos. CV2021-016161
CV2021-053708
The Honorable Erik Thorson, Judge

AFFIRMED

COUNSEL

Thorpe Shwer, PC, Phoenix
By Mitchell W. Fleischmann, Max K. Shanahan, Gaetano Forte
Co-Counsel for Plaintiff/Appellee High Desert Healing, LLC

Osborn Maledon, PA, Phoenix
By Eric M. Fraser, Michael Moorin
Co-Counsel for Plaintiff/Appellee High Desert Healing, LLC

Wolff Law, PLLC, Phoenix
By Jordan C. Wolff
Counsel for Defendant/Appellant CEC 141202761, LLC

MEMORANDUM DECISION

Judge Angela K. Paton delivered the decision of the Court, in which Presiding Judge Michael S. Catlett and Judge Jennifer M. Perkins joined.

P A T O N, Judge:

¶1 CEC 141202761, LLC ("CEC") appeals from the partial denial of its motion for relief under Arizona Rule of Civil Procedure ("Rule") 60 from an injunction issued against it in favor of High Desert Healing, LLC ("High Desert"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 This case is secondary litigation from a case litigated and appealed to this court. That case was decided in February 2024. *High Desert Healing, LLC v. CEC 141202761, LLC*, 1 CA-CV 23-0195, 2024 WL 849700 (Ariz. App. Feb. 29, 2024) (mem. decision).

I. Original Litigation between High Desert and CEC

¶3 In March 2018, High Desert began leasing commercial property from CEC. The lease term was 15 years and permitted High Desert to operate a medical marijuana dispensary on the property. The lease provided that High Desert may not assign the lease without CEC's consent and a $500 payment, but it also provided that CEC's approval would not be "unreasonably withheld, delayed or conditioned."

¶4 In August 2021, High Desert informed CEC that High Desert's parent company was being acquired and requested consent to assign the lease to the acquiring company, Trulieve. In its response, CEC noted it would not consider the assignment request until it received the $500 payment and expressed separate concerns about past due rent. High Desert paid CEC $500 the next day.

¶5 A month later, CEC denied the assignment request, citing "concerns that the additional locations and jurisdictions in which Trulieve operates would" increase CEC's "exposure to state and federal forfeiture laws." In its denial, CEC also said it was terminating the lease "effective immediately" because High Desert failed to pay rent, failed to pay the assignment fee, and improperly assigned the lease in 2019.

¶6 High Desert sued CEC, seeking a declaratory judgment that it had not breached the lease, but CEC moved to evict High Desert. After a four-day bench trial, the court ruled in June 2022 that (1) High Desert did not breach the lease, (2) CEC breached its obligation to approve the assignment under the lease, and (3) CEC was obligated to approve the assignment and could not evict High Desert.

¶7 After the trial, the parties litigated matters such as the form of judgment and CEC's request for additional findings of fact and conclusions of law. But in the interim, CEC continued to send High Desert multiple "Notice[s] of Breach of Lease," alleging various breaches dating back to 2019.

¶8 High Desert responded to the notices with a cease and desist letter, which it sent to CEC's counsel of record. The letter informed CEC that the notices were attempts to relitigate a case it had already lost and demanded that CEC cease its harassment of High Desert with meritless breach allegations. When CEC's counsel of record did not respond to the cease and desist, High Desert applied for an order to show cause regarding the notices. CEC's counsel of record withdrew from representation, and attorney Mark Goldman filed a notice of appearance for CEC.

¶9 The court issued its final judgment in February 2023, which, along with finalizing its June 2022 under advisement ruling, also ruled that the notices of breach were invalid. CEC appealed, raising only one issue: whether the court erred by failing to treat High Desert's request for an assignment as an improper "attempt" to assign the lease. CEC did not raise this issue at trial.

