

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF  
THEODORE ERNEST SCHEIDE, JR.,  
DECEASED.

THEODORE E. SCHEIDE, III,  
Appellant,  
vs.  
ST. JUDE CHILDREN'S RESEARCH  
HOSPITAL,  
Respondent.

No. 84279-COA

**FILED**

**NOV 28 2023**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Theodore E. Scheide, III (Chip) appeals from a district court's order denying a motion to strike and related relief pursuant to NRCP 60(b) in a probate matter. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

In October 2012, Theodore E. Scheide Jr. (Theodore) executed a will leaving his entire estate to his life partner Velma Shay, and if she predeceased him, then to St. Jude Children's Research Hospital (St. Jude) in Tennessee.<sup>1</sup> The will also explicitly disinherited Chip, Theodore's only biological child. Shay died in 2013, and Theodore passed away the following year in August 2014.

Following Theodore's death, the district court appointed Susan Hoy, Theodore's legal guardian at the time he passed, as the special administrator of Theodore's estate. Being unable to find Theodore's original will, Hoy filed a first and final account, report of administration, and

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

petition for final distribution recommending Theodore's estate pass intestate to Chip. When Theodore's former attorney, who drafted Theodore's will, learned of Hoy's recommendation, she filed a copy of Theodore's original will with the district court. Hoy thereafter recommended that the district court probate the copy of the will as proof of a lost will; however, Hoy withdrew her recommendation upon Chip's opposition.

In September 2016, St. Jude petitioned the district court to probate Theodore's lost will. A man named Fred E. Jones, who denoted himself as St. Jude's "Director – Legal/ALSAC," signed and verified the petition. Chip opposed the petition, arguing that St. Jude failed to meet its burden of proof for a lost will under NRS 136.240. The district court denied St. Jude's petition, and ultimately on appeal, the Nevada Supreme Court reversed, holding that St. Jude met NRS 136.240(3)'s two-witness requirement. *In re Estate of Scheide*, 136 Nev. 715, 727-28, 478 P.3d 851, 861 (2020). In turn, the supreme court remanded the matter to the district court "with instructions for the district court to probate the lost will." *Id.* at 728, 478 P.3d at 861.

On March 21, 2021, following the supreme court's opinion but prior to the district court entering an order to probate Theodore's will, Chip filed a motion for relief under NRCP 60(b)(3) and (4) from the supreme court's instruction for the district court to probate the lost will. Therein, Chip raised several new arguments, which it appears he had never before raised at any point during the litigation. First, he argued that St. Jude committed fraud because Jones, a representative from the American Syrian Lebanese Associated Charities (ALSAC)—the organization that oversees charitable contributions to St. Jude—signed the petition to probate the lost

will, and not a representative of St. Jude. As such, Chip asserted that ALSAC was the true petitioning party, but that it did not have standing to file the petition because it was not an interested party under the will. Chip also argued that, even if St. Jude was the properly named party, it committed fraud by filing the petition in a Nevada court because it does business in Nevada and failed to properly register to do so before filing the petition. As such, Chip argued that St. Jude was barred from commencing any proceeding in Nevada courts, so its petition was fraudulently filed. Finally, Chip argued that St. Jude filed its petition in bad faith and with unclean hands because it perpetually expends proceeds received from charitable games and lotteries outside of Nevada in contravention of NRS 462.200.

St. Jude opposed the petition, arguing that Chip's arguments were untimely and should have been raised several years before when he initially opposed St. Jude's petition to probate the copy of the lost will. St. Jude also contended that Chip's arguments were without merit. First, St. Jude argued that ALSAC signed the petition as St. Jude's duly authorized agent, and therefore, ALSAC's signature did not render St. Jude's petition fraudulent. Further, St. Jude argued that it was the properly named party in the petition as it was the named beneficiary under the will, and therefore, had standing to petition the court to probate the will. Finally, St. Jude contended that it does not do business in Nevada, and therefore, it could file the petition to probate Theodore's will without being registered as a foreign corporation doing business in Nevada. And, even if it was doing business in Nevada, St. Jude could still petition to probate the will as a named beneficiary.

The district court denied Chip's motion as both meritless and untimely. Specifically, the district court found that ALSAC signed St. Jude's petition as its properly authorized agent, and therefore, the petition was properly filed. Further, the district court found that St. Jude did not have to register in Nevada because it did not do business in the state when it maintained, defended, or settled any proceeding involving the estate, and therefore it did not commit fraud by filing the petition. As to Chip's other arguments, the district court found that they were untimely and barred by the doctrine of laches, explaining that he should have raised the arguments when he first opposed St. Jude's petition to probate the will. This appeal followed.

