IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHANN J. LEITER,
Appellant,
vs.
CATHERINE J. LEITER N/K/A
CATHERINE J. HAIGH,
Respondent.

No. 36136

FILED

SEP 10 2002

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Johann Leiter appeals from an order granting respondent Catherine Leiter, now Catherine Haigh, summary judgment in a post-decree divorce proceeding in which Leiter requested relief from the second lump-sum payment to Haigh pursuant to the terms of the marital settlement agreement. On appeal, Leiter contends that the district court erroneously concluded that there was no evidence of fraud regarding Haigh's remarriage. We disagree and affirm the district court's order granting Haigh summary judgment.

An appeal from an order granting summary judgment is reviewed de novo.[1] After viewing all evidence and taking every reasonable inference in the light most favorable to the nonmoving party, summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to summary judgment as a matter of law.[2]

---

[1]Riley v. OPP IX L.P., 112 Nev. 826, 830, 919 P.2d 1071, 1074 (1996).

[2]Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993); see also NRCP 56(c).

Leiter contends that the district court erroneously concluded that Haigh's failure to reveal that she planned to immediately remarry constituted intrinsic fraud. We note, however, that the district court actually concluded that there was no evidence of fraud, but it stated that if there was any concealment, it was intrinsic fraud and was time-barred by NRCP 60(b). In any event, Leiter argues that his cross-motion is not time barred because Haigh engaged in extrinsic fraud as she owed him a fiduciary duty to inform him that she intended to remarry.

NRCP 60(b) allows a party to seek relief from a judgment based on fraud—whether intrinsic or extrinsic—or fraud upon the court. At the outset, we acknowledge that in 1981, this court amended NRCP 60(b)(2), eliminating the intrinsic/extrinsic fraud distinction.[3] Under NRCP 60(b), relief based on fraud must be sought no later than six months after the divorce decree was entered. However, this six-month limitation is inapplicable to actions to set aside a judgment for fraud upon the court.[4] Because Leiter did not file his cross-motion requesting relief from the second payment until a year and a half after the divorce decree was entered, we conclude that Leiter's allegation that Haigh committed extrinsic fraud is time-barred under NRCP 60(b).

Leiter also contends that Haigh had a duty to reveal to the district court her intent to remarry, and her failure to do so constituted fraud upon the court. We have previously defined fraud upon the court,

---

[3]See NRCP 60(b)(2); see also Carlson v. Carlson, 108 Nev. 358, 362 n.6, 832 P.2d 380, 383 n.6 (citing In the Matter of the Amendment of NRCP 60(b)(2), ADKT 43 (Order Amending Rule, October 22, 1981)).

[4]NRCP 60(b).

"'in order to set aside a judgment or order because of fraud upon the court under Rule 60(b) . . . it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision.'"[5] We conclude that, under our definition, Leiter's allegation that Haigh committed fraud upon the district court is without merit. Leiter merely alleges that Haigh did not inform the court of her intent to remarry. But the marital settlement agreement that Leiter seeks to overturn provided that the second payment would be made irrespective of Haigh's remarriage. We further conclude that Leiter's remaining arguments concerning alimony in gross and public policy lack merit.

In response to Leiter's appeal, Haigh contends that she is entitled to interest on the second payment. We will not entertain Haigh's request for interest on the second payment because she failed to seek an interest award from the district court.[6] Haigh also contends that she is entitled to attorney fees under NRAP 38 because Leiter's appeal is frivolous. We disagree and conclude that Leiter's appeal is not so frivolous that it warrants sanctions.[7]

---

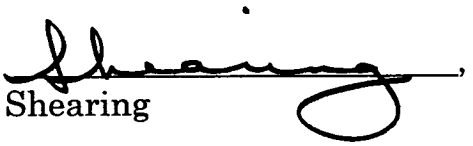
[5]Occhiuto v. Occhiuto, 97 Nev. 143, 146 n.2, 625 P.2d 568, 570 n.2 (1981) (quoting England v. Doyle, 281 F.2d 304, 309 (9th Cir. 1960)) (emphasis added).

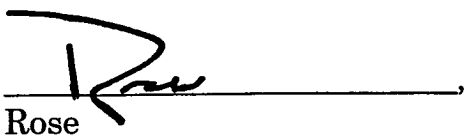
[6]See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52-53, 623 P.2d 981, 983-84 (1981) (concluding that an issue not raised to the district court will not be considered on appeal).

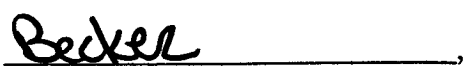
[7]See Bd. of Galley of History v. Datecs Corp., 116 Nev. 286, 288, 994 P.2d 1149, 1150 (2000) (noting that NRAP 38(b) authorizes this court to award attorney fees "if it determines that the appeals process has been misused.")

Having considered Leiter's arguments and concluding that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


Shearing, J.


Rose, J.


Becker, J.

cc: Hon. Charles M. McGee, District Judge, Family Court Division
Richard F. Cornell
Stephen H. Dollinger
Washoe District Court Clerk