

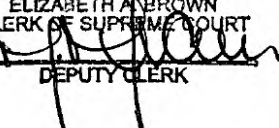
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRUCE PATTERSON,
Appellant,
vs.
ANDREA PATTERSON,
Respondent.

No. 84932-COA

FILED

APR 12 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Bruce Patterson appeals from a district court order denying a motion to set aside a stipulated decree of divorce pursuant to NRCP 60(b). Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

During the underlying divorce proceeding, counsel for Bruce and respondent Andrea Patterson exchanged correspondence in which they discussed the terms of a settlement agreement concerning the parties' community property and debts. Eventually, Bruce's counsel emailed Andrea's counsel, indicating that Bruce agreed to all the terms that had been discussed except for a term concerning the parties' IRS tax debt. As a result, Bruce's counsel suggested addressing the tax issue at a trial that had been scheduled in this matter while stipulating to the remaining terms that had been resolved. However, the parties did not proceed with the trial on the tax debt issue. Instead, at Andrea's counsel's suggestion, the parties prepared a stipulation and order vacating the trial on grounds that they were finalizing the terms of their divorce, which the district court entered.

Thereafter, Bruce, through his counsel, indicated that he changed his mind with respect to one of the previously resolved terms due to unrelated allegations.

Andrea then filed a motion to enforce the parties' settlement agreement, which Bruce opposed. The specific disagreement between the parties concerned whether correspondence exchanged between the parties' counsel resulted in the formation of a valid written contract that was enforceable pursuant to EDCR 7.50, which provides that an agreement or stipulation between the parties or their attorneys will not be effective unless, as relevant here, "the same is in writing subscribed by the party against whom the same shall be alleged, or by the party's attorney."¹ At the subsequent hearing on the matter, the district court orally found that, with the exception of the issue concerning the parties' IRS tax debt, there had been a recitation of terms to which they had agreed. As a result, the district court granted Andrea's motion as to the terms that the parties had agreed upon, but denied the motion insofar as it related to the IRS tax debt issue and scheduled an evidentiary hearing to resolve the matter.

¹In 2022, EDCR 5.101(b) was amended to provide that the rules set forth in Part VII of the EDCR are inapplicable to matters heard in the family division, effective June 10, 2022. *In re Amend. of Part I and Part V of the Rules of Prac. for the Eighth Jud. Dist. Ct.*, ADKT No. 0590 (April 11, 2022) (Order Amending Part I and Part V of the Rules of Practice for the Eighth Judicial District Court). Because that amendment did not become effective until after the entry of the parties' stipulated divorce decree, it does not govern this appeal.

The district court later entered a stipulation and order prepared by the parties in which they agreed to vacate the evidentiary hearing and to be equally responsible for their personal IRS tax debt for the 2016 and 2017 tax years. Andrea eventually prepared a proposed divorce decree based on that stipulation and the terms that had previously been resolved. However, around the same time that Andrea prepared the decree, Bruce obtained new counsel, who was substituted into this case, and Bruce notified Andrea, through counsel, that he would not sign the decree because he was unaware of the settlement and had concerns regarding its terms and omitted assets and debts. Andrea, in turn, submitted the proposed decree to the district court without Bruce's signature, which the district court entered.

Bruce then moved for various forms of post-judgment relief, including relief pursuant to NRCP 60(b), indicating that he was seeking for essentially the entire divorce decree to be set aside on the following grounds relevant to this appeal: (1) his prior counsel agreed to the settlement without his consent, (2) the divorce decree omitted unspecified assets and \$188,000 in unidentified debts, (3) the divorce decree required him to make an "absurd" \$150,000 equalization payment for "marital property" because "there [wa]s no marital property" and the "funds [we]re non-existent." Andrea opposed that motion, and the district court conducted a hearing on the matter. During the hearing, the district court orally denied Bruce's motion, reasoning that the decree could not properly be set aside in its entirety since Bruce's counsel had authority to settle the case on Bruce's behalf and the parties' settlement agreement was valid and enforceable.

Nevertheless, the district court recognized that it was authorized to adjudicate omitted assets and debts pursuant to NRS 125.150(3) and directed Bruce to file a separate motion addressing that issue if he believed he had a valid claim so it could be properly developed. Thereafter, the district court entered a written order that summarily denied Bruce's motion. This appeal followed.