On appeal, Chip raises the same arguments as he advanced in his NRCP 60(b)(3) and (4) motion before the district court except those he raises for the first time on appeal.<sup>2</sup> Specifically, Chip argues for the first time on appeal that the district court lacked jurisdiction over St. Jude's petition because St. Jude did not provide notice to all required parties, and therefore, the supreme court's direction for the district court to probate Theodore's will should be deemed void and thus relief under NRCP 60(b)(4) is warranted.

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<sup>2</sup>We reject Chip's argument that St. Jude came before the district court with unclean hands insofar as Chip fails to adequately support his claim that St. Jude perpetually violates NRS 462.200 by using proceeds derived from charitable lotteries or games conducted in Nevada outside of the State, or any authority explaining why that would warrant relief under NRCP 60(b) in this case. 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 an appellant's argument that is not cogently argued or lacks the support of relevant authority).



*ALSAC's signature on St. Jude's petition to probate Theodore's lost will does not render the petition fraudulent based on the due diligence requirement of NRCP 60(b)(3)*

Chip argues that St. Jude committed fraud by having a member of ALSAC sign its petition to probate Theodore's lost will and that in turn, ALSAC is the real party in interest.<sup>3</sup> St. Jude responds that Jones, a representative of ALSAC, signed the petition on St. Jude's behalf as its duly authorized agent, which is permitted.

"District judges are afforded *broad* discretion in ruling on NRCP 60(b) motions." *Kahn v. Orme*, 108 Nev. 510, 513, 835 P.2d 790, 792 (1992), *abrogated on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 950 P.2d 771 (1997). We review a district court's denial of an NRCP 60(b) motion for an abuse of discretion and will uphold the district court's decision to deny an NRCP 60(b) motion if sufficient evidence in the record supports that decision. *Id.*; *Smith v. Smith*, 102 Nev. 110, 111-12, 716 P.2d 229, 230 (1986) (recognizing that this court will uphold the decision of the district court granting or denying an NRCP 60(b) motion if there is sufficient evidence in the record to support the decision). As a threshold matter, we note that this argument does not warrant relief under NRCP 60(b)(3) because ALSAC's allegedly fraudulent signature was discoverable by due

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<sup>3</sup>We reject this argument insofar as Chip does not cogently explain why ALSAC's signature as its representative would render ALSAC, rather than St. Jude, the true petitioning party in interest under NRCP 17 ("An action must be prosecuted in the name of the real party in interest."). See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. In any event, we conclude that ALSAC signed the petition on St. Jude's behalf as St. Jude's duly authorized agent, so this argument has no merit. See Restatement (Third) of Agency § 1.01 (2006) (explaining that an agency relationship may be formed when an "agent performs the service requested by the principal following the principal's manifestation").

diligence from the time the petition was filed. Under NRCP 60(b)(3), “the court may relieve a party . . . from a final judgment” because of “fraud . . . misrepresentation, or misconduct by an opposing party.” Federal courts have held that a party moving for relief from judgment under FRCP 60(b)(3)—the identical federal analog to NRCP 60(b)(3)—must “prove by clear and convincing evidence that the [adverse judgment] was obtained through fraud . . . and the conduct complained of prevented the losing party from fully and fairly presenting the defense.” *De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000); *see also Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) (recognizing that federal cases are persuasive authority in interpreting the Nevada Rules of Civil Procedure). Further, the fraud must “not be discoverable by due diligence before or during the proceedings.” *Casey v. Albertson’s Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) (quoting *Pac. & Arctic Ry. and Navigation Co. v. United Transp. Union*, 952 F.2d 1144, 1148 (9th Cir. 1991)).

In the present case, the fact that a representative of ALSAC signed St. Jude’s petition to probate Theodore’s lost will was immediately discoverable upon reviewing St. Jude’s petition, as Jones explicitly denoted himself as “Director — Legal/ALSAC.” Because due diligence could have led Chip to challenge ALSAC’s signature on the petition immediately after reviewing it in 2016, including on the ground that St. Jude engaged in fraud by having Jones sign the petition on its behalf, this does not provide grounds for relief based on the due diligence requirement of NRCP 60(b)(3).<sup>4</sup>

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<sup>4</sup>We note that the district court found Chip’s request for NRCP 60(b) relief as being untimely due to laches. Without deciding the applicability of laches under the circumstances presented, we conclude that the due diligence requirement of NRCP 60(b)(3) renders this part of the NRCP 60(b) motion untimely.

