IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL L. NELSON,
Appellant,
vs.
NOEL C. NELSON, N/K/A NOEL C. DELGADO,
Respondent.

No. 82223-COA

ORDER OF AFFIRMANCE

Michael L. Nelson appeals from a district court order denying a motion to set aside a decree of divorce under NRCP 60. Eighth Judicial District Court, Family Court Division, Clark County; Sandra L. Pomrenze, Judge.

Appellant Michael L. Nelson and respondent Noel C. Nelson were married in 1999, and both parties worked as Las Vegas firefighters during the marriage. After relations broke down between the parties, Michael initiated a summary proceeding for divorce and the district court entered a decree of divorce between them on July 30, 2019.

As relevant here, the decree of divorce indicated that both parties would receive full ownership of their individual PERS accounts, but that Noel "shall list Michael as a survivor beneficiary of her PERS account upon her retirement." On September 2, 2020, Michael, with the assistance of counsel, filed a "Motion to Set Aside Decree of Divorce in Part Due to Mutual Mistake of the Parties," alleging that the portion of the decree

referring to Noel's PERS retirement plan should be voided or reformed as the parties were both unaware at the time they submitted their petition that Noel would be unable to name Michael as her survivor beneficiary under the same survivor beneficiary option plan Michael provided to Noel before they were divorced, creating an unequal distribution of community property. Noel opposed the motion, arguing that Michael's motion should be denied as untimely under NRCP 60 because Michael filed his motion to set aside thirteen months after the district court entered the divorce decree. After receipt and consideration of Michael's reply and a hearing on the matter, the district court entered its order denying Michael's motion under NRCP 60, finding, among other things, that his motion was untimely under NRCP 60 and that contract principles did not apply.[1] Michael now appeals.

As a preliminary matter, to the extent that Michael argues that contract principles would apply to the decree of divorce in this case as the parties had reached a settlement agreement prior to petitioning for summary disposition of the divorce, that argument lacks merit. Unless expressly noted otherwise in the divorce decree, marital settlement agreements become incorporated and merged into the divorce decree. *Day*

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[1]The 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, although the district court and the parties cite to the prior version of the rule, the revised NRCP 60 applies to this matter, and we therefore reference the updated rules herein.

v. Day, 80 Nev. 386, 389, 395 P.2d 321, 322-23 (1964) (explaining that "the survival provision of an agreement is ineffective unless the court decree specifically directs survival"). After merger, the agreement loses its independent nature and any attempt to enforce these agreements under contract principles is improper. *Id.* at 389, 395 P.2d at 322 (stating that "merger destroys the independent existence of the agreement and the rights of the parties thereafter rest solely upon the decree"). As the divorce decree at issue here does not indicate that the parties' settlement agreement survived the merger into the divorce decree, the district court did not err when it determined that contract principles did not apply in this case.

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., Adv. Op. 60, ___ P.3d ___ (Ct. App. September 30, 2021); *see also Mizrachi v. Mizrachi*, 132 Nev. 666, 673, 385 P.3d 982, 986 (Ct. App. 2016). We review a trial 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(b) provides, as pertinent here, that "the court may relieve a party . . . from a final judgment, order, or proceeding for . . . (1) mistake, inadvertence, surprise, or excusable neglect." A motion under Rule 60(b) must be made within a reasonable time, and for reasons including mistake, inadvertence, surprise, or excusable neglect under NRCP 60(b)(1), motions must be made "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).

Turning now to Michael's other arguments on appeal, Michael relies on our supreme court's holding in *Nevada Industrial Development, Inc. v. Benedetti*, 103 Nev. 360, 741 P.2d 802 (1987), to argue that the deadlines to file a NRCP 60(b) motion do not apply to requests for relief based on the contract principle of mutual mistake. In light of this, Michael argues that the district court erroneously applied NRCP 60(b) and (c) to his motion to set aside, which was solely based on the principle of mutual mistake. We disagree.[2]

In *Benedetti*, the appellant filed an independent action for relief from a prior judgment based on the theory of mutual mistake, amongst other claims for relief. 103 Nev. at 361, 741 P.2d at 803. However, the district court determined that, even though appellant had filed an independent action, the action was untimely as it sought relief under a category contained in NRCP 60(b) and dismissed the action under NRCP 41(b). *Id.* at 362, 741 P.2d at 803. The supreme court clarified, holding that "[w]hen the statutory period within which to obtain relief from a judgment under 60(b) has run, relief may be granted in an independent action on the basis of mutual mistake." *Id.* at 364, 741 P.2d at 804.

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[2]We decline to accept the invitation in Michael's reply brief to disregard Noel's pro se answering brief. Although pro se parties are encouraged to make efforts to comply with NRAP 28(e)(1), they are not required to do so. NRAP 28(e)(3). Further, although both parties present arguments relevant to mutual mistake, we decline to address those arguments given our conclusion below.

Notably, the opinion does not contain any discussion of whether the theory of mutual mistake is excluded from the broader category of "mistake" under NRCP 60(b)(1). Thus, contrary to Michael's assertion, this holding does not exempt mutual mistake from NRCP 60(b)(1)'s definition of "mistake" but rather clarifies that once the time for a NRCP 60(b)(1) motion has expired, a party may file an independent action to correct a mutual mistake, even if the six month period to file a motion in the same action has expired.[3] And because Michael failed to provide other authority outside of his unpersuasive interpretation of *Benedetti* to support this argument, we need not consider it further. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued or supported by relevant authority). Thus, we discern no error in the district court's determination that Michael's motion to set aside the judgment fell within NRCP 60(b)(1).

As motions for relief based on mistake, inadvertence, surprise, or excusable neglect under NRCP 60(b)(1) must be brought within six months of service of the written notice of entry of the judgment, NRCP

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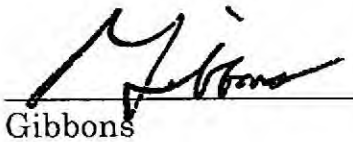
[3]We recognize that NRCP 60(d) permits an independent action "to relieve a party from a judgment" but note that this may be limited by the supreme court's holding in *Bonnell v. Lawrence*, which held, among other things, that independent actions "should be available only to prevent a grave miscarriage of justice." 128 Nev. 394, 402, 282 P.3d 712, 717 (2012). *But see* footnote 4, *infra*.

60(c)(1), we conclude that the district court did not abuse its discretion when it determined Michael's motion was untimely.[4] Thereforewe

ORDER the judgment of the district court AFFIRMED.[5]



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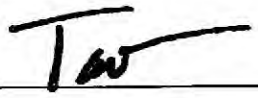

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[4]While we affirm the district court's conclusion that Michael's motion to set aside the judgment is untimely under NRCP 60(b), nothing in our decision of this matter should be construed as prohibiting Michael from seeking relief under NRS 125.184(2) (stating that a final judgment entered in a summary proceeding for divorce "does not prejudice or bar the rights of either of the parties to institute an action to set aside the final judgment for fraud, duress, accident, mistake or other grounds recognized at law or in equity") or, possibly, under NRS 125.150(3) (providing that "[a] party may file a postjudgment motion in any action for divorce . . . to obtain adjudication of any community property or liability omitted from the decree or judgment as the result of fraud or mistake" within 3 years of discovery of the facts constituting the fraud or mistake) to the extent that community property or debt was not included in the decree because of the mistake in the ability to designate one spouse as a beneficiary to the pension benefits. However, we make no comment on the merits of any such requests for relief.

[5]Insofar 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, Family Court Division
Eighth Judicial District Court, Family Court Division, Department P
Michael J. Warhola, LLC
Noel C. Nelson
Eighth District Court Clerk