II. The Instant Litigation

¶10 While CEC's appeal was pending before this court, CEC refused to consent to the assignment of the lease and continued to send High Desert notices of breach. In February 2024, High Desert again petitioned the superior court for an order that CEC appear and show cause as to why CEC's "ongoing demands and claims . . . should not be enjoined in order to protect [High Desert] from continued ongoing harassment and annoyance with invalid claims." High Desert electronically served the petition to CEC's counsel of record, Mark Goldman, and mailed his office a courtesy copy. CEC did not respond, and High Desert prepared a proposed order granting relief, including an injunction against CEC, which the court adopted in April 2024.

¶11 In adopting that order, the court found that High Desert "presented credible, admissible evidence" that (1) "CEC issued correspondence falsely claiming that it had the right to charge to Plaintiffs 'legal fees' on account of supposed 'unauthorized modifications' to the leased property, which . . . all occurred, . . . prior to the February 7, 2023 Judgment," and (2) "CEC falsely raised issues of alleged building safety, building code violations and unauthorized modifications . . . which allegedly arose and supposedly were in existence prior to the February 7, 2023 Judgment." The court elaborated that "[i]f CEC wished to raise th[ose] issues . . . , then . . . it was required to do so, if at all, during the litigation of this matter before the February 7, 2023[,] Judgment issued." The court thus enjoined CEC from claiming that there are "current or prior issue[s]" under the lease, including "any building safety or building code" violations.

¶12 Eight months later, CEC moved for Rule 60 relief from the injunction. CEC argued that (1) the injunction should not prevent it from raising code and safety violations that occurred between June to September 2024, (2) the injunction should not prevent CEC from seeking attorneys' fees under the lease, (3) the injunction should be vacated because High Desert did not disclose regulatory notices of code violations that postdated the judgment, and (4) the court should vacate the injunction because CEC's previous failure to oppose it was caused by High Desert's improper service of the order to show cause petition. Regarding its improper service argument, CEC argued that service on Mark Goldman was insufficient because (1) he had been suspended from the practice of law for 30 days and had not reappeared in the case after his suspension, and (2) Rule 5(c)(4) required service directly on CEC, not on its counsel.

¶13 The court granted CEC's Rule 60 motion in part and denied it in part. The court rejected CEC's improper service argument because "Goldman was still CEC's attorney of record" and Rule 5(c)(4) did not apply because the judgment had not "become final after appeal." The court "granted" the motion in part by clarifying that "current" means issues existing on or before February 7, 2023, and that CEC is not barred from seeking fees under the lease. In other words, the court limited the scope of the injunction to claims arising before the February judgment, so CEC could still notify High Desert of issues that arose after the judgment. The court denied all other relief. CEC timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") Section 12-2101(A)(2), (5)(b).

DISCUSSION

¶14 CEC raises four issues on appeal. First, CEC argues that the injunction is void because High Desert did not properly serve CEC the order to show cause petition that led to the injunction. Second, CEC argues that the injunction's scope exceeds what is allowed by statute because it enjoins CEC from asserting contract rights and code-safety issues. Third, CEC argues the court misapplied claim preclusion doctrines, effectively placing a gag order on CEC regarding High Desert's alleged code violations. Fourth, CEC argues the court abused its discretion in denying relief under Rule 60(b)(3) because High Desert committed fraud on the court in obtaining the injunction.

¶15 We review the court's ruling on a Rule 60(b) motion for an abuse of discretion. *City of Phoenix v. Geyler*, 144 Ariz. 323, 328 (1985); *see also Copeland v. Ariz. Veterans Mem'l Coliseum & Exposition Ctr.*, 176 Ariz. 86, 89 (App. 1993); *Gorman v. City of Phoenix*, 152 Ariz. 179, 182 (1987).

