

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEREMY JON HERRMANN,
Appellant,
vs.
KELLY NICOLE HERRMANN,
Respondent.

No. 86246-COA

FILED

FEB 08 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER DISMISSING APPEAL IN PART AND AFFIRMING IN PART

Jeremy Jon Herrmann appeals from a post-divorce decree district court order concerning marital property. Second Judicial District Court, Family Division, Washoe County; Sandra A. Unsworth, Judge.

Jeremy and respondent Kelly Nicole Herrmann were married in 2007 and share two minor children. In April 2022, the district court entered a default divorce decree after Jeremy failed to participate in the proceedings.

In late 2022, Jeremy began filing numerous motions to enforce the decree and/or hold Kelly in contempt, mostly pertaining to the division of property and alleged omitted property, including a Cummins engine and Kelly's pensions. At a November 2022 hearing on Jeremy's various filings, Kelly alleged that Jeremy had a federal pension not disclosed prior to the entry of the divorce decree, which Jeremy denied.

In November 2022, the district court entered a written order resolving 31 of Jeremy's motions. The court ordered that several items mistakenly omitted from the divorce decree be equally divided between the

parties. Although the written order mentioned the Cummins engine, it did not dispose of the issue. The district court further ordered the parties to file proof of their respective retirement accounts within 30 days and cautioned that if they did not, the court would deem their claims waived.

Jeremy did not file proof of his pension, so in January 2023, the district court entered an order regarding the omitted pensions, awarding each party their respective pension plans as their sole and separate property. Jeremy thereafter filed a “motion to set aside default judgment,” requesting that the court set aside the order regarding the omitted pensions. Around this time, Jeremy also filed seven additional motions for an order to enforce and/or for an order to show cause regarding contempt, alleging Kelly was withholding or damaging property he was entitled to from the divorce decree or that certain property had been omitted from the decree, including the Cummins engine. Kelly opposed the motions and Jeremy filed a reply.

The district court thereafter entered a written order denying all but one of Jeremy’s motions.¹ The court found Jeremy was filing piecemeal

¹With regard to the unresolved motion, the district court set a status hearing as to a Chevy pickup truck, tools, and a log splitter, which Jeremy alleged Kelly had improperly withheld after an earlier order directed her to make the items available to him at a specified location. Although this motion is still unresolved, this court nevertheless has jurisdiction over the appeal from the order denying NRCP 60(b) relief. *See* NRAP 3A(b)(8) (providing that appeals may be taken from special orders entered after final judgment). Further, the pending motion, which was filed separately from the NRCP 60(b) motion, does not affect the finality of the order resolving that motion or our jurisdiction over the appeal relating to the NRCP 60(b)

motions to harass Kelly, and therefore ordered that each party keep any remaining community property in their possession, except for property that was specifically awarded to the other party in the divorce decree or any other prior court order. The district court also sua sponte entered an order setting a vexatious litigant hearing based on Jeremy's filing of the aforementioned motions. This appeal followed.²

On appeal, Jeremy challenges the district court's denial of his motion to set aside the order regarding the omitted pensions and argues the district court exhibited bias against him. Jeremy also challenges the portion of the district court's order denying his motion for an order of enforcement and/or order to show cause, arguing that Kelly stole the Cummins engine, which he claims was omitted from the divorce decree.

We first turn to Jeremy's challenge to the portion of the district court's order denying his motion to set aside the order regarding the omitted

motion. *See Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006) (explaining that "when an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal's merits").

²To the extent Jeremy purports to appeal from the district court's order setting a vexatious litigant hearing, we lack jurisdiction to consider his appeal from that order as no statute or court rule authorizes an appeal from an order setting a future hearing. *See* NRAP 3A(b) (setting forth the orders and judgment from which an appeal may be taken); *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (providing that this court "may only consider appeals authorized by statute or court rule"). We therefore dismiss this appeal as to the order setting the hearing.

pensions. NRCp 60(b) sets forth the circumstances under which a district court may set aside a judgment. The district court has wide discretion to grant or deny a motion to set aside a judgment, and its determination will not be disturbed on appeal absent an abuse of that discretion. *Vargas v. J Morales Inc.*, 138 Nev., Adv. Op. 38, 510 P.3d 777, 780 (2022).

