IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRENT LOONEY, Appellant, vs. JIENNA LOONEY, Respondent.	No. 64582
TRENT LOONEY, Appellant, vs. JIENNA LOONEY, Respondent.	No. 64985

FILED

JUN 06 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from post-divorce-decree orders regarding alimony, child support, and the division of a retirement account.[1] Eighth Judicial District Court, Family Court Division, Clark County; William B. Gonzalez, Judge.

On appeal, Trent asks us to reverse district court orders dated November 2013, January 2014, and February 2014 (he does not appeal from the order dated August 2013).

As to the November 2013 order, an order denying reconsideration is not appealable. *See Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007) ("an order denying reconsideration is not appealable"); *Rico v. Rodriguez*, 121 Nev. 695, 700 n.1, 120 P.3d 812, 815 n.1 (2005). Even if it were, Trent fails to cogently argue how the district court abused its discretion in denying reconsideration. *Edwards v.*

[1]We do not recount the facts except as necessary to our disposition.

Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (appellate courts need not consider claims not cogently argued).

Trent next challenges the January 2014 order denying his request to modify his child support and alimony obligations based upon his alleged reduced income. Matters of child support and alimony rest in the sound discretion of the trial court. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996); *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918–19 (1996). Further, this court reviews factual findings for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

During an evidentiary hearing that lasted several days, Trent repeatedly declined to answer questions regarding his finances and the finances of the companies with which he has been associated, or repeatedly stated that he did not know or did not remember the answer to the questions posed. Accordingly, the district court found that Trent's testimony was not credible, that he was not forthcoming about his income and assets, and that he failed to meet his burden of proof. Because the district court's findings are supported by substantial evidence, it did not abuse its discretion by denying Trent's motion. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) ("we leave witness credibility determinations to the district court and will not reweigh credibility on appeal").[2]

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[2]Moreover, the district court found that to whatever extent Trent's financial situation may have been worse than it was at the time of the entry of the divorce decree, any underemployment was willful. NRS 125B.080(8). Because the question of willful underemployment is

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Trent also appeals from the district court's denial of his NRCP 60(b) motion regarding his separate property claim to a retirement account. The original divorce decree—negotiated and agreed upon by Trent with counsel in February 2013—gave him 14 days to produce proof that he was entitled to a portion of the retirement account as his separate property. The decree specified that if this deadline was not met, the entire retirement account would be deemed community property as a matter of law, regardless of whether separate property actually existed in the account, and the funds in the account would be divided evenly between the parties. Trent missed the deadline. Therefore, in August 2013, the district court adjudicated the entirety of the retirement account as community property. Trent did not appeal this order.

Nearly nine months after missing the deadline to provide proof of his separate property, four months after the district court divided the retirement account as community property, and over a month after the district court denied reconsideration of this ruling, Trent attempted to re-open the matter by filing an NRCP 60(b) motion to set aside the judgment. Trent's motion asserted that Jienna withheld a box of documents allowing him to trace his separate property contribution to the retirement account. Trent argued that Jienna's withholding prevented him from meeting the divorce decree's deadline. The district court denied Trent's motion and he appealed. Trent's original motion did not clarify which subsection of

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primarily a question of fact, we will not reverse the finding absent an abuse of discretion. *See, e.g., Minnear v. Minnear*, 107 Nev. 495, 497–98, 814 P.2d 85, 86–87 (1991). Therefore, under these facts, we cannot conclude that the district court abused its discretion in finding that Trent was willfully underemployed.

NRCP 60(b) he meant to invoke, but during oral argument on appeal, his counsel clarified that the motion relied upon the "excusable neglect" provision of NRCP 60(b)(1) and asserted that Trent's failure to meet the deadline was excusable because Jienna withheld the box of documents.[3]

We review a district court's determination on a motion to set aside judgment under NRCP 60(b) for an abuse of discretion, and must affirm if sufficient evidence exists in the record to support the district court's decision. *Cook v. Cook*, 112 Nev. 179, 181–82, 912 P.2d 264, 265 (1996); *Smith v. Smith*, 102 Nev. 110, 111–12, 716 P.2d 229, 230 (1986). Moreover, "[a]lthough the district court may relieve a party from a final judgment due to excusable neglect, the district court has wide discretion in determining what neglect is excusable and what neglect is inexcusable." *Durango Fire Protection, Inc. v. Troncoso*, 120 Nev. 658, 662, 98 P.3d 691, 693 (2004). In determining whether neglect is excusable for NRCP 60(b), each case depends on its own facts, and

