IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIK DOUGLAS WARD,
Appellant,
vs.
SVETLANA RITZA VILLAFLOR,
Respondent.

No. 84674-COA

FILED

MAY 30 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ERIK DOUGLAS WARD,
Appellant,
vs.
SVETLANA RITZA VILLAFLOR,
Respondent.

No. 85148-COA

ORDER OF AFFIRMANCE

Erik Douglas Ward appeals from a district court order denying his motion to reestablish supervised parenting time in Docket No. 84674-COA and from a district court order denying NRCP 60(b) relief in Docket No. 85148-COA.[1] These appeals are not consolidated. Eighth Judicial District Court, Family Division, Clark County; Charles J. Hoskin, Judge.

[1]Pursuant to the Supreme Court of Nevada's Order Dismissing Appeal in Part, entered August 19, 2022, in Docket No. 85148-COA, Ward's notice of appeal is treated as challenging only the district court's May 5, 2021, "Order After Reversal and Remand." However, we note (as observed by the supreme court in its order dismissing appeal in part) that Ward's February 24, 2022, motion to reconsider, as well as his March 9, 2022, amended motions for reconsideration related to the district court's February 23, 2022, custody order remain pending before the district court. Accordingly, Ward may file a new notice of appeal related to the February 23, 2022, order once the district court enters a written order resolving the motion for reconsideration.

Ward and respondent Svetlana Ritza Villaflor were never married and have two minor children in common. In December 2019, the district court entered a final custody decree, awarding Villaflor primary physical custody of the children but permitting Ward to have one hour per week of supervised parenting time at Donna's House (the third-party supervisor for his parenting time), until Ward submitted to a psychological evaluation demonstrating that the children would be safe in his care. Additionally, the district court instructed Ward to submit the documents supporting the psychological evaluation for its *in camera* review.

Following that order, Ward filed a motion for reconsideration, which the district court denied in March 2020. And, as relevant here, Ward later filed a motion to set aside that March 2020 order pursuant to NRCP 60(b), which the district court also denied. In a separate appeal, this court reversed and remanded the district court's order denying his motion to set aside the March 2020 order, concluding that the district court had abused its discretion in denying NRCP 60(b) relief without applying the factors discussed in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997), as required by the supreme court's opinion in *Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 471, 469 P.3d 176, 180 (2020).

Following remand from this court, the district court entered an "Order After Reversal and Remand" wherein it again denied Ward's motion for NRCP 60(b) relief. This revised order differed from the district court's previous order in that it contained a thorough examination of the *Yochum* factors. In its order, the district court found (1) that although Ward's requests were procedurally improper, he "[promptly applied] to remove the judgment;" (2) that Ward's repeated requests for additional time for filings,

as well as his other actions during the proceedings demonstrated an intent to delay the proceedings; (3) that although Ward is not an attorney, he had been instructed by the Chief Judge and the district court on proper court procedure; and (4) that any finding of good faith must be examined with Ward's "refusal to conduct any self-analysis or take the court-ordered steps which are designed to benefit his children and his relationship with them." *See Yochum*, 98 Nev. at 486, 653 P.2d at 1216. Having examined the four *Yochum* factors, the district court determined that Ward did not establish sufficient grounds to set aside the judgment and denied Ward's motion for a second time. Ward now appeals from that determination in Docket No. 85148-COA.

Following proceedings related to Ward's original NRCP 60(b) motion, Ward filed a "Motion for Visitation," wherein he moved the court to allow him to reestablish parenting time with his children, which had previously been terminated due to an incident that resulted in Ward being removed from Donna's House. After full briefing and a hearing, the district court entered an order denying Ward's request to reestablish supervised parenting time, and found—as it did in initially terminating his supervised parenting time—that if he provided "a psychological evaluation and shows he is not a danger to the minor children" the court may reconsider his request to reinstate his time with the children. Ward appeals that decision in Docket No. 84674-COA.

Docket No. 85148-COA

We turn first to Ward's challenges to the district court's "Order After Reversal and Remand," which denied his motion for NRCP 60(b) relief. In his informal brief, Ward presents several arguments that relate to the 2019 final custody order, rather than the denial of his NRCP 60(b) motion. However, those arguments are not properly before us on appeal,

because Ward failed to timely appeal that judgment.[2] Accordingly, because Ward does not challenge the merits of the NRCP 60(b) decision or the district court's application of the *Yochum* factors independent of his concerns regarding the 2019 custody order, such arguments are deemed waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).

Further, given that—as directed by our March 30, 2021, Order of Reversal and Remand—the district court set forth an express consideration of the *Yochum* factors in its order on remand, we discern no abuse of discretion in the district court's denial of Ward's motion for NRCP 60(b) relief, and we therefore affirm the order challenged in Docket No. 85148-COA. *See Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996) (reviewing NRCP 60(b) motions to set aside a judgment for an abuse of discretion).

Docket No. 84674-COA

Turning to the district court's order denying Ward's request to resume supervised parenting time at Donna's House, this court reviews a

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[2]Notably, the district court entered its final custody order on December 11, 2019, and Ward filed his post-judgment tolling motions on December 15, 2019, and again on January 21, 2020. The district court denied these motions on March 18, 2020, and Ward failed to properly or timely appeal those orders. *See Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1134 (1998) ("The filing of a timely notice of appeal is a fundamental jurisdictional requirement; without it, this court never obtains jurisdiction over an appeal and has no power to consider the issues raised . . . .").

child custody decision[3] for an abuse of discretion, and we will not disturb the district court's findings if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain the judgment. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 984 (2022). Further, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

In his informal brief, Ward again appears to challenge, among other things, the underlying merits of the 2019 custody decision, which is not properly before this court on appeal for the same reasons set forth above in regard to his effort to challenge that decision in the appeal in Docket No. 85148. Nevertheless, Ward also presents arguments related to the portion of the district court's order directing him to obtain a psychological examination before the court will consider reinitiating supervised parenting time with the children. But Ward does not contest the district court's ability to order him to obtain a psychological evaluation. And Ward has not complied with the district court's directive as he has failed to provide any unredacted psychological evaluation(s) for the court's *in camera* review in chambers.

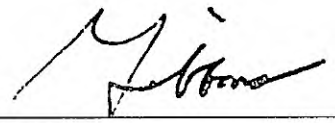
Rather than challenge the psychological evaluation order itself, on appeal Ward alleges that it is impossible to comply with the district court's order. But while Ward filed letters that purportedly demonstrated that several psychiatrists have refused to treat him, those documents were

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[3]A child custody determination also includes orders that provide "for the legal custody, physical custody or [parenting time] with respect to a child." NRS 125A.045(1).

heavily redacted, and Ward failed to provide unredacted versions of these documents for the court to review, even when the court instructed him that these materials could be submitted for the court to review *in camera* in its prior order. Under these circumstances, we discern no abuse of discretion in the district court's denial of Ward's request to reinstate his supervised parenting time. *See Rivero*, 125 Nev. at 428, 216 P.3d at 226; *Flynn*, 120 Nev. at 440, 92 P.3d at 1226-27. Accordingly, we also affirm the district court's order in Docket No. 84674-COA.

It is so ORDERED.[4]



_____, C.J.
Gibbons



_____, J.
Bulla



_____, J.
Westbrook

[4]Insofar as Ward raises arguments 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.

cc: Hon. Charles J. Hoskin, District Judge, Family Division
Erik Douglas Ward
Law Offices of Louis C. Schneider, LLC
Eighth District Court Clerk