

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA SCHMITZ F/K/A LISA
TUFENKJIAN,
Appellant/Cross-Respondent,
vs.
RAFFI TUFENKJIAN,
Respondent/Cross-Appellant.

No. 53867

FILED

APR 01 2011

ORDER OF AFFIRMANCE

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

This is an appeal and cross-appeal from a district court post-decree order denying appellant's NRCP 60(b) motion, granting respondent's motion to dismiss appellant's independent complaint, consolidated with the divorce action, and denying respondent's request for attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; William G. Henderson, Judge.

This case arose after the district court entered a divorce decree that included a division of the parties' assets. The decree contained a clause waiving, among other things, all future claims against the other party for personal and real property. The district court reserved jurisdiction to determine issues of child support modifications¹ and attorney fees relating to child support modifications. Over three years after the divorce decree was entered, appellant/cross-respondent Lisa Schmitz filed an independent action asserting, among other claims, that the court should set aside the provisions of the decree, including the waiver, because she alleged that her ex-husband, respondent/cross-

¹The parties do not raise child support modification as an issue in this appeal.


appellant Raffi Tufenkjian, purposefully hid and omitted assets that should have been included in the decree. The district court dismissed Schmitz's complaint, and denied Tufenkjian's request for attorney fees.

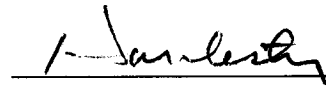
We conclude that the district court properly dismissed Schmitz's complaint attacking the divorce decree because the decree contained a valid waiver clause that showed Schmitz's "intentional relinquishment of a known right" and prohibited her from bringing an action for omitted assets. McKellar v. McKellar, 110 Nev. 200, 202, 871 P.2d 296, 297 (1994). We also conclude that Schmitz failed to file an NRCP 60(b) motion based on the alleged fraud by Tufenkjian within six months, and there was no fraud on the court that would allow Schmitz's independent action to go forward. NC-DHS, Inc. v. Garner, 125 Nev. ___, ___, 218 P.3d 853, 856 (2009); Occhiuto v. Occhiuto, 97 Nev. 143, 146 n.2, 625 P.2d 568, 570 n.2 (1981).

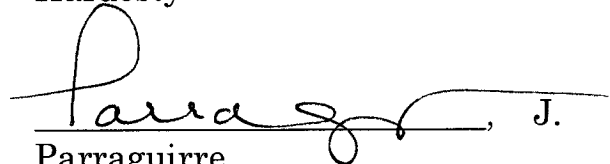
In regard to Tufenkjian's cross-appeal to reverse the district court's denial of his request for attorney fees, we conclude that the district court did not abuse its discretion in denying the request because it correctly found that Schmitz did not act in bad faith in bringing her independent action.² Bahena v. Goodyear Tire & Rubber Co., 126 Nev. ___, ___, 235 P.3d 592, 599 (2010). Accordingly, we

²Thus, we also deny Tufenkjian's request for attorney fees under NRAP 38.

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. William G. Henderson, District Judge, Family Court Division
Janet Trost, Settlement Judge
Vaccarino Law Office
Willick Law Group
Eighth District Court Clerk