On appeal, Bruce does not revisit the arguments he presented in opposing Andrea's motion to enforce concerning whether the contract formation elements were satisfied. *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). Instead, Bruce focuses on the arguments that he presented in his motion for post-judgment relief. Thus, we limit our examination to these issues and the court's resolution of Bruce's post-judgment motion.

As a preliminary matter, insofar as Bruce contends that his original counsel kept him in the dark with respect to the settlement agreement and entered into it without his consent, he has not established a basis for relief. In this respect, Bruce is essentially arguing that the settlement agreement was the result of his original counsel's fraud,² and

²Bruce further contends that his original counsel committed a fraud on the court because he had a conflict of interest, citing to NRPC 1.7(a)(2) (prohibiting an attorney from representing a client if there is a significant risk that the representation "will be materially limited by the lawyer's responsibilities to . . . a former client" unless, as relevant here, "[e]ach affected client gives informed consent, confirmed in writing"). In particular, Bruce asserts that his original counsel represented the parties' former hot

the supreme court has recognized that, when a lawyer fraudulently enters into a settlement agreement on behalf of his client without authority, the lawyer commits a fraud upon the court that provides a basis for setting aside a final judgment. *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 655-57, 218 P.3d 853, 859-60 (2009) (holding that a client was not bound when an attorney fraudulently entered into a settlement agreement since the attorney's fraud negated his authority as the client's agent); NRCP 60(d)(3) (authorizing the district court to "set aside a judgment for fraud upon the court").³ We review a district court's decision with respect to whether to set aside a stipulated final judgment based on an attorney's fraud upon the court for an abuse of discretion. *Id.* at 657, 218 P.3d at 861.

Here, Bruce had knowledge of the settlement agreement as early as May 27, 2021, when he executed a declaration, under penalty of perjury, in support of his opposition to Andrea's motion to enforce the agreement. Yet, in his declaration, Bruce did not in any way suggest that he was unaware of the terms of the agreement or that his counsel at the

air ballon business, and the parties by extension, in certain federal litigation but did not obtain their informed consent before proceeding to represent Bruce against Andrea in the underlying proceeding. However, Bruce failed to raise this issue before the district court and thereby waived it. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

³Although Bruce cites to NRCP 60(b)(1) on appeal, his argument properly falls under NRCP 60(d)(3) as discussed above, and "[a] party is not bound by the label he puts on his papers." *NC-DSH, Inc.*, 125 Nev. at 652, 218 P.3d at 857 (internal quotation marks omitted).

time entered into it without his consent. Moreover, although Bruce subsequently appeared personally with said counsel at the hearing on Andrea's motion to enforce the settlement agreement, he once again did not raise any concerns about his counsel's actions, even after the district court determined that those actions resulted in the formation of an enforceable settlement agreement concerning most of the property issues in this case. And rather than immediately seeking new counsel following the hearing, Bruce took no action while his original counsel stipulated to a resolution of the parties' remaining IRS tax debt dispute. It was not until after the parties' divorce decree was eventually entered that Bruce, with the assistance of newly retained counsel, filed his motion for post-judgment relief wherein he first asserted, without any supporting evidence, that his original counsel acted without his knowledge or consent.

In essence, Bruce made an after-the-fact argument in his motion without any supporting explanation or evidence to meet his "heavy burden" of establishing fraud upon the court by "clear and convincing evidence." *Id.* at 657, 218 P.3d at 860-61 (quotation marks omitted). Under these circumstances, Bruce failed to establish a basis for relief under NRCP 60(d)(3), and we therefore discern no abuse of discretion in the district court's decision to deny his motion for post-judgment relief insofar as it related to his allegation that his original counsel acted without his knowledge or consent in settling this case.⁴ *See id.* at 657, 218 P.3d at 861.

⁴To the extent that Bruce contends the district court was required to conduct an evidentiary hearing before denying his motion, his argument is

Bruce next challenges the denial of his motion for post-judgment relief, arguing that the district court should have set aside the divorce decree pursuant to NRCP 60(b)(1) because it included a provision requiring him to make a \$150,000 equalization payment in connection with the parties' former hot air balloon business, which they sold. Bruce specifically argues that, while the parties were still operating the business, it was involved in a ballooning accident and that, as a consequence, lawsuits were brought against the parties, he was forced to sell the business's equipment and issue refunds to customers who had prepaid for flights, and he was unable to collect the full sale price from the business's buyer. As a result, Bruce contends that he could not make the equalization payment because "there were no assets left in this matter, just debts."

