IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL E. DAVIS,
Appellant,
vs.
KORTNEY TROTTA F/K/A KORTNEY DAVIS,
Respondent.

No. 90587-COA

FILED
APR - 3 2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Daniel E. Davis appeals from a district court order denying a motion for relief pursuant to NRCP 60(b). Eighth Judicial District Court, Clark County; Mari D. Parlade, Judge.

Daniel and respondent Kortney Trotta were divorced pursuant to a decree filed in November 2019. The decree awarded both parents joint legal custody and joint physical custody of their two minor children. The parties waived child support. After several modifications of the custody and support orders, Daniel and Kortney entered into a stipulation and order in 2022, which awarded Kortney primary physical custody of their minor children and awarded Daniel parenting time every other weekend.

In October 2024, Kortney filed a motion to modify legal and physical custody, Daniel's parenting time, the holiday schedule, and child support. She also sought attorney fees, costs, and the reduction of unpaid health insurance premiums to judgment. According to Kortney, Daniel had failed to attend the children's medical appointments and educational conferences. Notably, Kortney asserted he failed to attend three medical

appointments, including a medication check for their son that was necessary for managing his medication. Similarly, Kortney contended Daniel had been obstinate in the required educational meetings for their son's 504 plan as well as conferences to address their daughter's educational struggles. Accordingly, Kortney sought sole legal custody to make educational and medical decisions for their children.

As to physical custody, Kortney alleged that Daniel's failure to exercise parenting time constituted a substantial change in circumstances affecting the children's emotional wellbeing. Kortney asserted that the best interest factors favored awarding her primary physical custody. Notably, she alleged that Daniel voluntarily reduced his allotted parenting time and frequently canceled visits at the last minute, which she argued affected the children's physical, emotional, and developmental needs, *see* NRS 125C.0035(4)(c), (g); his refusal to exercise parenting time, derogatory comments about her parenting, and orders to her regarding the children increased conflict between he and Kortney as well as undermined his ability to cooperate, *see* NRS 125C.0035(4)(d), (e); Daniel stopped allowing their children contact with their half-sibling at the behest of his new wife, *see* NRS 125C.0035(4)(i); and Daniel's limited use of parenting time, cancellations, and refusal to participate in medical appointments and educational meetings strained his relationship with the children, *see* NRS 125C.0035(4)(h). Kortney requested an order removing holidays from special consideration in the parenting schedule because Daniel had not been exercising his parenting timeshare on holidays. Kortney also requested that child support be reviewed so that it correlated to Daniel's reduced

parenting timeshare. Daniel did not file an opposition to Kortney's motion to modify custody.

At the hearing on Kortney's motion, Kortney appeared with counsel but neither Daniel nor his counsel appeared. During the hearing, Kortney acknowledged that both of their children had medical conditions requiring special attention and educational intervention programs. She stated that Daniel's failure to attend or participate in certain appointments and meetings has hindered or delayed her ability to secure proper medical care and educational reinforcement for the children. Kortney testified that she enters the children's appointments in a calendar that is available for Daniel to access, but he still does not attend those appointments.

Kortney also testified that their children did not believe they were welcome to stay overnight at Daniel's home. Additionally, she noted that Daniel failed to show up for certain holidays with the children and did not call or message the children outside of the parenting time he exercised.

The district court found Kortney's testimony credible and compelling. The court found that Kortney had been addressing the children's psychological, medical, developmental, and educational needs. In contrast, the court found Daniel refused to participate, which had delayed medical treatment for the children. The court also found that his failure to participate in educational meetings had affected the educational interventions necessary for the children. The court found that Kortney provided Daniel with opportunities to be in the children's lives, but he has failed to participate in those opportunities. And the court found that Daniel's minimal cooperation had resulted in significant conflict in their relationship. The district court further found that, because Daniel failed to

respond to Kortney's motion to modify custody or appear at the relevant hearing, he conceded that Kortney's allegations were meritorious.

The district court found based on Daniel's absence from their children's lives, it was in the children's best interest to award Kortney sole legal and primary physical custody. The court awarded Daniel parenting time every other Saturday from 9:00 a.m. to 5:00 p.m. The court also ended the holiday and vacation timeshare, providing that each party shall celebrate holidays during their respective timeshare. The district court also granted Kortney's request for reimbursement of health insurance premiums and attorney fees. The written order was entered December 9, 2024.

