

IN THE SUPREME COURT OF THE STATE OF NEVADA

J. MICHAEL SUNDE,
Appellant,
vs.
DARLENE R. SUNDE,
Respondent.

No. 50737

FILED

FEB 05 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from post-judgment district court orders in a divorce proceeding denying an NRCP 60(b) motion to set aside a judgment and awarding attorney fees and costs. First Judicial District Court, Carson City; William A. Maddox, Judge.

On appeal, appellant J. Michael Sunde challenges district court orders (1) denying his NRCP 60(b) motion to vacate as void an August 17, 2005, district court judgment entered in favor of respondent Darlene R. Sunde and (2) awarding attorney fees and costs to respondent.

NRCP 60(b) motion

Motions brought seeking NRCP 60(b) relief are within the sound discretion of the district court, and this court will not set aside the district court's decision absent an abuse of discretion. Bianchi v. Bank of America, 124 Nev. ___, ___, 186 P.3d 890, 892 (2008). Here, the district court denied the request after noting that appellant had failed to appeal the 2005 judgment and waited nearly two years after the 2005 judgment was entered to file his motion for NRCP 60(b) relief. We have previously recognized that a lack of diligence can warrant denial of NRCP 60(b) voidness relief, see Matter of Harrison Living Trust, 121 Nev. 217, 222, 112 P.3d 1058, 1061 (2005); Deal v. Baines, 110 Nev. 509, 874 P.3d 775 (1994) (determining that a decision to wait nearly two years to bring a


motion for NRCP 60(b) voidness relief was unreasonable), and having reviewed the parties' briefs and the record on appeal, we conclude that appellant has failed to demonstrate that, under the facts of this case, the district court abused its discretion in denying the request for NRCP 60(b) relief for lack of diligence. Bianchi, 124 Nev. at ___, 186 P.3d at 892.

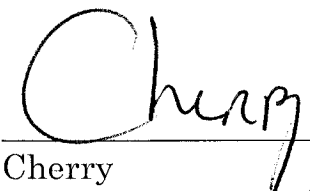
Attorney fees and costs

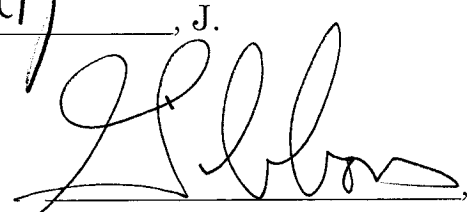
This court reviews the district court's award of attorney fees and costs for an abuse of discretion. Rivero v. Rivero, 125 Nev. ___, ___, 216 P.3d 213, 234 (2009); Nevada Power v. Flour Illinois, 108 Nev. 638, 646-47, 837 P.2d 1354, 1360 (1992). Having reviewed appellant's arguments regarding the award of attorney fees and costs, we conclude that he has not demonstrated that the district court abused its discretion in awarding attorney fees and costs.¹

Accordingly, having concluded that appellant's appellate arguments do not warrant reversal, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Cherry


_____, J.
Gibbons

¹We deny appellant's request that this court award him attorney fees and costs for proceedings on appeal and before the district court. We also deny respondent's April 6, 2009, motion for attorney fees and double costs for the filing of a frivolous appeal.

cc: First Judicial District Court Dept. 2, District Judge
Carolyn Worrell, Settlement Judge
Aziz N. Merchant
O'Mara Law Firm, P.C.
Carson City Clerk