

IN THE SUPREME COURT OF THE STATE OF NEVADA

CYNTHIANNA WEITZEL,
Appellant,
vs.
ROBERT WEITZEL,
Respondent.

No. 54404

FILED

APR 09 2010

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

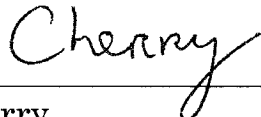
ORDER OF AFFIRMANCE

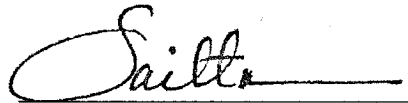
This is a proper person appeal from a district court order denying appellant's motion to modify spousal support. Eighth Judicial District Court, Family Court Division, Clark County; Frank P. Sullivan, Judge.


On appeal, appellant argues that the district court abused its discretion by denying as untimely her motion to set aside the parties' spousal support order for fraud by an adverse party under NRCPC 60(b). Appellant was represented by counsel in the divorce proceedings, which concluded with a final divorce decree entered on September 17, 2007. On August 7, 2008, appellant filed a proper person motion to set aside the decree's spousal support provision, arguing for the first time that respondent had misrepresented his income in the divorce proceedings. Ultimately, the district court denied the motion as untimely. Appellant first moved to set aside the spousal support decree more than ten months after the decree was entered. Because she alleged a fraud by an adverse party, rather than a fraud on the court, the district court did not abuse its discretion by finding that the motion was untimely. See NRCPC 60(b); Cook v. Cook, 112 Nev. 179, 912 P.2d 264 (1996) (holding that the district

court's broad discretion to grant or deny an NRCP 60(b) motion will not be disturbed absent an abuse of discretion).¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Frank P. Sullivan, District Judge, Family Court Division
Cynthianna Weitzel
Alan R. Harter
Eighth District Court Clerk

¹In her proper person appeal statement, appellant also asks this court to recognize that respondent would have been required to make higher child support payments if he had not misrepresented his income. Because appellant did not raise this issue in the district court, she is precluded from raising it on appeal. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

²Respondent's counsel's motion to withdraw is denied as moot in light of this order.