

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS HANTGES,  
Appellant,  
vs.  
JAMIE WISE,  
Respondent.

No. 55082

**FILED**

SEP 14 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 an NRCP 60(b) motion for relief from a divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Sandra L. Pomrenze, Judge.

Appellant argued before the district court that he was entitled to relief from the divorce decree's alimony requirement because he was mentally incompetent at the time the divorce decree was entered. Because the motion for relief was untimely, the district court did not abuse its discretion by denying appellant's 2009 motion seeking relief from his 2003 divorce decree. See NRCP 60(b) (requiring that motions for relief from a judgment based on newly discovered evidence or misrepresentation of a party be made within six months of the written notice of entry of the judgment). Although the six-month limitation does not apply to an NRCP 60(b)(4) motion based on a void judgment, see id., appellant did not allege that the district court lacked jurisdiction to enter the divorce decree. See Gassett v. Snappy Car Rental, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995) ("For a judgment to be void, there must be a defect in the court's authority to enter judgment through either lack of personal jurisdiction or jurisdiction over subject matter in the suit."), superseded by rule on other

grounds as stated in Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 6 P.3d 982 (2000).

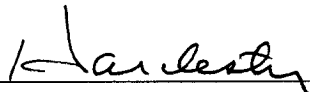
Appellant argues on appeal that the district court misunderstood the purpose of the motion. The court's statements at the hearing on the motion indicated that the court understood the relief appellant was seeking. As to timeliness, despite appellant's contention that his mental incapacity was not diagnosed until 2007, he was aware in 2003 of the facts underlying his claim of incompetence, namely his abuse of alcohol and repeated suicide attempts. Moreover, appellant was represented by counsel and was undergoing treatment for his alcoholism at the time of the divorce, but the issue of competence was not raised during the divorce proceedings or in a timely manner thereafter. See NRCP 60(b). And with respect to appellant's arguments regarding evidence that he intended to produce for the district court, the court did not abuse its discretion by refusing to allow appellant to present evidence of his later diagnosed condition because appellant failed to include the evidence with his motion for relief and such evidence would not have resulted in the motion for relief being timely. See Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 492, 117 P.3d 219, 226 (2005) (explaining that this court will not interfere with a district court's evidentiary ruling absent a showing of palpable abuse of discretion).


Finally, to the extent that appellant sought to have his alimony payments modified based on changed circumstances under NRS 125.150(7), appellant's divorce decree specifically stated that the alimony payments could not be modified under any circumstances. See Gilman v. Gilman, 114 Nev. 416, 426, 956 P.2d 761, 767 (1998) (holding that because the parties' divorce decree included a specific provision regarding

modification, the court would presume that they intended that provision, rather than the general changed circumstances doctrine, to apply). Accordingly, appellant was not entitled to a modification of alimony.

In light of the above, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division  
Thomas A. Hantges  
John Peter Lee Ltd.  
Eighth District Court Clerk