IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDGAR TAVARES,
Appellant,
vs.
JENNY TAVARES,
Respondent.

No. 88218-COA

FILED
MAR 09 2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Edgar Tavares appeals from a district court order denying a postjudgment motion to set aside a stipulated divorce decree. Eighth Judicial District Court, Clark County; Mari D. Parlade, Judge.

Edgar and respondent Jenny Tavares were married in August 2016. In March 2021, the parties filed a joint petition for a summary decree of divorce. In April 2021, the parties submitted their stipulated decree, setting forth their property distribution, which was then adopted and entered by the court. Relevant to this appeal, the decree awarded Jenny three properties (the Cedar Street, Rockville Creek, and Prosperity River properties) and her entire 401(k) account, while Edgar was awarded his 401(k) account.

Approximately 18 months later, in November 2022, Edgar filed a motion to set aside the decree of divorce pursuant to NRCP 60(b), arguing

the property distribution was inequitable and Jenny fraudulently induced him into signing an unfavorable decree by taking advantage of his dejected mental state. He claimed his motion was timely filed because the six-month time frame for filing an NRCP 60(b) motion did not commence as he did not receive notice of entry of the decree. He alternatively argued that NRCP 60(b)(6) was not subject to the six-month time limit and allowed for relief for "any other reason."

Jenny opposed the motion, primarily arguing Edgar's motion to set aside was untimely, he waived his right to notice of entry of the decree and, in any event, he received a copy of the decree and notice of entry of the decree in the mail. While she pointed out there was a longer time frame for filing a post-decree motion for omitted assets due to fraud under NRS 125.150(3), she argued that statute was inapplicable here because Edgar did not claim any assets were omitted from the decree due to fraud and was instead just unhappy with their agreement. In response, Edgar argued that the decree omitted the parties' respective 401(k) accounts and an evidentiary hearing was warranted.

After hearing arguments, the district court entered a written order denying Edgar's motion to set aside on the basis that it was not filed timely pursuant to NRCP 60(c) and therefore the court lacked jurisdiction to consider his motion. *See Kramer v. Kramer*, 96 Nev. 759, 761-62, 610 P.2d 395, 397 (1980) (explaining a district court lacks continuing jurisdiction to modify provisions of a divorce decree regarding property rights except as provided by statute or rule). This appeal followed.

On appeal, Edgar challenges the district court's denial of his motion to set aside the stipulated divorce decree. Divorce decrees entered as a result of a summary petition for divorce are final judgments. NRS 125.184(1). And the time limits set forth in NRCP 60 are generally applicable to divorce decrees. *Byrd v. Byrd*, 137 Nev. 587, 591, 501 P.3d 458, 462 (Ct. App. 2021); *see also Mizrachi v. Mizrachi*, 132 Nev. 666, 673, 385 P.3d 982, 986 (Ct. App. 2016). We review a district court's decision to grant or deny a motion to set aside a judgment under NRCP 60 for an abuse of discretion. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

NRCP 60 allows the district court to set aside a final order for various reasons, including mistake or excusable neglect; newly discovered evidence; fraud, misrepresentation, or misconduct by an opposing party; or for any other reason that justifies relief. NRCP 60(b)(1), (2), (3), (6). "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2) and (3) no more than 6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later." NRCP 60(c)(1). Further, the time for filing the motion cannot be extended under Rule 6(b). *Id.*

Here, the district court denied Edgar's NRCP 60(b) motion to set aside and concluded that it did not have jurisdiction to consider the motion because Edgar did not timely file it pursuant to NRCP 60(c). Edgar's motion was filed roughly 18 months after notice of entry of the decree and sought relief generally under NRCP 60(b) based on his allegations that he did not receive notice of entry of the decree and that Jenny fraudulently

induced him into signing an unfavorable decree. Before the district court, he argued at various points that his claims fell under NRCP 60(b)(1)-(3) and (6). To the extent he argues he is entitled to relief under NRCP 60(b)(1)-(3), his motion to set aside was filed well beyond the six-month time limit, which cannot be extended, and was therefore properly denied by the district court. *See* NRCP 60(c)(1).

Although Edgar argued below that he did not receive notice of entry of the decree, he does not cogently challenge the district court's rejection of that argument or present relevant authority in an effort to show that the district court erroneously rejected it. As a result, this court need not consider this issue on appeal. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an argument that is not cogently argued or lacks the support of relevant authority); *see also Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed [forfeited].").

