

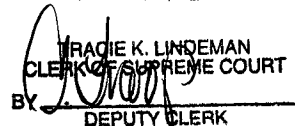
IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE PERKINS,
Appellant,
vs.
DIANA PERKINS,
Respondent.

No. 46987

FILED

JAN 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying an NRCP 60(b) motion to set aside a default divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Stefany Miley, Judge.

In September 2005, respondent Diana Perkins filed a divorce complaint against appellant Bruce Perkins. Bruce was served with the summons and the complaint, but he failed to file an answer. Accordingly, after providing Bruce with notice, the district court entered a default.

At a November 2, 2005 prove-up hearing, the district court explained to Bruce, who was acting in proper person at the time, that due to his failure to respond to any of the pleadings filed in the divorce proceeding, the court was prepared to grant the divorce decree. During the hearing, Diana explained the extent of the parties' assets and debts, and she offered testimony concerning reasonable child support, custody, and visitation arrangements. Bruce testified that bank accounts in the children's names had not been identified as assets. After the parties stipulated that the accounts would be maintained for the children's exclusive benefit, the court granted the divorce decree.

During that same hearing, Diana moved to extend a temporary protective order (TPO) that had earlier been entered against

Bruce. Bruce opposed extending the TPO, but, based on findings that Bruce had continued to make unwanted contact with Diana, the court granted the motion. Bruce then indicated that he wished to take the children to Texas for Christmas, but the court explained that the parenting plan was set forth in the divorce decree, which had already been granted, and if he had wanted to adjust the visitation schedule, he should have answered the complaint.

Bruce did not appeal or move to alter the child visitation terms based on changed circumstances but, on December 13, 2005, he filed an NRCP 60(b) motion to set aside the divorce decree, asserting that he was not given an equitable share in the property distribution, and indicating that he was generally upset about the divorce. Diana opposed the motion and filed a countermotion to enforce the terms of the decree, arguing that Bruce had failed to answer the complaint and that his motion to set aside the decree failed to set forth any grounds for doing so.

At a hearing on the NRCP 60(b) motion, Bruce, through counsel, maintained that certain property had been undervalued in the decree and that it was unfair for the court to grant the divorce decree given Bruce's weakened psychological state. Bruce maintained that after the decree was entered, he had the family home appraised at a value higher than assessed in the decree. Although the court asked Bruce if he had any evidence to support his claims, Bruce was unable to offer anything other than his statements to support his contentions that the decree was inequitable and the result of misrepresentation or excusable neglect or mistake. The district court denied the NRCP 60(b) motion, finding that Diana had properly filed for divorce and a default was properly entered based on Bruce's failure to answer. Regardless, the court

also determined that the terms of the property division set forth in the decree appeared equitable. Bruce appeals.

The district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion.¹ As a threshold matter, the party moving to set aside a default decree must show some excuse for his failure to answer a complaint or otherwise defend against it.²

Having reviewed the record and the parties' briefs, we conclude that the district court did not abuse its discretion when it denied Bruce's NRCP 60(b) motion. Bruce's decision to forego retaining an attorney until after the decree was entered does not demonstrate excusable neglect or mistake. While Bruce expressed that he was upset about the divorce, he was fully aware that Diana was filing for divorce on incompatibility grounds, but he nevertheless elected not to file an answer contesting the allegations contained in the complaint, and the decree was accordingly granted. At the NRCP 60(b) motion hearing, Bruce failed to present any documentation or other evidence to support his claim that the home had been undervalued. Regardless, the district court determined that the assets had been distributed equitably and that there was no evidence that Diana had misrepresented their value. Although Bruce

¹Cook v. Cook, 112 Nev. 179, 912 P.2d 264 (1996); see Smith v. Smith, 102 Nev. 110, 716 P.2d 229 (1986) (explaining that this court will uphold the district court's order denying an NRCP 60(b) motion if there is substantial evidence in the record to support the decision).

²Price v. Dunn, 106 Nev. 100, 104, 787 P.2d 785, 787 (1990).

indicated that he was upset during the divorce proceedings, the court explained to him that Diana had taken the necessary steps to complete the divorce and his desire to remain married was not a basis for denying the decree. Accordingly, since Bruce failed to show that the divorce decree was granted as a result of mistake, inadvertence, surprise, or excusable neglect, or of any misrepresentation on Diana's behalf, we affirm the district court's order denying his NRCP 60(b) motion.

It is so ORDERED.³

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

³Although Bruce implies in his brief that the custody arrangement was not in the children's best interest, neither the custody determination nor anything related to the parenting plan was raised as a basis for setting aside the decree under NRCP 60(b). Accordingly, we decline to consider any arguments regarding child custody. See Wolff v. Wolff, 112 Nev. 1355, 1363-1364, 929 P.2d 916, 921 (1996) (recognizing that arguments not presented to the district court are considered waived on appeal (citing Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981))).

Diana maintains that this appeal is frivolous, and she requests an attorney fees award under NRAP 38. Bruce made no argument in response. Under NRAP 38, if this court determines that an appeal has been taken frivolously, it may award "such attorney fees as it deems appropriate to discourage like conduct in the future." After considering this standard and Diana's arguments, we decline to impose sanctions.

cc: Hon. Stefany Miley, District Judge, Family Court Division
Persi J. Mishel, Settlement Judge
Thomas Stafford
Willick Law Group
Eighth District Court Clerk