In any event, Chip does not point to any legal authority supporting his assertion that St. Jude was required to sign the probate petition itself. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). To the contrary, under NRS 136.100, “[a] petition for the probate of a will . . . must be signed by the party petitioning, or the attorney for the petitioner, and filed with the clerk of the court.” (Emphasis added.) Here, Chip agrees that St. Jude’s attorney of record executed St. Jude’s probate petition, so St. Jude’s signature as a party was unnecessary for the petition to have been validly filed. Further, as discussed herein, Chip has failed to present any authority that St. Jude was prohibited from designating ALSAC as its legal representative and directing Jones to sign the petition on St. Jude’s behalf. Thus, we see no error in the district court’s finding that Jones’ signature as a representative of ALSAC did not render St. Jude’s probate petition fraudulent.

*The district court did not abuse its discretion in finding that, based on the record, St. Jude does not do business in Nevada and, therefore, could file its petition to probate the lost will without registering with the Nevada Secretary of State*

Chip further argues that St. Jude committed fraud by filing the petition because it does business in Nevada without properly registering to do business in the state, and therefore was barred from commencing any proceedings in Nevada courts under NRS 82.5234(2).<sup>5</sup> Specifically, Chip

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<sup>5</sup>NRS 82.5234(2) provides, in pertinent part:

[E]very foreign nonprofit corporation which is doing business in [Nevada] and which fails or neglects to qualify to do business in [Nevada] in accordance with the laws of this State may not commence or maintain any action or proceeding in any court of

argues that St. Jude, located in Memphis, Tennessee, does business in Nevada because it “promotes and participates in give aways [sic], selling of raffles for Henderson real estate, charitable events, [and] fund raising [sic].” Chip supports these assertions with evidence in the record consisting of printouts from websites soliciting charitable donations to St. Jude and entry in charitable raffles, as well as mail to Nevada addresses soliciting donations for several charitable events and giveaways in 2019 and 2020.<sup>6</sup> St. Jude contends that it was not required to register with the state prior to filing its probate petition because it does not do business in Nevada, and even if it did, it was permitted to file the petition under NRS 136.070(1).

As a preliminary matter, we conclude that even if St. Jude was required to register as doing business in Nevada, its failure to do so does not present grounds for relief under NRCP 60(b)(3), again based on the due diligence requirement of the rule. Here, the fact that St. Jude was not registered to do business in Nevada was widely available, public information at the time St. Jude filed its petition in 2016, and therefore was discoverable by Chip had he undertaken his due diligence as required. *See Casey*, 362 F.3d at 1260 (holding that fraud warranting relief under FRCP 60(b)(3) must “not be discoverable by due diligence before or during the proceedings”); *see also Cap Exp., LLC v. Zinus, Inc.*, 996 F.3d 1332, 1340

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this State until it has qualified to do business in  
this State.

<sup>6</sup>While Chip makes additional claims of St. Jude’s purported business activities in Nevada, including its “expenditure of seemingly endless funds for the purchase of advertising on multiple television channels, for the thousands of ads they run each day, all year long, targeting the residents of Nevada, seeking contributions,” he does not point to evidence in the record supporting these assertions.



(Fed. Cir. 2021) (holding that fraud was not discoverable by due diligence because the concealed information was not “widely available, [or] a matter of public record”). Indeed, in the exhibits to Chip’s NRCP 60(b) motion, Chip showed that St. Jude was not registered to do business in Nevada by running a quick search on the Nevada Secretary of State website. *See Cap Exp.*, 996 F.3d at 1340. Therefore, we conclude that Chip’s allegation of fraud on St. Jude’s part because it was not registered to do business here does not present grounds for relief under NRCP 60(b)(3) because he could have raised the issue earlier, as the information was readily available.

Further, the legal test to determine whether a foreign nonprofit corporation is “doing business” in Nevada is two-pronged: first, courts look to “the *nature* of the company’s business functions” in the state; and second, courts look to the *quantity* of business it conducts in the state. *Sierra Glass & Mirror v. Viking Indus., Inc.* 107 Nev. 119, 122, 808 P.2d 512, 513 (1991) (emphasis added); *see also RTTC Commc’ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 40, 110 P.3d 24, 28 (2005) (explaining that “the two-prong test utilized . . . in *Sierra Glass* is instructive” for statutes outside NRS Chapter 80).