¶16 At the outset, we do not reach the merits of CEC's argument that the injunction exceeds what is allowed by law. "The scope of an appeal from a denial of a Rule 60 motion is restricted to the questions raised by the motion to set aside and does not extend to a review of whether the trial court was substantively correct in entering the judgment from which relief was sought." *Laveen Meadows Homeowners Ass'n v. Mejia*, 249 Ariz. 81, 83, ¶ 6 (App. 2020) (citation omitted). So even if we agreed with CEC that the injunction was granted on dubious legal grounds, our review is limited to the superior court's partial grant and partial denial of CEC's Rule 60(b) motion. *See id.* Whether a judgment is legally correct is not grounds for relief under Rule 60. We therefore do not consider the merits of CEC's argument that the superior court "exceeded its statutory authority" in entering the injunction, or that the injunction misapplied claim preclusion doctrines, and address only CEC's challenges of the court's refusal to grant further Rule 60(b) relief.

I. High Desert properly served CEC.

¶17 CEC argues that the court erred in finding that High Desert properly served the order to show cause petition. CEC argues that the judgment had become final, so Rule 5(c)(4) required High Desert to serve the order to show cause petition on CEC itself, not on its counsel of record, Mark Goldman, rendering the injunction void under Rule 60(b)(4). CEC thus argues that the court abused its discretion by refusing to vacate the injunction for voidness.

¶18 Although we review the court's ruling on a 60(b) motion for an abuse of discretion, *supra* ¶ 15, we review whether a judgment is void for insufficient service de novo. *See Sycamore Hills Ests. Homeowners Ass'n, Inc. v. Zablotny*, 250 Ariz. 479, 482, ¶ 6 (App. 2021). Rule 5(c)(1) provides: "If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders or a specific rule requires service on the party." Rule 5(c)(4), on the other hand, provides that "[a]fter the time for appeal from a judgment has expired or a judgment has become final after appeal, a . . . pleading requesting . . . enforcement of that judgment must be served in the same manner that a summons and pleading are served . . . ."

¶19 CEC's argument that Rule 5(c)(4) controls here is unavailing. CEC's reading of Rule 5(c)(4) would render the clause "or a judgment has become final after appeal" meaningless, because in no case would the case become "final after appeal" before "the time for appeal from a judgment has expired." Here, the judgment did not become "final after appeal" until December 26, 2024—ten months after High Desert filed the order to show cause petition. Rule 5(c)(1) thus applies, and High Desert was not required to serve CEC itself until the judgment became final after appeal.

¶20 CEC argues that, even if Rule 5(c)(1) applied, Mark Goldman had been suspended from the practice of law for 30 days and had not reappeared in this matter after his suspension ended. Under Arizona Supreme Court Rule 72(b)(1), "[i]n the case of suspensions of sixty (60) days or less, the suspended lawyer may choose," but is not required, "to associate with another lawyer . . . during the period of suspension" and is only obligated "not to practice law during the period of suspension." If the suspended attorney and client associate with other counsel during the attorney's suspension, the suspended attorney shall, upon reinstatement, "file either a notice of appearance as counsel of record and dissolve the association, or move for leave to withdraw in the relevant matters." Ariz. R. Sup. Ct. 72(b)(1).

¶21 Here, CEC and Goldman did not associate with other counsel during his 30-day suspension nor did he withdraw from representation of CEC. And there is no rule requiring a suspended attorney to file a new notice of appearance to "reappear" in matters after serving a suspension of less than 60 days if the suspended attorney did not associate with another attorney during the suspension period. Ariz. R. Sup. Ct. 72(b)(1). Goldman therefore remained CEC's counsel of record after his suspension.

¶22 CEC maintains that Mark Goldman was not its counsel after Goldman's suspension and thus argues the injunction on CEC is "void for lack of due process under Rule 60(b)(4)."

