

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC HOLYOAK,
Appellant,
vs.
TONI HOLYOAK,
Respondent.

No. 83976-COA

FILED

APR 14 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Eric Holyoak appeals from a district court order denying his motion to set aside a Qualified Domestic Relations Order under NRCP 60(a). Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Eric and respondent Toni Holyoak were divorced in 2008. In 2015, after vigorous post-divorce litigation, the district court entered a Qualified Domestic Relations Order (QDRO) which detailed Toni's share of Eric's retirement benefits.¹ As relevant here, Eric, through counsel, filed a motion to set aside this 2015 QDRO under NRCP 60(a), claiming that the original QDRO contained a clerical error that provided Toni with more than her community property share of his retirement benefits. Eric also included a proposed QDRO with this motion, which, in addition to correcting the alleged clerical error mentioned above, also included a provision terminating Toni's benefits in February 2021. Toni did not oppose this motion, and the district court accepted and entered Eric's proposed

¹This order was the subject of an appeal in *Holyoak v. Holyoak*, No. 67490, 2016 WL 2957146 (Nev. May 19, 2016) (Order of Affirmance).

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amended QDRO. Several months after entry of this QDRO, Toni informed the district court that she had filed for bankruptcy. Subsequently, and pursuant to an order from the United States Bankruptcy Court for the District of Nevada, this matter was stayed and the amended QDRO was declared *void ab initio*. After resolution of the bankruptcy action, Eric renewed his NRCP 60(a) motion to set aside, which contained the same arguments and proposed QDRO as the previous motion.

During the hearing on the motion, the district court denied Eric's request for NRCP 60(a) relief, finding, among other things, that the previous district court judge found good cause to enter the 2015 QDRO, that the terms of the parties' original contract indicated that Toni would receive a divided share of Eric's retirement benefits that would not terminate until Eric ceased receiving benefits, and that Eric had failed to demonstrate that the difference in Toni's share of the retirement benefits or the absence of a termination provision in the 2015 QDRO was a clerical error. Accordingly, the district court entered an order that denied Eric's request to terminate Toni's retirement benefits with prejudice, because he had not demonstrated that the absence of a termination provision in the 2015 QDRO was a clerical error under NRAP 60(a). The court also denied Eric's request for correction of the alleged clerical error as to the calculations without prejudice, finding that he failed to demonstrate that the alleged incorrect calculations were a clerical error.² Shortly thereafter, Eric filed a motion to alter or amend that judgment, arguing that the district court's oral findings at the hearing did

²Even though the district court determined that Eric could not terminate Toni's retirement benefits, it clarified that Eric would be able to seek further relief regarding his allegations that the QDRO provided Toni with a disproportionate share of his retirement benefits earned during the marriage.

not indicate that it would be denying Eric's request for termination of Toni's benefits with prejudice, which the district court denied. Eric now appeals.

Having considered Eric's informal brief and the record on appeal, we affirm the district court's orders in this matter. On appeal, Eric challenges the district court's order denying his NRCP 60(a) motion, as well as the order denying his post-judgment motion to alter and amend the original order. Notably, in challenging the denial of his NRCP 60(a) motion, Eric asks this court to, among other things, determine whether, under Nevada law, QDROs should have an established termination date. However, this argument fails to actually challenge the basis on which the district court denied his motion, namely, that Eric failed to prove that the alleged incorrect calculation of Toni's share of the retirement benefits, or the absence of a termination date for those benefits, was the result of a clerical error that could be corrected through NRCP 60(a). Accordingly, any such argument has been waived and the challenged order can thus be affirmed on this basis. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived). Moreover, to the extent that Eric's argument on this point relates to the merits of the district court's initial QDRO, it exceeds the scope of NRCP 60(a)—which is designed to “correct a clerical mistake or a mistake arising from oversight or omission”—and does not provide a basis for relief from the denial of Eric's motion for NRCP 60(a) relief. *See Pickett v. Comanche Constr., Inc.*, 108 Nev. 422, 428, 836 P.2d 42, 46 (1992) (clarifying that clerical errors are mistakes in writing or copying, or mistakes that are not the result of the exercise of judicial function). Therefore, we affirm the district court's order.

Eric's challenge to the district court's denial of his motion to alter or amend also fails. On appeal, Eric argues that the district court abused its discretion in denying his motion to alter or amend the judgment because the court's ultimate written judgment differs from what the judge stated at the hearing. However, at the hearing on the motion, the district court clarified that it intended to dismiss the challenged claim with prejudice. And because we affirm the district court's denial of Eric's NRCP 60(a) motion, we conclude that the district court did not abuse its discretion in denying Eric's motion to alter or amend. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (reviewing an order denying a motion to alter or amend for an abuse of discretion).

Accordingly we,

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Eric Holyoak
Anthony L. Barney, Ltd.
Eighth District Court Clerk

³Insofar as Eric 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.