Here, Chip does not demonstrate by identifying only isolated examples of St. Jude’s apparent attempts to solicit donations in Nevada that St. Jude conducts a significant quantity of business in the state such that it is “doing business” in Nevada. *Sierra Glass*, 107 Nev. at 125, 808 P.2d at 515 (determining that an Oregon corporation was conducting a significant quantity of business in Nevada where Nevada sales made up one-seventh of the company’s total sales). Indeed, Chip points to nothing in the record showing the total dollar amount St. Jude receives from Nevada donations and how it compares to the total donations it receives nationwide. Likewise,

because St. Jude is a Tennessee corporation that is registered to do business in Tennessee, Chip has not shown that the nature of St. Jude's solicitation of donations in Nevada is intrastate such that those donations are both solicited and expended in Nevada, and not in Tennessee. *Id.* at 125, 808 P.2d at 515 (holding that the nature of a corporation's business in Nevada was interstate in nature because it solicited orders that were placed in Oregon). Thus, because Chip has not shown that St. Jude conducts a significant quantity of intrastate business in Nevada, we conclude that sufficient evidence in the record supports the district court's finding that St. Jude does not do business in the state, and therefore the district court did not abuse its discretion in finding that "St. Jude is permitted under Nevada law to maintain, defend or settle any proceeding including the Estate of Theodore E. Scheide Jr. without registering with the Secretary of State [under] NRS 80.015(1)(a)" as set forth in the district court's order.

*Chip's challenge to the district court's jurisdiction was untimely*

Chip argues for the first time on appeal that the district court lacked subject matter jurisdiction over St. Jude's petition because it failed to provide notice to all parties as required under NRS 136.100 and NRS 136.230. Specifically, Chip argues that a court only has jurisdiction to consider proof of the execution and validity of a lost will "after notice is given to all persons, as prescribed for proof of wills in other cases," NRS 136.230, including "all persons named as personal representatives [in the will] who are not petitioning," NRS 136.100. However, Chip suggests that St. Jude failed to provide notice of its petition to the parties named as executors in Theodore's will. As such, Chip contends that the district court lacked jurisdiction to consider St. Jude's petition, and thus the supreme court's direction for the district court to probate the lost will should be considered

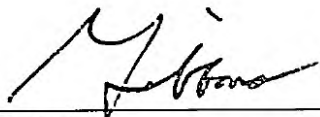
void. Without reaching the merits of Chip's argument, we conclude that his challenge to the district court's jurisdiction is untimely.

NRCP 60(b)(4) allows a party to request relief from a void judgment. A judgment is void if the district court lacked subject matter jurisdiction to enter the judgment. *See Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011). While subject matter jurisdiction may generally be raised at any time, *id.*, a party seeking relief from a void judgment under NRCP 60(b)(4) on jurisdictional grounds must file their motion "within a reasonable time," NRCP 60(c)(1); *see also In re Harrison Living Tr.*, 121 Nev. 217, 222, 112 P.3d 1058, 1061 (2005) ("[W]e confirm that courts retain the discretion to apply lack of diligence principles to NRCP 60(b)(4) void judgment challenges."); *Hammer v. Rasmussen*, No. 82977, 2022 WL 15563988, at \*3 (Nev. Ct. App. Oct. 27, 2022) (Order of Affirmance) (affirming a district court's denial of a motion for relief under NRCP 60(b)(4) because the district court lacked subject matter jurisdiction as untimely). While there is no fixed cutoff constituting a reasonable time, absent exceptional circumstances, a multi-year delay is generally unreasonable. *See Harrison Living Tr.*, 121 Nev. at 222, 112 P.3d at 1061 (upholding a district court's denial of an NRCP 60(b) motion filed eighteen months after judgment as untimely); *Hammer*, 2022 WL 15563988, at \*3 (affirming a district court's finding that party's NRCP 60(b)(4) challenge to the district court's subject matter jurisdiction brought nearly a decade after the court established jurisdiction was untimely).


In this case, Chip did not challenge the district court's jurisdiction until seven years after St. Jude first filed its petition to probate the lost will, which is when Chip would have been aware of St. Jude's insufficient notice to interested parties. He offers no cogent explanation as

to why he did not raise this issue at any point in the last seven years, let alone in his original NRCP 60(b) motion. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). As such, we conclude that Chip did not raise the issue of the district court's lack of jurisdiction to consider proof of the lost will within a reasonable time.<sup>7</sup> Therefore, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Gloria Sturman, District Judge  
Israel Kunin, Settlement Judge  
Hofland & Tomsheck  
Hutchison & Steffen, LLC/Reno  
Hutchison & Steffen, LLC/Las Vegas  
Eighth District Court Clerk

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<sup>7</sup>Insofar as the parties have raised any other arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.