However, even if we were to consider that contention, denial of Edgar's motion to set aside would still be proper. The parties filed a joint petition for a summary decree of divorce, and NRS 125.184(1) provides that entry of a final judgment in summary divorce proceedings waives the rights of the parties to written notice of entry of the decree. Notwithstanding this waiver, the record reveals Edgar was served with a copy of the notice. Jenny's attorney filed an affidavit stating that she mailed the decree and notice of entry of the decree to Edgar at the Rockville Creek property—his

last known address—in April 2021. Under NRCP 5(b)(2)(c), a paper is served by mailing it to the person's last known address and such service is complete upon mailing. Moreover, the record further demonstrates that Edgar was in receipt of the decree. Shortly after entry of the decree, Edgar quitclaimed his interest in the Rockville Creek property to Jenny and signed a grant, bargain, sale deed allowing Jenny to sell the Prosperity River property. Furthermore, in his deposition, Edgar testified that, in December 2021, he provided the decree to his loan officer and a paralegal who amended the decree in order to enable him to obtain a home loan. Nevertheless, Edgar still waited until November 2022 to file his motion to set aside. Altogether, this demonstrates that Edgar failed to show that he did not receive notice of the entry of the decree and that he failed to file a timely motion to set aside. We therefore conclude the district court did not abuse its discretion by denying his motion under NRCP 60(b)(1)-(3). *See Cook*, 112 Nev. at 181-82, 912 P.2d at 265.

To the extent Edgar summarily argues that his motion was timely filed under NRCP 60(b)(6) (allowing the district court to set aside a final judgment for any other reason that justifies relief), we conclude he has failed to demonstrate relief is warranted on this basis. "To justify relief under subsection (6) [of Federal Rule of Civil Procedure 60(b)], a party must show 'extraordinary circumstances' suggesting that the party is faultless in the delay." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393 (1993); *cf. McClendon v. Collins*, 132 Nev. 327, 330, 372 P.3d 492, 494 (2016) (noting that the "[f]ederal cases interpreting the Federal

Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts" (internal quotation marks omitted)). Further, relief may not be sought under NRCP 60(b)(6) when it would have been available under NRCP 60(b)(1)-(5). *Vargas v. J Morales Inc.*, 138 Nev. 384, 389, 510 P.3d 777, 781 (2022).

Edgar briefly argues that he could obtain relief under NRCP 60(b)(6), which is not constrained by the six-month time limit imposed on NRCP 60(b)(1)-(3). However, he fails to demonstrate that he filed his motion in a reasonable time or that he was faultless in the delay in filing his motion to set aside. *See* NRCP 60(c)(1); *Pioneer Inv. Servs. Co.*, 507 U.S. at 393. As previously discussed, the record demonstrates that Edgar did not overcome the presumption that he was served with notice of entry of the stipulated decree, knew about the decree by December 2021 at the latest, and was no longer in a state of mental distress at that time, yet he waited until November 2022 to file his motion, nearly a year later. Moreover, although he sought relief generally under NRCP 60(b) in his motion to set aside, his main allegation was that Jenny manipulated him and fraudulently induced him into signing an unfavorable decree by taking advantage of his distressed mental state during their divorce proceedings. These assertions fall within the ambit of NRCP 60(b)(3) rather than NRCP 60(b)(6). As such, even if he had shown he was faultless in the delay in filing his motion, relief under NRCP 60(b)(6) was unavailable to him. *See Vargas*, 138 Nev. at 389, 510 P.3d at 781; *see also Byrd*, 137 Nev. at 592,

501 P.3d at 463 (stating that "because [the respondent's] claim is one that is specifically contemplated by the first five enumerated sections of NRCP 60(b), relief under NRCP 60(b)(6) is unavailable").

Finally, we are unpersuaded by Edgar's contention that the district court abused its discretion by denying his motion to set aside based on NRS 125.150(3). NRS 125.150(3) allows a party to file a postjudgment motion in a divorce action to obtain adjudication of any community property or liability omitted from the decree as a result of fraud or mistake within three years after the discovery by the aggrieved party of the facts constituting fraud or mistake. Edgar claims that the parties' respective 401(k) accounts were omitted from the decree and he therefore timely filed his motion, but the district court failed to apply that statute and make necessary findings. Edgar's contention that the 401(k) accounts were omitted assets is rebutted by the plain language of the stipulated decree, which unambiguously awards each party their respective 401(k) accounts. As such, Edgar has failed to demonstrate that relief is warranted on this basis.[1] We, therefore,

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[1]To the extent Edgar asserts there were additional omitted assets or financial issues that were not dealt with in the decree, he does not present cogent argument related to the same. As a result, Edgar has forfeited any such arguments. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Moreover, insofar as Edgar 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.

ORDER the judgment of the district court AFFIRMED.[2]


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

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[2]Edgar additionally argues on appeal that NRCP 60(d)(3) (allowing the district court to set aside a judgment based on fraud upon the court) provides him an avenue for relief and does not have the same time constraints as NRCP 60(b)(1)-(3). However, because Edgar relied only on NRCP 60(b) below, his arguments related to NRCP 60(d) are forfeited and we need not consider them. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been [forfeited] and will not be considered on appeal").

Notwithstanding this forfeiture, Edgar's claim in this respect necessarily fails because his allegations of fraud pertained to Jenny purportedly inducing him into signing an unfavorable decree and taking advantage of his distressed mental state, which does not constitute a fraud upon the court. *See NC-DSH, Inc. v. Garner*, 125 Nev. 647, 654, 218 P.3d 853, 858 (2009) (noting that fraud upon the court "cannot mean any conduct of a party or lawyer of which the court disapproves," and defining fraud upon the court as "that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases").

cc: Hon. Mari D. Parlade, District Judge
James J. Jimmerson, Settlement Judge
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