Relief from a final judgment is available under NRCP 60(b)(1) if the judgment resulted from "mistake, inadvertence, surprise, or excusable neglect." This court reviews a district court order resolving an NRCP 60(b) motion for an abuse of discretion. *Willard v. Berry-Hinckley Indus.*, 139 Nev., Adv. Op. 52, 539 P.3d 250, 255 (2023). We will not disturb the district

unavailing. Indeed, while *NC-DSH* requires the district court to conduct "a proper hearing" before granting a motion for relief under NRCP 60(d)(3) to determine if the movant has met the clear and convincing evidence standard, 125 Nev. at 657, 218 P.3d at 860-861, no such hearing is required before the court may deny a motion brought under NRCP 60(d)(3). See *Hansen v. Aguilar*, No. 64239, 2016 WL 3136154, at *2 n.2 (Nev. Ct. App. May 25, 2016) (Order of Affirmance) (reasoning that the district court was not required to conduct an evidentiary hearing to resolve a motion to set aside a final judgment for fraud upon the court since the court denied, rather than granted, the motion).

court's decision unless it is unsupported by substantial evidence, which is evidence that a reasonable mind might accept as adequate to support a conclusion, or disregards established legal principles. *Id.*

A review of the exchange of correspondence that resulted in the parties' settlement agreement demonstrates that Andrea, through counsel, initially requested that Bruce indemnify her from any liability related to the lawsuits against the parties' business and make a \$135,000 equalization payment because he "moved money from accounts and received money from selling items without Andrea's consent." In the response from Bruce's original counsel, no dispute was presented with respect to whether Bruce moved money from accounts and sold items without Andrea's consent; whether the equalization payment, standing alone, would cause the distribution of the parties' community property and debts to be unequal; or whether funds were available to make the equalization payment. Instead, Bruce's counsel explained that due to the size of the equalization payment and the potential liability associated with the lawsuits, Bruce was offering either an equalization payment or indemnification, and was willing to increase the equalization payment to \$150,000 if Andrea would forego indemnification. The parties ultimately agreed to those terms, reflecting their intent to equally divide their community property and debts and belief that the terms would have such effect, which the district court accepted in entering the divorce decree based on the parties' settlement—a settlement that Bruce has failed to demonstrate was unenforceable for the reasons discussed above. See NRS 125.150(1)(b) (requiring the district court to "make an equal disposition of the community property of the parties" to the

extent practicable unless “the court finds a compelling reason” for making an unequal disposition and sets forth its reasons for doing so in writing).

In seeking to set aside the divorce decree due to its inclusion of the equalization-payment provision, Bruce did not present any argument or explanation before the district court concerning the consequences of the ballooning accident, as he rested his argument that an evidentiary hearing was warranted concerning the provision on his bald assertions that the provision was “absurd,” that “there [wa]s no marital property,” and that the “funds [we]re non-existent.” *Cf. Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining, in the context of an appeal, that courts need not consider issues that are not supported by cogent argument). While Bruce now associates the circumstances surrounding the ballooning accident with his argument for relief pursuant to NRCP 60(b)(1), his opening brief demonstrates that both Bruce and his counsel were aware of the ballooning accident and potential consequences at the time of the settlement negotiations,⁵ which is confirmed

⁵In particular, Bruce states that the ballooning accident happened in September 2019—more than a year before the parties entered into their settlement agreement—and that his former counsel represented the hot air balloon business in at least one of the lawsuits against it and was aware of the fallout from the ballooning accident at the time of the settlement negotiations. Insofar as Bruce contends that his former counsel was ineffective, relief is unwarranted since the underlying proceeding was a purely civil family law action and there is no indication that Bruce was an indigent litigant in danger of losing his physical liberty. *See Garcia v. Scolari’s Food & Drug*, 125 Nev. 48, 57 n.7, 200 P.3d 514, 520 n.7 (2009) (“We find no support . . . for the proposition that the right to an ineffective-

by the parties' discussion of lawsuits against the business and indemnification in the associated email exchange and undermines any assertion that the equalization-payment provision resulted from mistake, inadvertence, surprise, or excusable neglect. Moreover, before the district court, Bruce did not provide any documentation to show that, at the time the parties' negotiated their settlement and agreed to the equalization-payment provision, there was some mistake, inadvertence, surprise, excusable neglect, or other circumstances relevant to NRCP 60(b)—such as a mistake with respect to the liabilities associated with the ballooning accident—that influenced the parties' negotiations concerning the provision, such that relief would be warranted under NRCP 60(b). Instead, Bruce simply provided the district court with a self-serving declaration in which he stated that he agreed with the contents of his motion, *cf. Clauson v. Lloyd*, 103 Nev. 432, 434-35, 743 P.2d 631, 633 (1987) (holding that a broad self-serving affidavit was not sufficient to support summary judgment), which was deficient for the reasons discussed above.

