

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN CONWAY,
Appellant,
vs.
JAMES SHIELDS BEASLEY,
Respondent.

No. 58402

FILED

MAY 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a motion for relief from an order adjudicating an attorney's lien. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellant was a plaintiff in a district court real property case.¹ Respondent was appellant's attorney. After trial, a verdict was entered in favor of appellant and the district court awarded additional attorney fees. A dispute arose between appellant and respondent over the amount of attorney fees. Appellant attempted to have the matter heard by the State Bar's fee dispute arbitration program, which ultimately declined to entertain the matter because the district court had chosen to exercise its jurisdiction. The district court heard the fee dispute and awarded fees to respondent. Appellant did not timely appeal that order. After the time to file an appeal had lapsed, appellant filed a motion, seeking

¹This appeal was docketed naming the defendant in the district court case as respondent. As this matter arises from an independent dispute between appellant and his attorney, we have corrected the caption to reflect the attorney as respondent.

reconsideration as to the reasonableness of the attorney fees, and relief under NRCP 60(b) based on newly discovered evidence and fraud. The district court denied appellant's motion. This appeal followed.

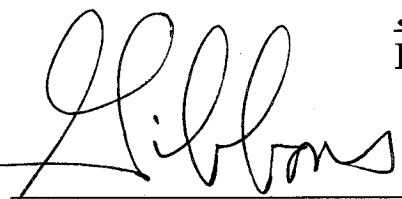
The only issue properly before this court is the district court's order denying appellant's NRCP 60(b) motion for relief from the order adjudicating the attorney fee lien on the basis of newly discovered evidence and fraud.² A district court's decision whether to grant relief under NRCP 60(b) is reviewed for an abuse of discretion. Deal v. Baines, 110 Nev. 509, 512, 874 P.2d 775, 777 (1994). Here, the district court found that appellant had not produced any newly found evidence which could not have been discovered by due diligence in time to move for a new trial under Rule 59, as appellant conceded that the billing statements submitted to the district court as new evidence were previously available. NRCP 60(b)(2). The district court reviewed the billing statements that appellant contended were fraudulent and concluded that appellant had not provided any evidence of specific discrepancies nor evidence of what the proper billing amounts should have been, and had not met his burden

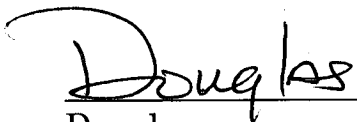
²Appellant's motion was filed more than ten days after the notice of entry of the district court's order adjudicating the attorney fees lien, and thus, appellant's motion did not toll the time to substantively appeal from the district court's order adjudicating the attorney fees lien. NRAP 4(a); see AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010) (holding that a motion for reconsideration may toll the time to file an appeal if the motion qualifies as a motion to alter or amend under NRCP 59(e) and is timely filed). Further, an order denying reconsideration is not substantively appealable. In re Orpheus Trust, 124 Nev. 170, 181 n.27, 179 P.3d 562, 569 n.27 (2008).

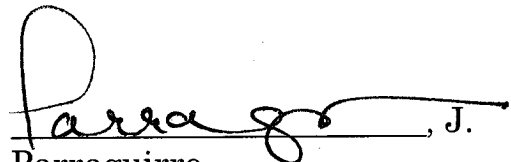
to demonstrate fraud. NRCP 60(b)(3); Occhiuto v. Occhiuto, 97 Nev. 143, 146 n.2, 625 P.2d 568, 570 n.2 (1981).

Having considered appellant's proper person appeal statement and reviewed the record, we conclude that the district court applied the correct legal standards and did not abuse its discretion in denying appellant's request for NRCP 60(b) relief. Deal, 110 Nev. at 512, 874 P.2d at 777. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Jerome Polaha, District Judge
John Conway
Law Office of James Shields Beasley
Washoe District Court Clerk