¶23 Due process requires only that High Desert's method of service was "reasonably calculated . . . to apprise" CEC of the filing. *Malnar v. Joice*, 236 Ariz. 170, 172, ¶ 7 (2014) (citation omitted). "[T]he question of actual receipt is immaterial." *Columbia Grp., Inc. v. Jackson*, 151 Ariz. 86, 89 (App. 1985). Generally, compliance with the service method prescribed by statute—here, Rule 5(c)(1)—"affords sufficient due process" when "the statutory provisions in themselves indicate that there is reasonable probability that if . . . complied with, the defendant will receive actual notice." *Malnar*, 236 Ariz. at 172, ¶ 7.

¶24 High Desert's method of service was reasonably calculated to apprise CEC of the order to show cause petition because High Desert complied with the rules and did not know that service on CEC's counsel of record would be ineffective. And there is a reasonable probability that service on CEC's counsel of record would give CEC actual notice. *See id.*

¶25 Ultimately, the court did not err in finding that High Desert properly served CEC. Even assuming error, any error is harmless because CEC had the opportunity to raise issues—and, in fact, did raise issues and create a supplemental record—challenging the injunction in its Rule 60(b) motion, which the court held a hearing on. *Epperson v. Indus. Comm'n*, 26 Ariz. App. 467, 472 (1976) (finding defective service harmless in the absence of any resulting prejudice from the defective service). The court thus did not abuse its discretion by refusing to vacate the judgment on the grounds that the injunction was void due to improper service.

II. CEC is not entitled to Rule 60(b)(1) relief because its failure to respond to the show cause petition does not constitute "excusable neglect."

¶26 CEC next argues it is entitled to relief from the injunction based on excusable neglect because it could not respond to the injunction due to Goodman's failure to apprise CEC of High Desert's show cause petition. CEC thus asserts that the court abused its discretion by refusing to vacate the injunction under Rule 60(b)(1).

¶27 A party may be relieved from a final judgment upon a showing of "mistake, inadvertence, surprise, or excusable neglect[.]" Ariz. R. Civ. P. 60(b)(1). Neglect is excusable if the party's actions "might be the act of a reasonably prudent person in the same circumstances." *Ulibarri v.*

Gerstenberger, 178 Ariz. 151, 163 (App. 1993). And "[e]ach attorney of record is responsible for keeping advised of the status of, and the deadlines in, pending actions in which that attorney has appeared." Ariz. R. Civ. P. 5.3(b).

¶28 CEC argues that its neglect in failing to respond to High Desert's show cause petition is excusable because it did not have actual notice of the petition due to its attorney's neglect. But we look to "the neglect of the statutory agent" authorized to receive service, not the "neglect of the principal itself" to determine whether neglect is excusable. *W. Coach Corp. v. Mark V Mobile Homes Sales, Inc.*, 23 Ariz. App. 546, 549 (1975). As explained above, Mark Goldman was CEC's counsel of record and remained authorized by rule to receive service on behalf of CEC. *Supra* ¶ 21. Goodman's failure to inform CEC of the show cause petition and proposed injunction was inexcusable. *See W. Coach Corp.*, 23 Ariz. App. at 549 ("[W]here service had been made on a[n] . . . agent, and the agent failed to notify his principal, through mere carelessness, . . . such a showing does not constitute 'excusable neglect but was indeed inexcusable neglect.'" (citation omitted)).

¶29 Further, CEC's own actions under the circumstances were not reasonable. CEC claims that, by February 2024, CEC ended its relationship with Goldman and knew that he was not properly communicating court updates. Despite this knowledge, CEC did not inform the superior court or High Desert's counsel that communications with Goldman would not reach CEC or otherwise move to have Goldman withdrawn as counsel. CEC's failure to have Goldman withdrawn as counsel, or to at least inform High Desert that its counsel of record was not providing court updates, does not constitute excusable neglect. *See Ulibarri*, 178 Ariz. at 163. The court thus did not abuse its discretion by declining to vacate the injunction under Rule 60(b)(1).