On January 10, 2025, Daniel filed a motion pursuant to NRCP 60(b) to set aside the district court order modifying custody and support. He alleged that, after Kortney filed the motion to modify custody and support, the parties engaged in settlement discussions. During this time, Daniel dismissed his counsel, but his counsel failed to file a notice or motion of withdrawal with the district court. Daniel asserted that, after he dismissed his counsel, he continued to negotiate directly with Kortney's counsel, even contacting counsel on December 2, 2024, the day before the hearing. Despite his contact with Kortney's counsel, Daniel asserted in his motion to set aside that he was never informed of the hearing date for Kortney's motion to modify the custody arrangement. Daniel therefore requested that the district court set aside the order modifying the custody arrangement because he acted in good faith to resolve the matter before the hearing, his counsel failed to oppose the motion or appear, and he was unaware of the hearing date.

Kortney opposed the motion. She asserted that Daniel had been aware of the hearing date since November 20, 2024, when his counsel received a proposed stipulation and order that set forth the hearing date. According to Kortney, Daniel later emailed her attorney and indicated that he personally reviewed the stipulation and order that had been provided to his counsel. As to his allegation that his counsel failed to appear at the relevant hearing, Daniel acknowledged that he fired counsel before the hearing and was personally handling the negotiations with Kortney's counsel. Additionally, Daniel contended that he personally wrote to Kortney on November 24, 2024, and stated they would be going to court, which she argued contradicted his assertion that he was trying to negotiate the matter. Kortney alleged that Daniel was acting in bad faith and should be sanctioned by the court. In support of her opposition, Kortney included emails between her counsel and Daniel's counsel sent throughout 2024; a November 26, 2024, email from Daniel's counsel indicating that Daniel dismissed him and wanted to conduct the negotiations himself; and an email from Daniel to Kortney's counsel sent on December 2, 2024, acknowledging he reviewed the proposed stipulation and order and had several objections to its provisions; and the proposed stipulation and order indicating the hearing date for the motion to modify.

At the hearing on the motion to set aside, Daniel, through new counsel, argued that his prior counsel never actually withdrew from the case by filing a motion with the district court. As prior counsel did not properly withdraw, Daniel argued that counsel was obligated to file an opposition and appear at the hearing. In contrast, Kortney maintained that the record showed Daniel was aware of the hearing as shown by his review

of the stipulation and order containing the hearing date. Kortney asserted that Daniel's failure to appear at the hearing was not a mistake, but instead indicative of his habit of not participating or showing up to appointments.

The district court questioned Daniel under oath. He admitted that he did not review the opposition and exhibits. He acknowledged his email to Kortney's counsel, which was drafted with his new wife's assistance, indicated he had objections to the proposed stipulation and order. The district court stated that it did not see anywhere in the email about the stipulation and order that hinted Daniel did not agree to be present at the December 3, 2024, hearing.

The district court later entered a written order in which it found that Daniel was not truthful about whether he was aware of the December 3, 2024, hearing date. The court found that his testimony was contradicted by his email indicating he reviewed the stipulation and order which contained the court date. While it might have been better practice for counsel to file a formal withdrawal, the court found that counsel's failure to do so did not negate that Daniel knew about the hearing date. Accordingly, the district court found that Daniel did not establish a good faith basis for his mistake. Although the district court noted that courts should hear cases on the merits, it did not agree that it should permit fraud. The district court further found that its decision on the motion to modify was not based on Daniel's failure to respond or appear but rather based on the evidence introduced at the hearing. The district court accordingly denied the motion to set aside. This appeal followed.

On appeal, Daniel contends that the district court abused its discretion in denying his motion for NRCP 60(b) relief. He asserts that the

district court failed to consider the allegations concerning his counsel's misconduct. Daniel asserts that he demonstrated excusable neglect because he was not aware that his counsel had failed to oppose the motion and counsel did not inform him that he was required to appear at the hearing. Daniel acknowledges that he fired his counsel before the hearing but insists that counsel did not properly withdraw from his case. Daniel contends that allowing Kortney's counsel to negotiate directly with him did not alleviate Daniel's counsel of his obligation to represent him competently. He asserts that his counsel failed to meet professional obligations in such a manner that it constituted abandonment and therefore counsel's actions cannot be imputed to Daniel. Daniel further asserts that the district court relied too heavily on the email about the proposed stipulation and order to conclude that Daniel was aware of the hearing date. Daniel asserts that the strong policy toward deciding custody matters on the merits militates to consideration of his claim.

