

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARRELL JAMES BURPEE,
Appellant,
vs.
PAMELA MICHELLE BURPEE,
Respondent.

No. 80850-COA

FILED

DEC 29 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Yourey
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Darrell James Burpee appeals from a district court order denying an NRCP 60(b) motion to set aside an Amended Qualified Domestic Relations Order (Amended QDRO) in a divorce action. Eighth Judicial District Court, Family Court Division, Clark County; Lisa M. Brown, Judge.

Darrell and Pamela Michelle Burpee married in 1991 and divorced in 2014.¹ Prior to their divorce, the district court ordered Darrell to pay Pamela temporary spousal support as well as attorney fees. Per the divorce decree, Darrell and Pamela stipulated to divide Darrell's pension, and the district court awarded Pamela alimony to continue until she accessed Darrell's pension. The QDRO directed payments to Pamela of 50% of the portion of Darrell's pension that was earned during the marriage. Over the next year, Darrell failed to meaningfully comply with his financial obligations, resulting in thousands of dollars of arrearages. Pamela ultimately sought a finding of contempt and an Amended QDRO in a supplemental motion in 2015 awarding her 100% of Darrell's pension. Darrell did not file an opposition.

The district court signed the Amended QDRO but did not issue a separate written order granting the supplemental motion to amend the QDRO. The court also did not explain its reasoning in the Amended QDRO

¹We recount the facts only as necessary for our disposition.

for issuing the Amended QDRO, nor did it alternatively make a contempt finding authorizing the Amended QDRO. Pamela did not file and attempt service of a notice of entry for the Amended QDRO until more than two years later.

More than a year-and-a-half after Pamela filed the notice of entry, Darrell filed a motion to set aside the Amended QDRO under NRCP 60(b) arguing, among other things, that the district court failed to prepare an order outlining its findings of fact and conclusions of law that authorized the filing of the Amended QDRO. After a subsequent hearing, the district court summarily denied Darrell's motion. This appeal followed.

On appeal, Darrell argues that the district court abused its discretion when it ruled on an NRCP 60(b) motion without making any findings of fact or conclusions of law and that the district court erred when it modified the divorce decree by awarding Pamela 100 percent of Darrell's pension.² Pamela replies that the Amended QDRO did not modify the divorce decree but simply was an enforcement mechanism to effectuate the terms of the divorce decree and the Amended QDRO serves as the order granting her 2015 supplemental motion.

The district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion, and this court will not disturb that decision absent an abuse of discretion. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996). When determining whether there are grounds for

²Darrell also argues that equitable tolling applied to his motion to set aside and that his Due Process rights were violated because he did not have an opportunity to be heard before the district court awarded Pamela 100 percent of his pension. Pamela responds that equitable tolling does not apply because Darrell far exceeded the six-month time limitation and filed his motion a year-and-a-half late. Additionally, Pamela contends that Darrell received sufficient notice.

NRCP 60(b)(1) relief, the court must consider four factors: “(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of personnel knowledge of procedural requirements; and (4) good faith.” *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 the Nevada Supreme Court recently held in *Willard v. Berry-Hinckley Industries*, “district courts must issue explicit and detailed findings, preferably in writing, with respect to the four *Yochum* factors to facilitate this court’s appellate review of NRCP 60(b)(1) determinations.” 136 Nev. 467, 471, 469 P.3d 176, 180 (2020). The appellate courts’ review of NRCP 60(b)(1) determinations “necessarily requires district courts to issue findings pursuant to the pertinent factors in the first instance.” *Id.* at 470, 469 P.3d at 180 (citing *Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011)). “Without an explanation of the reasons or bases for a district court’s decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation.” *Jitnan*, 127 Nev. at 433, 254 P.3d at 629.


Here, we recognize that at the time the district court decided Darrell’s motion it did not have the benefit of *Willard* for guidance, including that it was required to render explicit factual findings for each of the *Yochum* factors. However, even prior to *Willard*, district courts were required to at least consider the four *Yochum* factors—and, based on the record, the district court failed to consider the factors here.

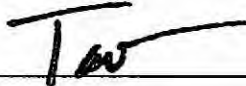
Moreover, we cannot perform an independent *Yochum* analysis because we do not know when the district court intended the NRCP 60(b) timeliness clock to begin or if equitable tolling applies. Pamela makes two different arguments. First, she argues that the Amended QDRO served as an enforcement mechanism, while Darrell argues it was a modification of the

decree of divorce. Second, she argues that the Amended QDRO serves as the order from the 2015 supplemental motion. However, if the Amended QDRO served as an enforcement mechanism, it needs to enforce an order, and no independent order was filed in this case. Similarly, if the Amended QDRO itself serves as the order, the Amended QDRO needed to contain the court's ruling authorizing the Amended QDRO and the legal basis for it. Furthermore, it should have set forth parameters regarding the amount of money owed and included appropriate limitations so as to avoid awarding an amount beyond that required to satisfy the arrearage. Additionally, the Amended QDRO does not explain how 100 percent of the pension, including a portion never designated as community property, could be awarded to satisfy the unstated arrearage.

Because we are not sure what the district court intended without an order granting the 2015 supplemental motion, or alternatively including the necessary analysis and parameters in the Amended QDRO, as well as an order from 2019 that addresses the relevant *Yochum* factors, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³Insofar as the parties raise 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: Chief Judge, Eighth Judicial District Court
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