

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAPHAEL LAFOND,
Appellant,
vs.
CHRISTINE LAFOND, N/K/A
CHRISTINE SHEBECK,
Respondent.

No. 82486-COA

FILED

MAR 09 2022

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

ORDER OF AFFIRMANCE

Raphael LaFond appeals from an order granting NRCP 60(b) relief in a post-divorce proceeding. Eighth Judicial District Court, Family Court Division, Clark County; Lisa Brown, Judge.

The parties were divorced by way of a stipulated decree of divorce entered in 2017. Pursuant to the terms of the decree, the parties were each awarded 50 percent of the bitcoins, valued at approximately \$80,000, when available. Shortly thereafter, Raphael filed a motion to set aside the decree, seeking to modify the parties' child custody holiday schedule and child support provisions, and requesting an order directing respondent Christine LaFond (n/k/a Christine Shebeck) to refinance the vehicle she was awarded into her own name. Christine filed an opposition and countermotion, where she sought enforcement of the bitcoin provision from the decree, requesting an accounting of all the bitcoin accounts and her 50 percent share immediately. As relevant here, the district court ordered that Christine would take her half of the bitcoin and that Raphael would provide proof of any and all bitcoin accounts for at least the four months prior the entry of the decree so that Christine could verify the amounts.

Christine then filed a motion to set aside the decree asserting that Raphael had not disclosed any information regarding corporations that he conducted business through and earned income from; that he converted some of the bitcoins into other types of cryptocurrency and was using the cryptocurrency to make profits; that he misrepresented the value of the bitcoins at the time of the divorce; and that the bitcoins were likely worth more than \$1 million, rather than the \$80,000 he represented at the time of the divorce. Raphael opposed and counter-moved to enforce the settlement agreement, asserting that the parties entered a contract and Christine agreed to \$40,000 as her share of the bitcoins.

After an evidentiary hearing, the district court granted Christine's motion to set aside the decree's provisions regarding the bitcoins, concluding that the parties agreed to share the bitcoins equally, and although the decree indicated that the approximate value was \$80,000, Raphael misrepresented the true value of the bitcoins. Accordingly, the court ordered Raphael to give Christine access to the bitcoin accounts and other cryptocurrency accounts that he transferred bitcoin assets into, and that Christine would be awarded 50 percent of all the cryptocurrency assets identified by her expert at trial as being acquired during the marriage. This appeal followed.

On appeal, Raphael challenges the district court's order awarding Christine 50 percent of the all the cryptocurrency assets acquired during the marriage, asserting that pursuant to the parties' stipulated decree Christine agreed to receive \$40,000 as her share of the community property interest in the cryptocurrency. This court reviews the district court's decisions in divorce proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Similarly, the

district court has broad discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b), 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).

As an initial matter, Raphael primarily argues that the parties' agreement constituted a contract and, pursuant to the terms of their agreement, Christine agreed to accept \$40,000 as her community share of the cryptocurrency, and that their contract should be enforced. Contrary to this assertion, unless expressly noted otherwise in a decree of divorce, the parties' settlement agreement is incorporated and merged into the decree. *Day 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"). And after the agreement is merged into the decree, the agreement loses its independent nature and enforcement of the agreement under contract principles is generally 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"). Thus, because the decree here does not indicate that the parties' settlement agreement survived the merger into the divorce decree, the district court did not err in considering Christine's NRCP 60(b) motion.

As to the remainder of Raphael's argument, namely that the decree awarded Christine \$40,000 as her share of the community interest in the cryptocurrency, the district court concluded that in the stipulated decree the parties intended to equally divide the cryptocurrency, which would be distributed at a later date. And although the parties agreed that the cryptocurrency had an approximate value of \$80,000 at the time of the agreement, Raphael misrepresented the value and it was actually worth

significantly more than \$80,000 at the time of divorce. The court went on to find that because Raphael misrepresented the value of those assets at the time of divorce, and then failed to distribute Christine's 50 percent interest to her and failed to timely provide her information as to the value of those assets, Christine should be awarded 50 percent of the cryptocurrency accounts that existed at the time the decree of divorce was entered.

As relevant here, NRCP 60(b) provides that "the court may relieve a party . . . from a final judgment, order, or proceeding for . . . (1) mistake, inadvertence, surprise, or excusable neglect; [or] . . . (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." Notably, Raphael fails to offer any argument challenging the district court's finding that he either mistakenly or purposefully misrepresented the value of the cryptocurrency assets at the time of the parties' stipulation, and instead, only asserts that Christine could have done her own research to determine the actual value of the assets. *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).

Regardless, if a party misrepresents the value of an asset, that the other party could have done more to investigate the true value of the asset does not preclude relief under NRCP 60(b). *See Carlson v. Carlson*, 108 Nev. 358, 361-62, 832 P.2d 380, 382 (concluding that respondent's argument that appellant could have done more to investigate the true value of an asset did not preclude NRCP 60(b) relief when the record demonstrated respondent misrepresented the value, either by mistake or through fraud). And here, the district court found that Raphael misrepresented the value of the assets and that Christine reasonably relied

on Raphael's misrepresentations based on both parties' testimony, the testimony of an expert witness, and exhibits admitted during trial demonstrating the value of the assets over time. Indeed, the district court made very detailed findings, specifically finding that Christine's testimony was credible, while Raphael's was evasive and not credible. Similarly, the court found that Christine's expert witness explained how he traced the cryptocurrency accounts and the movement of the assets within those accounts, while Raphael's expert testified that he had never conducted such a tracing and was not hired to determine whether Raphael held or owned any cryptocurrency.

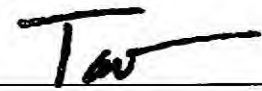
Based on these findings, we cannot conclude that the district court abused its discretion in concluding that Raphael misrepresented the value of the cryptocurrency assets and that NRCP 60(b) relief was warranted. *See id.* at 361-62, 832 P.2d at 382 (explaining that the "purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party" in concluding a mutual mistake or a fraudulent misrepresentation as to the value of an asset warrants relief from the judgment pursuant to NRCP 60(b)). Thus, we likewise cannot say that the district court abused its discretion in concluding that the decree intended to award the parties equal shares of the cryptocurrency and, to the extent the decree awarded Christine less than 50 percent of those assets based on Raphael's misrepresentation, it should be set aside and amended to award her an equal share.¹ *See Williams*, 120 Nev. at 566, 97 P.3d at 1129; *Cook*, 112 Nev. at 181-82, 912 P.2d at 265.

¹As to Raphael's arguments challenging the credibility of the witness testimony and the weight of the evidence, we do not reweigh the same on appeal. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007)

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court, Family Court Division
Eighth Judicial District Court, Department T
Raphael LaFond
Radford J. Smith, Chartered
Eighth District Court Clerk

(refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). Similarly, to the extent Raphael challenges the district court's findings as to the evidence admitted during trial, he has failed to provide this court with the transcripts, and we therefore presume it supports the district court's findings. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (holding that appellant is responsible for making an adequate record on appeal and when "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision").

²Insofar as Raphael raises other 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.