

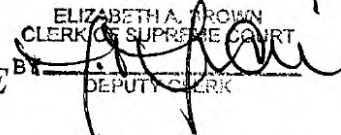
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KASSIM CARNEY,
Appellant,
vs.
SUSAN MORURI,
Respondent.

No. 85614-COA

FILED

MAR 29 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kassim Carney appeals from a district court post-divorce decree order concerning marital property. Eighth Judicial District Court, Family Division, Clark County; Dawn Throne, Judge.

During the underlying proceeding, Carney and respondent Susan Moruri were divorced by way of a stipulated decree of divorce, which divided the parties' community property and debts and included a representation by the parties that they made a full and fair disclosure of their assets. A little less than six months later, Moruri moved to set aside the decree pursuant to NRCP 60(b), seeking, among other things, adjudication of the parties' interests in a real estate business, which, according to Moruri, Carney formed and failed to disclose prior to the decree's entry. Carney failed to file an opposition to that motion, which the district court initially granted following a hearing. Carney then filed a combined motion for reconsideration and opposition to Moruri's motion in which he argued, as relevant here, that the real estate business had no value at the time the decree was entered. The district court subsequently granted Carney's motion for reconsideration and scheduled an evidentiary hearing on Moruri's motion to set the decree aside.

Following the evidentiary hearing, the district court entered an order granting Moruri's motion insofar as it related to the real estate business, citing NRCP 60(b)(1) and NRS 125.150(3). In particular, the district court found that the business was an omitted asset because Carney failed to disclose it, that bank statements submitted by Moruri established the business's value was \$69,877.12 when the decree was entered, that Carney failed to establish that he owned less than 100 percent of the business, and that Moruri was therefore entitled to \$34,938.56, which was one-half of the business's value. This appeal followed.

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). We review the 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). However, questions of law, including those pertaining to jurisdiction, are reviewed de novo. *Id.* at 667-68, 221 P.3d at 704.

On appeal, Carney first challenges the district court's adjudication of the parties' interests in the real estate business on two jurisdictional grounds. First, Carney argues that, because the district court did not resolve Moruri's motion within six months of the decree's entry, the court lost jurisdiction to later grant her NRCP 60(b) relief. Initially, the district court's jurisdiction to entertain a motion for NRCP 60(b) relief depends on the date the motion was filed rather than the date that the court acts upon the motion. *See* NRCP 60(c)(1) ("A motion under [NRCP] 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than [six] months after the date of the proceeding or the date of service of written notice of entry of the [challenged] judgment or order, whichever

date is later.”); *see also Doan v. Wilkerson*, 130 Nev. 449, 453-54, 327 P.3d 498, 501 (2014) (holding that the district court lacks jurisdiction to consider an untimely motion for NRCP 60(b)(1) relief and that such a motion must be denied), *superseded by NRS 125.150(3) on other grounds, as recognized in Kilgore v. Kilgore*, 135 Nev. 357, 364-65, 449 P.3d 843, 849 (2019). Moreover, Carney overlooks that the district court also granted Moruri’s motion pursuant to NRS 125.150(3), which authorizes a party in a divorce proceeding to file a postjudgment motion for adjudication of an asset omitted from a divorce decree due to fraud or mistake “within [three] years after the discovery by the aggrieved party of the facts constituting the fraud or mistake.” *See* 2015 Nev. Stat., ch. 180, preamble, at 860 (explaining that the purpose of NRS 125.150(3) was to supersede the supreme court’s decision in *Doan*, 130 Nev. at 451, 327 P.3d at 499, which required a party seeking to adjudicate an omitted asset to move for such relief by way of a timely NRCP 60(b) motion or an independent action based on exceptional circumstances justifying equitable relief). Here, Moruri moved for adjudication of her interest in the real estate business, essentially alleging that it was omitted from the decree due to recently discovered fraud or mistake, within six months after the decree’s entry, and relief is therefore unwarranted as to Carney’s first jurisdictional argument.