As a result, we conclude that Bruce failed to demonstrate that the district court abused its discretion by denying his request for relief from the divorce decree pursuant to NRCP 60(b) insofar as it related to the

assistance-of-counsel argument exists in civil cases.”); *see also Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985) (noting “the presumption that, unless [an] indigent litigant may lose his physical liberty if he loses the litigation, there is generally no right to counsel in a civil case”).

equalization-payment provision.⁶ See *Willard*, 139 Nev., Adv. Op. 52, 539 P.3d at 255.

Bruce further argues that the district court should have set aside the divorce decree pursuant to NRCP 60(b)(1) because it omitted \$188,000 in unidentified community debts, which he asserts were largely related to the parties' former hot air balloon business. Bruce's argument in this respect is beset by many of the same problems as his argument concerning the equalization payment provision. In particular, before the district court, Bruce initially baldly asserted in his motion that \$188,000 in community debts was omitted from the divorce decree, without producing any documentation to establish the existence of such debts aside from his self-serving declaration referenced above. See *Clauson*, 103 Nev. at 434-35, 743 P.2d at 633. And when the district court inquired at the subsequent hearing on the matter as to what debts were omitted from the decree, the only explanation that Bruce's new counsel provided was that Bruce's

⁶To the extent Bruce cites to *Blanco v. Blanco*, 129 Nev. 723, 311 P.3d 1170 (2013), for the proposition that the district court should have conducted an evidentiary hearing before denying his motion, he has not demonstrated a basis for relief. In particular, *Blanco* explains that "[b]efore making the factual determinations to support the disposition of property, it may be necessary for the [district] court to hold an evidentiary hearing," 129 Nev. at 732, 311 P.3d at 1176, whereas here, the district court was asked to consider whether relief was warranted pursuant to NRCP 60(b) after having already distributed the parties' community property and debts pursuant to an agreement between them. Moreover, given Bruce's failure to provide the district court with meaningful argument concerning the equalization payment and supporting evidence, an evidentiary hearing was unwarranted.

concerns related to tax debts addressed in the divorce decree as well as prospective tax debts associated with ongoing liability for the parties and their former business that were not addressed in the divorce decree.


In considering these arguments at the hearing, the district court recognized that it had authority to adjudicate omitted assets and debts under NRS 125.150(3), which provides that “[a] party may file a postjudgment motion in any action for divorce . . . to obtain adjudication of any community property or liability omitted from the decree or judgment as the result of fraud or mistake,” subject to certain timing requirements that are not relevant here. But the district court also essentially reasoned that Bruce’s motion for post-judgment relief was primarily directed at challenging the divorce decree itself rather than meaningfully addressing the purportedly omitted debts. As a result, the district court orally denied Bruce’s motion insofar as it related to such debts and directed Bruce to file a separate motion developing the omitted debts issue if he believed he had a valid claim.

Given the vague and unsupported nature of Bruce’s arguments concerning the allegedly omitted debts, we discern no abuse of discretion in the district court’s handling of this issue.⁷ See *Doan v. Wilkerson*, 130 Nev. 449, 453, 327 P.3d 498, 501 (2014) (reviewing a district court order concerning omitted assets for an abuse of discretion), *superseded by* NRS

⁷To the extent that Bruce argues the district court was required to conduct an evidentiary hearing on this issue before denying his motion pursuant to *Blanco*, relief is unwarranted for reasons similar to those set forth at *supra*, note 5.

125.150(3) *on other grounds*, as recognized in *Kilgore v. Kilgore*, 135 Nev. 357, 364-65, 449 P.3d 843, 849 (2019).

Accordingly, for the reasons set forth above, we
ORDER the judgment of the district court AFFIRMED.⁸


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Division
Hitzke & Ferran
Andrea Patterson
Eighth District Court Clerk

⁸Insofar as the parties raise 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.