

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YOSEF LE ROI MUSTAFANOS,
Appellant,
vs.
DEBORAH JUNE STRODE,
Respondent.

No. 75574-COA

FILED

OCT 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Yosef Le Roi Mustafanos appeals from a district court order denying a motion for relief from judgment in a divorce action. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

In the proceedings below, the parties were divorced by way of a decree of divorce filed on April 25, 2016, with the notice of entry of order filed on May 2, 2016, following a bench trial. Pursuant to the terms of the decree, as relevant here, the parties were to sell the marital residence, sharing the proceeds after any offsets, and respondent Deborah Strode was awarded a Western Star semi-truck along with several miscellaneous items as her sole and separate property. Prior to the divorce trial, Deborah filed for bankruptcy, but did not include the property she was awarded in the divorce decree as assets in her bankruptcy matter. Following the entry of the decree of divorce, Deborah's bankruptcy matter was reopened and she amended her filings to include the property she was awarded in the decree. On April 5, 2017, Yosef filed a "Motion to Reverse Decisions or Trial de Novo," seeking an order reversing and modifying various provisions of the decree of divorce. Following a hearing, the district court denied the motion,

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concluding that pursuant to NRCP 59 and NRCP 60,¹ the motion was untimely as it was filed nearly one year after the decree of divorce was entered. The district court also found that Yosef failed to present any new evidence as the evidence presented in the motion, namely that Deborah committed fraud by failing to include the property awarded to her in the divorce decree in her bankruptcy filings, was known at the time of trial and, in fact, Yosef made many of the same arguments at trial. Further, the district court noted that Yosef's attempt to re-characterize the evidence as a fraud upon the court did not change the fact that Yosef was aware of all the relevant facts at the time of trial and that Yosef failed to meet his burden under NRCP 59 and NRCP 60. This appeal followed.

On appeal, Yosef challenges the district court's denial of his motion for relief from judgment, asserting that the district court abused its discretion in finding that no fraud existed and that the facts presented relating to Deborah's reopened bankruptcy proceeding were not new evidence. This court reviews the district court's decisions in divorce proceedings for an abuse of discretion and we will not disturb a district court's decision that is supported by substantial evidence. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.* Similarly, the district court's denial of a motion for

¹The Nevada Rules of Civil Procedure were amended effective March 1, 2019. See *In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Accordingly, we cite the prior version of the rules herein.

relief from judgment pursuant to NRCP 60 is reviewed for an abuse of discretion. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

Although Yosef challenges the district court's conclusions on the merits of his claims, and the district court noted that Yosef failed to provide new evidence, the district court ultimately denied his motion based on its conclusion that it was untimely. NRCP 60(b) requires a motion for relief from judgment to be filed within a reasonable time and, as relevant here, if based on mistake, newly discovered evidence, or fraud, within six months of the notice of entry of order. *Doan v. Wilkerson*, 130 Nev. 449, 453, 327 P.3d 498, 501 (2014 (holding "that NRCP 60(b)'s time limitation applies to a motion for relief from or modification of a divorce decree"). Here, the decree was entered in May 2016, but Yosef did not file his motion until April 2017, which was well past the six-month time limit of NRCP 60(b). Additionally, to the extent Yosef was seeking a new trial or to amend the judgment pursuant to NRCP 59, his motion was similarly untimely as NRCP 59 requires such motions to be filed within 10 days of service of the written notice of entry of judgment. Accordingly, we discern no abuse of discretion in the district court's denial of Yosef's motion based on its untimeliness.² *Cook*, 112 Nev. at 181-82, 912 P.2d at 265.

²We note that NRCP 60(b) does not impose a time limit on a motion for relief based on a fraud upon the court, but the rule still requires the motion be brought "within a reasonable time." NRCP 60(b); *see also NC-DSH, Inc. v. Garner*, 125 Nev. 647, 659, 218 P.3d 853, 862-63 (2009). Yosef only makes a summary statement that Deborah committed a fraud upon the court, as he did below, but does not provide any cogent argument as to that assertion. *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 claims that are not cogently argued). However, even if Yosef intended to move for relief based on a fraud upon the court, the record

As to Yosef's challenge of the district court's denial of his motion to recuse and assertion that the district court should be disqualified due to bias, we presume judges are unbiased. *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009). Additionally, "rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification." *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). "[D]isqualification for personal bias requires 'an extreme showing of bias [that] would permit manipulation of the court and significantly impede the judicial process and the administration of justice.'" *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1254-55, 148 P.3d 694, 701 (2006) (alteration in original) (quoting *Las Vegas Downtown Redev. Agency v. Hecht*, 113 Nev. 632, 636, 940 P.2d 127, 129 (1997)). Thus, this court reviews a district court's decision not to recuse itself for an abuse of discretion. *Dunleavy*, 104 Nev. at 789, 769 P.2d at 1275.

Here, although Yosef asserts that the district court's bias stemmed from an extrajudicial source, in doing so he merely makes a conclusory statement that the judge was biased against him, as evidenced by the district court's rulings in the underlying divorce proceedings, which


indicates Yosef knew Deborah failed to include the property in her bankruptcy filings as early as May 2015, when his counsel argued during a hearing that Deborah committed bankruptcy fraud by failing to include the semi-truck as an asset, and he knew of Deborah's position as to the ownership of the assets at the latest during the trial in December 2015. We therefore conclude that Yosef did not timely bring a motion to set aside the decree based on fraud upon the court when he filed his motion nearly one year after the entry of the decree and thus, the district court did not abuse its discretion in denying Yosef's motion for that reason. *Cook*, 112 Nev. at 181-82, 912 P.2d at 265.

are insufficient to establish the district court should be disqualified. *See id.* Thus, based on our review of the record, we see no basis for concluding that the judge was biased.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³To the extent Yosef challenges the distribution of assets in the decree of divorce, those arguments are not properly before us as the notice of entry of the decree was served on April 28, 2016, and filed on May 2, 2016, while Yosef's notice of appeal was not filed until April 9, 2018. Accordingly, the time to appeal from that determination had long passed at the time the notice of appeal was filed and Yosef's motion for relief from judgment did not toll that time. *See* NRAP 4(a) (providing the time within which an appeal must be filed and that a tolling motion must be timely filed to toll the time to file an appeal).

Insofar as Yosef 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. Additionally, we have reviewed the document Yosef filed with this court on September 17, 2019, and conclude that nothing set forth therein impacts our resolution of this matter.

cc: Hon. Leon Aberasturi, District Judge
Yosef Le Roi Mustafanos
Deborah June Strode
Third District Court Clerk