Second, Carney asserts that the district court lacked jurisdiction to adjudicate the parties’ interest in the real estate business because the parties moved to Texas following entry of the decree. However, Carney does not dispute that the district court obtained personal jurisdiction over the parties at the outset of the underlying proceeding. *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); *see also* NRCP 12(h)(1) (providing that a challenge to personal jurisdiction is waived if not raised in an answer or pre-answer motion

brought pursuant to NRCP 12); *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 656-57, 6 P.3d 982, 986 (2000) (stating the same). By virtue of its personal jurisdiction over the parties, the district court had jurisdiction to adjudicate the parties' interest in the real estate business, which was formed in Texas, prior to the decree's entry, see *Lewis v. Lewis*, 71 Nev. 301, 306, 289 P.2d 414, 417 (1955) (stating that a district court possesses control over out-of-state property through jurisdiction over the parties and that the court can exercise such control to avoid multiplicity of suits), and it had continuing jurisdiction to do so under the circumstances presented here. See, e.g., NRS 125.150(3) (providing that the district court has continuing jurisdiction to hear a timely postjudgment motion to adjudicate an asset omitted from a divorce decree due to fraud or mistake); see also *Barker v. Barker*, 757 S.E.2d 42, 45 (Ga. 2014) (“[O]nce a court with personal jurisdiction over the parties enters a divorce decree, personal jurisdiction continues throughout all subsequent proceedings that arise out of the original cause of action . . . and a party cannot escape that continuing jurisdiction to modify the original decree by moving to another state.”). Thus, for the foregoing reasons, Carney has failed to demonstrate that the district court lacked jurisdiction to adjudicate the parties' interests in the real estate business. See *Ogawa*, 125 Nev. at 668, 221 P.3d at 704.

As to the merits of the district court's decision with respect to the real estate business, Carney raises two arguments. First, Carney asserts that the business constituted his separate property because it had not made a profit or distributions prior to entry of the divorce decree. However, Carney's position in this respect runs contrary to Nevada law surrounding community property. In particular, under Nevada law, property acquired after marriage by either or both spouses is community property unless an exception applies. See NRS 123.220 (setting forth various exceptions to the general rule). And here, Carney has not argued

that any of the recognized exceptions apply or otherwise directed this court's attention to any evidence, much less clear and convincing evidence, that the business was his separate property. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument); *see also Lopez v. Lopez*, 139 Nev., Adv. Op. 54, 541 P.3d 117, 125 (Ct. App. 2023) ("Properties acquired during marriage are presumed to be community property, and this presumption can be overcome only by clear and convincing evidence."). Consequently, Carney has failed to demonstrate that the district court improperly treated the business as community property.


Second, Carney argues that the district court improperly relied on the bank statements that Moruri submitted during the evidentiary hearing on this matter to establish the business's value rather than looking to a professional appraisal. However, our review of the documents filed in this matter reveals that Carney did not raise the issue of how the business should be valued or argue, as he does on appeal, that an appraisal was required in his motion practice before the district court. While Carney could have raised these arguments at the evidentiary hearing, he has not provided this court with a copy of the transcript from the evidentiary hearing demonstrating that he raised the issue during the hearing, much less attempted to introduce a business appraisal or any other evidence to contradict what Moruri presented. *See* NRAP 9(b)(1)(B) (requiring pro se litigants who request transcripts and have not been granted in forma pauperis status to file a copy of their completed transcripts with the court clerk)¹; *Cuzze v. Univ & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172

¹We note the supreme court issued a notice to Carney in which it instructed him that appellants who have not been granted in forma


P.3d 131, 135 (2007) (explaining that when an appellant “fails to include necessary documentation in the record, we necessarily presume that the missing [documents] support[] the district court’s decision”); *see also Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that points not urged in the trial court are waived and will not be considered on appeal). Consequently, Carney has failed to establish a basis for relief in this respect.

Thus, for the foregoing reasons, we conclude that Carney has not demonstrated that the district court abused its discretion in setting aside the divorce decree, adjudicating the parties’ interests in the real estate business, and awarding Moruri half the value of the business as her community share. *See Vargas*, 138 Nev., Adv. Op. 38, 510 P.3d at 780. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Dawn Throne, District Judge, Family Division
Kassim Carney
Page Law Firm
Eighth District Court Clerk

_____ pauperis status and have requested a transcript “must file a copy of the transcript in this court” and cited specifically to NRAP 9(b)(1)(B).