> [t]he presence of the following factors indicates that the requirements of this rule have been satisfied: (1) a prompt application to remove the judgment; (2) an absence of an intent to delay the proceedings; (3) a lack of knowledge of the procedural requirements on the part of the moving

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[3]During oral argument on appeal, Trent's counsel invited the court to construe Trent's motion as one based upon Jienna's alleged "fraud" under NRCP 60(b)(3) or another provision of NRCP 60(b) if the court believed that it should exercise discretion to do so. However, appellate courts generally limit themselves to arguments actually made by counsel as those are the only arguments to which the opposing party has been given a fair opportunity to respond, and therefore we decline this invitation and construe the motion in accordance with Trent's arguments. Nonetheless, we have considered whether Trent is entitled to relief pursuant to the other provisions of NRCP 60(b) and concluded he is not.

> party; and (4) good faith. . . . A showing of a meritorious defense to the action is also required. . . . Finally, the district court must consider the state's underlying basic policy of deciding a case on the merits whenever possible. . . .

Stoecklein v. Johnson Elec., Inc., 109 Nev. 268, 271–75, 849 P.2d 305, 307–10 (1993).

Here, the district court did not abuse its discretion in denying NRCP 60(b) relief for several different reasons. As an initial observation, Trent has failed to provide relevant authority for his "excusable neglect" claim, and until oral argument it was unclear which section of 60(b) his brief relied upon. His brief does not discuss the relevant factors under 60(b)(1), such as showing how he or his counsel lacked knowledge of the 14-day procedural requirement at issue here or how he acted in good faith in pursuing his retirement account claim. *See id.* at 271, 849 P.2d at 307; *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Second, to succeed under 60(b)(1), Trent must demonstrate not merely that he may have had separate property in the retirement account; that was never the issue before the district court, and we can even assume on appeal (without deciding) that he did. Rather, before even addressing the contents of the retirement account, he must demonstrate the existence of good cause to miss the 14-day deadline stipulated in the divorce decree before even being allowed to argue, in any forum, whether such separate property existed. *See Stoecklein*, 109 Nev. at 271–75, 849 P.2d at 307–10.

Here, the record is clear that both Trent and his counsel were aware of the 14-day deadline to which Trent agreed in the final divorce decree, so he cannot demonstrate "a lack of knowledge of the procedural requirements on the part of the moving party." *See id.* Further, some question exists as to whether Trent's motion was brought "promptly" when

his own motion claimed that the documents were delivered to him on September 1, 2013 (and there is evidence that Trent received at least some of the documents as early as July from third parties such as 3M), yet his motion for 60(b) relief was not filed until December 10. Trent never offers any reason for this delay. *See* NRCP 60(b) (all 60(b) motions must be made within a "reasonable time"). The district court found that Trent pursued this claim in bad faith by, among other things, willfully misstating his finances and wrongfully withdrawing money from the retirement account.

Furthermore, and perhaps most importantly, Trent never submitted copies of the alleged documents as exhibits to the district court with his NRCP 60(b) motion, and by failing to do so provided no grounds for the district court to conclude that the documents actually proved his assertions, or that they even existed apart from his naked claim. Trent failed to provide the district court with a complete record showing he was entitled to relief, and thus we cannot conclude on appeal that the district court abused its discretion by denying relief. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007); *Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981). Under these circumstances, a reasonable jurist could find that Trent failed to meet his burden to prove that his neglect in missing the 14-day deadline was "excusable"; therefore, the district court did not abuse its discretion in denying relief.[4]

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[4]We have considered Trent's other arguments on appeal and hold that they are without merit, including his argument that the district court was compelled to grant his motion due to Jienna's non-opposition, that the district court failed to account for the tax consequences of the retirement

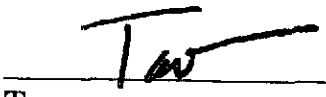
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Therefore, we

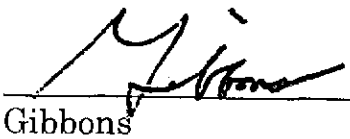
ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Charles J. Hoskin, Presiding District Judge, Family Court Division
Department F, Eighth Judicial District Court, Family Court Division
Patricia A. Marr
Black & LoBello
Eighth District Court Clerk

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account distribution, and that all the civil orders from the evidentiary hearing are unconstitutional.