

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLAIRE NILES WILLIAMS,
Appellant,
vs.
CLIFFORD ROBERT WILLIAMS,
Respondent.

No. 42494

FILED

DEC 21 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying an NRCP 60(b) motion to set aside an amended divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

The parties were married for twenty-seven years when respondent filed a complaint for divorce in April 1999. During the marriage, the parties ran a successful realty business, Robert Williams Realty (RWR). After the complaint was filed, the parties engaged in protracted, contentious settlement negotiations.

Approximately two years after respondent filed the complaint, and immediately before a scheduled pre-trial conference, the parties reached an oral settlement agreement. The court held a prove-up hearing, and respondent testified as to the parties' agreement. The district court entered the settlement into the minutes and told the parties to reduce the agreement to writing. The parties were later unable to agree on a written version of the settlement. Appellant's objection was that the value listed for RWR was too low. Her objection notwithstanding, respondent submitted to the district court, for approval, a proposed written divorce

decree, which incorporated the oral settlement agreement. The court adopted and entered respondent's divorce decree.

After the divorce decree was entered, appellant filed a motion for a new trial under NRCP 59 or to set aside the judgment under NRCP 60(b) due to misrepresentation and irregularity. The district court denied appellant's motion. Appellant did not appeal at that time.

In the interim, the district court amended the divorce decree to reflect minor changes. Appellant then filed a new NRCP 60(b) motion to set aside the amended divorce decree based on respondent's alleged misrepresentation of RWR's value and appellant's incapacity to agree to a settlement agreement.¹

After several months of further discovery and litigation, the district court denied appellant's NRCP 60(b) motion without hearing new evidence on the valuation of RWR or on respondent's alleged misrepresentation. The district court determined that appellant was competent to enter into the settlement agreement, that she had agreed to the \$5,000 value of RWR in the oral settlement agreement, and that respondent did not misrepresent RWR's value. Appellant has appealed.

On appeal, in addition to challenging the order denying appellant's 60(b) motion, appellant insists that she is appealing from the amended divorce decree. Contrary to appellant's assertion, this court does not have jurisdiction to consider her challenge to the amended divorce

¹Appellant's health issues stem from breast cancer in 1996. Although her treatment was a success and her current prognosis is excellent, she has lingering medical problems, including impairment of her vision and cognitive ability. Appellant insisted that because of her health issues, she was unable to agree to the settlement.

decree. The amended divorce decree was filed on May 22, 2002, and notice of the amended decree's entry was served by facsimile that same day.

To vest jurisdiction in this court, a notice of appeal must be timely.² Under NRAP 4(a)(1), a notice of appeal must be filed in the district court within thirty days after written notice of the order's entry is served. Although, NRAP 4(a)(4) recognizes that timely filed tolling motions terminate the time in which to file a notice of appeal, pending resolution of such motions, an NRCP 60(b) motion is not a tolling motion. An order denying a motion to set aside a judgment under NRCP 60(b), however, is an independently appealable order.³

As the second NRCP 60(b) motion did not toll the time in which to file an appeal, the notice of appeal was untimely filed, to the extent that it is taken from the earlier orders and, specifically the amended divorce decree itself. However, the notice of appeal is timely with respect to the district court's order denying the second NRCP 60(b) motion. Thus, our review in this appeal is limited to issues arising from the order denying appellant's second 60(b) motion.⁴

The district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this

²See NRAP 4(a)(1).

³See Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987).

⁴This appeal was referred to the en banc court because the briefs raised and extensively discussed an issue regarding the propriety of oral settlement agreements in divorce proceedings. However, since the issue arises with respect to the amended divorce decree, and appellant did not timely appeal from that decree, this court lacks jurisdiction to consider the issue in the context of this appeal.

court will not disturb that decision absent an abuse of discretion.⁵ Under NRCP 60(b)(3), a judgment can be set aside if evidence establishes that the adverse party has committed fraud, misrepresentation, or other misconduct.

On appeal, appellant contends, among other things, that the district court abused its discretion in denying NRCP 60(b) relief because (1) respondent fraudulently misrepresented the value of RWR, (2) the district court did not hear evidence of RWR's valuation, and (3) appellant either did not agree to the settlement agreement or was incapacitated and could not agree.


Here, the district court found that respondent did not misrepresent the value of the business and, even if he did, appellant did not seek to value the business until after the settlement agreement. In particular, the district court found that during the parties' settlement negotiations, appellant "had ample notice of the \$5,000.00 value of RWR, Inc. and ample opportunity to investigate at any time during discovery or settlement." Further, the district court pointed to the fact that letters from appellant's attorney include the \$5,000 value of RWR, and that appellant personally made no statement during the prove-up hearing, other than a "thank you" at the end of the hearing. The district court

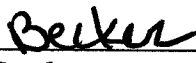
⁵See Cook v. Cook, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996). We note that this case involves the former version of NRCP 60(b) before it was amended in 2005. Because the 2005 amendments did not significantly alter the relevant portions of NRCP 60(b), we need not distinguish the different versions in this matter.

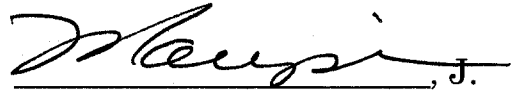
further found that appellant was mentally able to process information and agree to the settlement.


Having reviewed the record, the parties' appellate briefs, and having considered the oral argument in this matter, we conclude that the district court did not abuse its discretion in denying NRCP 60(b) relief. Accordingly, we

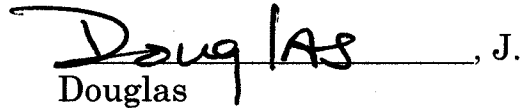
ORDER the judgment of the district court AFFIRMED.

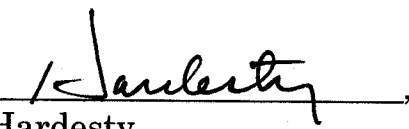
 _____, C.J.
Rose

 _____, J.
Becker

 _____, J.
Maupin

 _____, J.
Gibbons

 _____, J.
Douglas

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
John J. Graves Jr., Settlement Judge
Beckley Singleton, Chtd./Las Vegas
Law Office of Daniel Marks
Clark County Clerk