III. CEC is not entitled to relief under Rule 60(b)(3) because the injunction was not obtained by fraud.

¶30 CEC argues that the affidavits High Desert submitted constituted fraud because they were "false or recklessly incomplete," that the false statements "were central to [High Desert's] harassment theory," and that but for High Desert's misrepresentations, the superior court would not have entered the injunction. Specifically, CEC asserts that Koslow, a High Desert executive, misrepresented that all code, safety, and permit issues had been fully and finally resolved and that county officials had confirmed there were no issues of any kind. High Desert responds that

Koslow's statements were accurate and that no evidence supports CEC's fraud claim. High Desert also points out that CEC did not provide the transcript for the hearing on CEC's Rule 60(b) motion.

¶31 The court may relieve a party from judgment, including an injunction, if the injunction was granted due to "fraud . . . , misrepresentation, or other misconduct of an opposing party[.]" Ariz. R. Civ. P. 60(b)(3). The party seeking relief under Rule 60(b)(3) "must show the opponent's misconduct by clear and convincing evidence." *Est. of Page v. Litzenburg*, 177 Ariz. 84, 93 (App. 1993) (citation omitted).

¶32 To the extent there are factual disputes between the parties regarding this issue, we must resolve them in favor of upholding the court's decision because CEC did not provide the relevant transcripts from the Rule 60(b) hearing. *See Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995). The only evidence in the record which CEC points to as evidence of fraud are notices and regulatory communications that were sent after Koslow submitted his affidavit. The only document that predates Koslow's affidavit was a notice and order to comply sent by the Planning and Development Department of the Code Compliance Division. But this notice was sent to CEC, not High Desert, and there is no evidence that Koslow was aware of the notice at the time he gave his affidavit.

¶33 High Desert was not sent the other notices and regulatory communications until after Koslow submitted his affidavit. When evidence was not in existence at the time the injunction was granted, that evidence could not have influenced the court's decision on whether to grant the injunction. *Cf. Boatman v. Samaritan Health Servs.*, 168 Ariz. 207, 212 (App. 1990). After resolving disputed facts in favor of upholding the court's decision, there is no evidence that Koslow misrepresented that code, safety, and permit issues had been fully and finally resolved at the time he gave his affidavit or that any such misrepresentation was material to the court's decision to grant the injunction. The court thus did not abuse its discretion in denying Rule 60(b) relief on the grounds that High Desert obtained the injunction through fraud.

IV. CEC is not entitled to relief under Rule 60(b)(6) because CEC cannot show it suffered hardship due to extraordinary circumstances.

¶34 CEC argues that if it is not entitled to relief under any other subsection of Rule 60(b), then it is entitled to relief under Rule 60(b)(6). It argues in its opening brief that its lack of notice and the severe

consequences of the injunction constitute "extraordinary circumstances." Although CEC backs away from this argument in its reply brief and insists it is not requesting relief on Rule 60(b)(6) grounds**,** because it adequately raised this issue before the superior court and in its opening brief, we will consider whether CEC was entitled to relief from the injunction under Rule 60(b)(6).

¶35 To obtain relief from judgment under Rule 60(b)(6) (allowing for relief from a judgment for "any other reason justifying relief"), the movant must show: (1) "a reason for setting aside the judgment other than one of the reasons set forth in the preceding five clauses of [R]ule 60([b]);" (2) "extraordinary circumstances of hardship or injustice justifying relief;" and (3) a meritorious defense. *Skydive Ariz., Inc. v. Hogue*, 238 Ariz. 357, 364, ¶ 25 (App. 2015).

¶36 CEC sought relief from the injunction under Rule 60(b)(1), (3), and (4). As detailed above, CEC was not entitled to any further relief than that which was already granted under those subsections of the rule. CEC did not seek relief under subsections (2) (newly discovered evidence) and (5) (satisfaction of judgment), and from our review of the record, CEC was not entitled to relief under those subsections either. Because relief is not available under the other subsections of Rule 60(b), the first requirement for relief under Rule 60(b)(6) is met.

