

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRET W. OGILVIE,
Appellant,
vs.
MERRY OGILVIE,
Respondent.

No. 56084

FILED

JAN 18 2011

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 a motion to set aside a divorce decree. Second Judicial District Court, Washoe County; Linda M. Gardner, Judge.

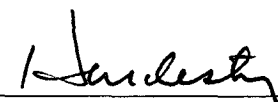
The district court did not abuse its discretion in refusing to set aside the divorce decree because the federal action appellant filed while the divorce case was pending was not a removal. See Cook v. Cook, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996) (explaining that this court will not overturn a district court's decision to deny a motion to set aside a judgment under NRCP 60(b) absent an abuse of discretion). In particular, appellant did not seek to have the federal court adjudicate the divorce case, but instead, he raised new claims against three defendants, two of whom were not parties to the divorce case. See 28 U.S.C. § 1441 (2006) (identifying actions that are, generally, removable to federal court). Moreover, it does not appear that appellant followed the procedures for removal, and the federal court did not treat the action as a removal of the divorce case. See 28 U.S.C. § 1446 (setting forth the procedures for removal). Thus, the district court retained jurisdiction over the divorce case, even while the federal action was pending.

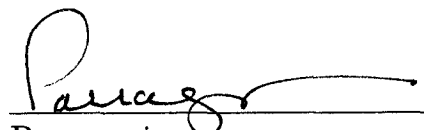
Additionally, the district court did not abuse its discretion by declining to recuse itself based on the pending federal action. See Rivero v. Rivero, 125 Nev. ___, ___, 216 P.3d 213, 233 (2009) (stating that a judge's decision not to recuse herself will not be overturned absent a clear abuse of discretion); see also United States v. Studley, 783 F.2d 934, 940 (9th Cir. 1986) (holding that "[a] judge is not disqualified by a litigant's suit or threatened suit against [that judge]").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


Saitta, J.


Hardesty, J.


Parraguirre, J.

cc: Hon. Linda M. Gardner, District Judge
Bret W. Ogilvie
Anderson & Gruenewald
Washoe District Court Clerk

¹In light of this order, we deny the motions for stay as moot.