We review the denial of an NRCP 60(b)(1) motion for an abuse of discretion. *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018), *holding modified by Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 470-71 n.6, 469 P.3d 176, 180 n.6 (2020). We give wide discretion to the district court's ruling on NRCP 60(b)(1) motions. *Id.* Nevertheless, the district court abuses its discretion when it disregards guiding legal principles. *McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. 610, 617, 310 P.3d 555, 559 (2013).

Under NRCP 60(b)(1), the district court may relieve a party from a final judgment on grounds of "mistake, inadvertence, surprise, or excusable neglect." "NRCP 60(b)(1) operates as a remedial rule that gives

due consideration to our court system's preference to adjudicate cases on the merits, without compromising the dignity of the court process." *Willard*, 136 Nev. at 469, 469 P.3d at 179. In *Yochum v. Davis*, the supreme court held that when a trial court determines whether grounds for NRCP 60(b)(1) relief exist, the district court must apply four factors: "(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. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in part by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997). The district court must also consider Nevada's bedrock policy to adjudicate cases on their merits whenever feasible in determining an NRCP 60(b)(1) motion. *Rodriguez*, 134 Nev. at 657, 428 P.3d at 257.

Having reviewed the record, we conclude that the district court did not abuse its discretion in denying the motion to set aside the order modifying custody and support. The court found that Daniel did not demonstrate his counsel's failure to appear constituted excusable neglect. *See* NRCP 60(b)(1). The record supports this conclusion. Daniel acknowledged that he fired his counsel, and the record indicates that this occurred on November 26, 2024.[1] The exhibits in the record showed that Daniel thereafter elected to negotiate with Kortney's counsel himself. Thus, he could not assert that he reasonably expected his counsel to attend the modification hearing, and he failed to demonstrate that counsel's failure to

[1]EDCR 5.302(b) requires "[a]n attorney who seeks to withdraw from representing a client without substituting a new attorney in the case may only do so by order of the court if proceedings remain pending in the case."

appear at the relevant hearing amounted to excusable neglect. *Cf. Passarelli v. J-Mar Development, Inc.*, 102 Nev. 283, 286, 720 P.2d 1221, 1224 (1986) (holding that counsel's failure to meet professional obligations due to psychiatric disorder "effectually and unknowingly deprived [the party] of legal representation" warranting NRCP 60(b)(1) relief); *see also Engleson v. Burlington N. R.R. Co.*, 972 F.2d 1038, 1043 (9th Cir. 1992) (holding that carelessness is not a ground for NRCP 60(b) relief).

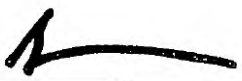
The district court's conclusion that Daniel's failure to appear at the modification hearing did not constitute a good faith mistake or excusable neglect is also supported by the record. The exhibits in the record showed that the proposed stipulation and order that had been circulated between the parties noted the date of the modification hearing. The record further showed that Daniel, in his personal correspondence with Kortney's attorney, acknowledged dismissing his counsel and reviewing the proposed stipulation and order himself. The record shows that Daniel reviewed the proposed stipulation and order thoroughly and even had specific objections to its provisions. Daniel also acknowledged at the hearing on the motion to set aside that he went over the proposed order with his new wife. The district court's conclusion that Daniel's assertions and testimony that he did not know about the motion hearing were not credible is supported by the record. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009) ("[C]redibility determinations and the weighing of evidence are left to the trier of fact.").

Lastly, Daniel does not demonstrate that the preference for adjudicating cases on the merits warrants relief under NRCP 60(b)(1). Contrary to Daniel's argument on appeal, the order granting modification

did not constitute a default judgment. As outlined above, the district court conducted an evidentiary hearing during which Kortney appeared and presented evidence, the court found Kortney's testimony credible and compelling, and it made findings regarding the relevant best interest factors delineated in NRS 125C.0035(4). *See Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015); *see also* NRS 125C.001 (setting forth the State of Nevada's policy for child custody matters). In addition, the district court did not grant Kortney's motion to modify the custody arrangement based on Daniel's failure to oppose it or appear at the hearing; it merely construed his failure to oppose the motion and appear as a concession that Kortney's contentions were meritorious after the court found those contentions credible and sufficient to warrant modification.

In light of the foregoing, we conclude Daniel fails to demonstrate the district court abused its discretion by denying Daniel's motion to set aside the order modifying the custody arrangement. *See Rodriguez*, 134 Nev. at 656, 428 P.3d at 257. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Mari D. Parlade, District Judge
The Grigsby Law Group
Roberts Stoffel Family Law Group
Eighth District Court Clerk