¶37 But to obtain relief under Rule 60(b)(6), CEC must also demonstrate "extraordinary circumstances of hardship or injustice justifying relief." The rules do not define what constitutes an extraordinary circumstance, but this court has found such circumstances exist and can justify vacating a judgment when a party's counsel, who expressly disavowed having client contact to obtain client consent, enters into a stipulation on behalf of that client resulting in a judgment for nearly the entire amount of the plaintiff's claim sought in the complaint. *Williamsfield/Higley L.P. v. Stren*, 1 CA-CV 18-0322, 2020 WL 628731, *5, ¶ 28 (Ariz. App. Feb. 11, 2020) (mem. decision). This court has also found extraordinary circumstances exist when a court granted a stay of summary judgment while a defendant was on active duty in the military, but after a change in judge, the court granted and entered summary judgment against him while he was still on active duty. *Skydive Ariz., Inc.*, 238 Ariz. at 364, ¶ 27. But "a client whose attorney has abandoned him" and fails to participate in litigation is not entitled to Rule 60(b)(6) relief. *Panzino v. City of Phx.*, 196 Ariz. 442, 444, ¶ 1 (2000), *abrogated on other grounds by Gonzalez v. Nguyen*, 243 Ariz. 531 (2018).

¶38 Here, CEC identifies "the combination of suspension, lack of actual notice, and the permanent consequences of the injunction" as the extraordinary circumstances requiring relief. We disagree. Of note, based on the facts in *Parker Law Team, PLLC v. CEC 141202761, LLC*, no later than October 2023, Scott Ayers, CEC's sole member and manager had received court filings and rulings, indicating that Goldman was no longer defending the litigation in that case and had been suspended from the practice of law. 1 CA-CV 25-0176, 2025 WL 3240167, **1-2, ¶¶ 7-8 (Ariz. App. Nov. 20, 2025) (mem. decision).

¶39 In *Parker Law Team*, "Ayers admitted that, "beginning in October 2023, he and CEC 'did, in fact, receive court filings in this matter after the [c]ourt ordered counsel for Parker Law Team, PLLC to send them directly to [CEC's] . . . statutory agent.'" *Id.* at *2, ¶ 8. Ayers added that Goldman "continued to actively mislead me and CEC by providing assurances that he was addressing all matters in the litigation and had everything under control in the litigation." *Id.* Despite knowing that Goldman was not providing adequate communication regarding case statuses, CEC took no affirmative steps to ensure it was staying up to date with court filings in this case or to inform High Desert that Goldman was no longer authorized to receive documents on CEC's behalf.

¶40 We also note that this court held in *Parker Law Team* that an attorney's abandonment of a client, without more, does not meet Rule 60(b)(6)'s "extraordinary circumstances" requirement. *Id.* at ¶ 12; *see also Panzino*, 196 Ariz. at 448, ¶ 21 ("We simply cannot adopt a rule that encourages lawyers, once their misconduct or inattention has made successful representation of a client unlikely, to abandon the client so that the client can later seek relief under" Rule 60(b)(6).). We see no reason to depart from that reasoning here. There is a reasonable basis for the superior court's refusal to vacate the judgment as a form of relief under Rule 60(b)(6). *Cf. Sears Roebuck & Co. v. Walker*, 127 Ariz. 432, 437 (App. 1980).

¶41 Both parties request their reasonable attorneys' fees and costs on appeal pursuant to Arizona Rule of Civil Appellate Procedure ("ARCAP") 21, Section 12-341.01(A), and the fee-shifting provision in the parties' lease agreement. Because CEC has not prevailed, we deny its request. We grant High Desert its reasonable attorneys' fees and, as the prevailing party, its costs, upon compliance with ARCAP 21.

CONCLUSION

¶42 We affirm.



MATTHEW J. MARTIN • Clerk of the Court
FILED: JR