IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS J. LAFFERTY,
Appellant,
vs.
ELIZABETH ANN PRICE,
Respondent.

No. 62732

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying NRCP 60(b) relief in a post-divorce proceeding. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

The parties were divorced in a summary proceeding in July 2010. The stipulated divorce decree required appellant Thomas J. Lafferty to pay respondent Elizabeth Ann Price $620 per month in spousal support for five and one-half years. In April 2012, Price filed a motion for an order to show cause, alleging that Lafferty had failed to make a number of his spousal support payments. She sought to have the arrearages reduced to judgment and requested sanctions for the failure to make the payments.

Lafferty opposed the motion and filed a countermotion under NRCP 60(b) to set aside the spousal support provision of the divorce decree. In his countermotion, Lafferty alleged that the spousal support provision was procured by fraud. He also asserted that Price committed various other improper acts towards him, including taking money from him, but he did not request any relief with regard to these other actions. Price opposed the motion. Ultimately, the district court denied Lafferty's

NRCP 60(b) motion and set a hearing date with regard to Price's motion for an order to show cause.[1]

Lafferty did not appeal the district court's denial of his NRCP 60(b) motion. Instead, just under six months later, he filed a second NRCP 60(b) motion, seeking relief from the order denying his first NRCP 60(b) motion. Price filed another opposition, and the district court denied the second motion for NRCP 60(b) relief.

Thereafter, Lafferty filed a notice of appeal, designating both orders denying NRCP 60(b) relief to be challenged on appeal. But because Lafferty's notice of appeal was not timely as to the denial of the first NRCP 60(b) motion, the Nevada Supreme Court determined that appellate jurisdiction was lacking as to that order and dismissed the appeal to the extent that it challenged the denial of the first NRCP 60(b) motion. Thus, our review of this appeal is limited to the order denying the second NRCP 60(b) motion. *See* NRAP 4(a)(1) (requiring a notice of appeal to be filed within 30 days of the written notice of entry of the order appealed from); *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) ("[T]he proper and timely filing of a notice of appeal is jurisdictional.").

Despite the Nevada Supreme Court's limitation of this appeal to the denial of the second NRCP 60(b) motion, Lafferty's arguments in his opening brief largely relate to setting aside the divorce decree. Lafferty apparently raises these arguments based on his contention that they are

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[1]The district court proceedings relating to the show cause order are separate from the denial of Lafferty's NRCP 60(b) motions and are not before this court on appeal.

not barred by claim or issue preclusion. But Lafferty's arguments regarding preclusion are not on point.

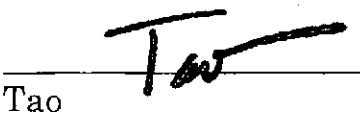
As discussed above, the only order properly before this court is the order denying Lafferty's second motion for NRCP 60(b) relief, which sought to set aside the first order denying NRCP 60(b) relief. Thus, in order to succeed on appeal, Lafferty must demonstrate that the first order denying NRCP 60(b) relief was due to be set aside based on one of the enumerated grounds set forth in NRCP 60(b), such as by showing that the second order was the result of a mistake or was procured by fraud. *See* NRCP 60(b)(1), (3). But Lafferty's NRCP 60(b)-based appellate arguments relate only to setting aside the divorce decree, not to setting aside the first order denying NRCP 60(b) relief. As a result, we conclude that he has waived any such arguments for setting aside that order.[2] *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3

[2]Lafferty also raises arguments on appeal relating to a protective order granted to Price in the underlying proceedings, but that order is not properly before this court on appeal. Moreover, even assuming that the protective order was relevant to the order before us on appeal, Lafferty has not provided this court with any portion of the district court record relating to that motion, such as the motion for a protective order, any response to the motion, or any order resolving the motion. Thus, insofar as this motion was relevant to the denial of Lafferty's second NRCP 60(b) motion, we presume that it supported the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision.").

(2011) (explaining that an issue not raised on appeal is deemed waived). Accordingly, we necessarily

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Law Office of Michael H. Schwarz
F. Peter James
Eighth District Court Clerk