

IN THE SUPREME COURT OF THE STATE OF NEVADA

TYRONE GEORGE DUFF,  
Appellant,  
vs.  
A. STANYAN PECK, ESQ.,  
Respondent.

No. 61534

**FILED**

**MAR 14 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malin  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is a proper person appeal from a district court post-judgment order denying an NRCP 60(b)(4) motion to vacate a previous order dismissing the underlying action.<sup>1</sup> Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

This appeal arises from an action appellant initiated in 1999 against respondent, appellant's former wife's counsel in appellant's 1993 divorce case. The 1999 action encompassed claims based on the allegation that respondent fraudulently and illegally obtained a protective order against appellant in the divorce case. In 2000, the district court dismissed the underlying complaint under NRCP 12(b)(5) for failure to state a claim for which relief can be granted, and this court later affirmed that dismissal on appeal. *See Duff v. Peck*, Docket No. 35626 (Order of Affirmance, February 3, 2003).

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<sup>1</sup>To the extent that appellant seeks to challenge the portion of the district court's order declaring him to be a vexatious litigant, because such post-judgment vexatious litigant orders are not appealable, *Peck v. Crouser*, 129 Nev. \_\_\_, \_\_\_, 295 P.3d 586, 588 (2013), and thus, we lack jurisdiction to consider that portion of the order.

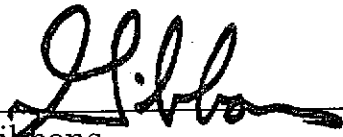
In the interim, in 2009, appellant filed a motion in the divorce action seeking to vacate the 17-year-old protective order. The district court granted the motion, but did so solely because appellant's former wife did not file an opposition. This court subsequently dismissed appellant's appeal from that order because he was the prevailing party below. See *Duff v. Foster*, Docket No. 55397 (Order Dismissing Appeal, June 10, 2010). Following the denial of rehearing, appellant's request for en banc consideration was similarly denied. See *Duff v. Foster*, Docket No. 55397 (Order Denying En Banc Reconsideration, Nov. 17, 2010).


In 2012, appellant filed an NRCP 60(b)(4) motion in the case below seeking to vacate, as void, the 2000 dismissal of his claims against respondent. The district court ultimately denied the motion, concluding that it was not made in a reasonable time and that this court's orders entered on appeal from the family court order vacating the protective order in Docket No. 55397 had no bearing on the underlying case. This appeal followed.

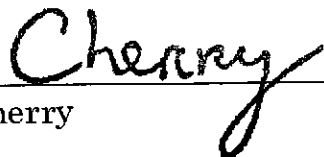
On appeal, appellant argues that, in light of the family court's order vacating the protective order and this court's treatment of the family court's decision on appeal in Docket No. 55397, his claims against respondent for fraudulently obtaining the protective order in the case below should be reinstated with the prior dismissal of his claims vacated as void. Having considered appellant's arguments, we conclude that neither the vacating of the protective order on the basis that the motion to vacate was unopposed, nor this court's order entered in Docket No. 55397, support granting appellant NRCP 60(b)(4) relief from the dismissal of his complaint below. Thus, the district court did not abuse its discretion in denying appellant's NRCP 60(b)(4) motion, see *In re Harrison Living*

*Trust*, 121 Nev. 217, 222, 112 P.3d 1058, 1061 (2005) (reviewing NRCPC 60(b)(4) orders for an abuse of discretion), and we therefore

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

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

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Scott N. Freeman, District Judge  
Tyrone George Duff  
Lemons, Grundy & Eisenberg  
Washoe District Court Clerk

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<sup>2</sup>In light of this order, we deny as moot all requests for relief currently pending in this appeal.