Before the district court, Jeremy argued that Kelly stole his documents, that he was attempting to obtain information related to his pension, and that he was having difficulty obtaining such information. The district court denied the motion to set aside, concluding that Jeremy failed to state a legal basis for setting aside the order and noting that he was given ample time to obtain the information, yet he failed to do so, and failed to request additional time or provide proof of his difficulties.

On appeal, Jeremy summarily argues that he sent proof to the court that he tried to obtain statements related to his federal pension. However, in making this assertion he fails to explain what proof he submitted for the court's consideration, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider assertions that are not supported by cogent argument), and our review of the record does not reveal anything to support the assertion that such information was provided to the district court.

Moreover, the record supports the district court's determination that Jeremy failed to either obtain the information or request additional time to do so. And on appeal, Jeremy does not challenge the district court's determination that he had ample time to obtain pension information or request additional time but failed to do so, and he has therefore waived that

argument. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Under these circumstances, we discern no abuse of discretion in the district court's denial of the motion to set aside. See *Vargas*, 138 Nev., Adv. Op. 38, 510 P.3d at 780.

Next, Jeremy challenges the portion of the district court's order addressing the Cummins engine that he claims Kelly stole and that he maintains was omitted from the divorce decree. Under NRS 125.150(3), a party can seek adjudication of an asset mistakenly omitted from the divorce decree within three years of discovering the mistake. *Kilgore v. Kilgore*, 135 Nev. 357, 365, 449 P.3d 843, 849 (2019). We review a district court's factual findings deferentially and will not set them aside unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

Here, the court ultimately declined to conclude the engine was an omitted asset, noting that it was part of a vehicle Kelly was awarded in the divorce decree and that Jeremy failed to rebut that evidence. While Jeremy argues that Kelly lied about the engine being part of this vehicle, he does not point to any evidence in the record to support this position. Indeed, the evidence he submitted with his motion before the district court does not demonstrate that the engine at issue here was not the engine that was part of the truck awarded to Kelly. Under these circumstances, Jeremy has not demonstrated that the engine was an omitted asset that should have been included in the divorce decree, and we therefore conclude that

the district court did not abuse its discretion in making this determination. *See Ogawa*, 125 Nev. at 668, 221 P.3d at 704.


Finally, Jeremy makes a summary argument that the district court was biased because it saw Jeremy wearing a t-shirt during one proceeding, that the court was corrupt, and that it was attempting to “shut [him] up” by setting a vexatious litigant hearing. We conclude that relief is unwarranted on this point because Jeremy has not demonstrated that the court’s conduct or orders in the underlying case were based on knowledge acquired outside of the proceedings and the court’s decision does not otherwise reflect “a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by*


Killebrew v. State ex rel. Donohue, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Therefore, Jeremy is not entitled to relief based on this claim.³

We, therefore,

ORDER the judgment of the district court DISMISSED IN PART AND AFFIRMED IN PART.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

³Insofar as Jeremy raises 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.

To the extent Jeremy raises summary claims pertaining to child custody and various other issues, we do not address those claims as they either relate to prior orders not timely appealed from or were not raised below in the motions resolved by the challenged order and, therefore, were not addressed in the challenged order. As such, those issues are not properly before this court on appeal. *See* NRAP 3(a)(1) (requiring the timely filing of a notice of appeal for appeals permitted by law); NRAP 4(a)(1) (providing a notice of appeal must be filed no later than 30 days after the date written notice of entry of the order appealed from is served); *see also Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (providing that an argument, other than a challenge to the court's jurisdiction, not raised in the district court is "waived and will not be considered on appeal").

cc: Hon. Sandra A. Unsworth, District Judge, Family Division
Jeremy Jon Herrmann
Willick Law Group
Washoe District Court Clerk