IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ISAAC CHARLES RICHARDSON,
Appellant,
vs.
URSALYNNE DIONNE RICHARDSON,
Respondent.

No. 67817

ORDER OF AFFIRMANCE

This is an appeal from district court post-judgment orders denying NRCP 60(b) relief in a child custody proceeding. Eighth Judicial District Court, Family Court Division, Clark County; Rebecca Burton, Judge.

On July 15, 2014, the district court entered an order adopting the parties' stipulation regarding custody and visitation (parenting time). Based on that stipulation, the court granted respondent primary physical custody of the parties' minor child, subject to appellant's specified right of parenting time. Appellant did not file a notice of appeal or a tolling motion from the July 15, 2014, order, and the time for filing a notice of appeal expired.

Thereafter, on November 17, 2014, appellant filed a motion to set aside or reconsider the custody order, citing NRCP 60(b).[1] In this

[1]Appellant also cited NRCP 61, but that rule does not set forth any grounds for disturbing an existing judgment. Instead, it merely requires the court to disregard any errors that are not inconsistent with substantial justice or a party's substantial rights. *See* NRCP 61.

motion, appellant argued that the district court had improperly designated respondent as the child's primary physical custodian despite appellant having custody of the child for more than 148 calendar days each year, which he asserted was necessarily a joint custody arrangement. He further asserted that the child support order would need to be modified in light of the parties' having joint physical custody. Respondent opposed the motion, and the district court denied it on January 6, 2015, finding both that the primary physical custody designation was proper and that appellant's NRCP 60(b) motion was untimely, was filed in bad faith, and was filed with intent to delay the resolution of the proceedings.

That same day, appellant filed a second motion under NRCP 60(b), seeking to set aside the district court's order denying his first NRCP 60(b) motion.[2] In this second NRCP 60(b) motion, appellant reiterated his arguments from his previous motion that the timeshare constituted a joint physical custody arrangement and that recognizing the arrangement as joint physical custody necessitated a new child support order. He also raised new arguments regarding the amount of time he had to prepare for the hearing on his first NRCP 60(b) motion and the district court's behavior during that hearing. Respondent opposed the motion, and appellant filed a reply. Thereafter, the district court denied NRCP 60(b) relief, finding that the issues raised in appellant's motion were previously decided, such that reconsideration of those issues was precluded. This appeal followed.

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[2]Although the district court's order denying relief was filed on January 6, 2015, the district court had held a hearing at which it orally denied relief one month earlier, on December 5, 2014.

In his notice of appeal, appellant designates only the order denying his second request for NRCP 60(b) relief, filed on April 6, 2015, as being challenged on appeal. In his civil appeal statement, however, appellant makes substantive arguments asserting that the district court abused its discretion by awarding primary physical custody to respondent and by labeling the parties' custody arrangement as primary physical custody when he has the child for more than 40 percent of the time.

But because appellant did not file a timely notice of appeal or tolling motion following service of notice of entry of the July 15, 2014, order establishing custody, the propriety of that order is not before us on appeal, as we would lack jurisdiction to consider that order even if appellant had designated it as being challenged in his notice of appeal. *See* NRAP 4(a)(1) (requiring a notice of appeal to be filed within 30 days after written notice of entry of a judgment); NRCP 4(a)(4) (designating certain post-judgment motions as tolling motions); NRAP 26(c) (adding three days to the time for filing certain documents); NRCP 6(e) (same); *Rust v. Clark Cnty. 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."). Thus, we may only review appellant's arguments as to the merits of the underlying decision if they are appropriately before us in the context of the denial of one of appellant's two NRCP 60(b) motions.

To the extent that appellant seeks to challenge the denial of his first NRCP 60(b) motion, it appears that we have jurisdiction to consider that denial. *See* NRAP 4(a)(4) (designating certain post-judgment motions as tolling motions); *Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. ___, ___, 314 P.3d 946, 948 (2013) (concluding that a timely NRCP

59(e) motion generally tolls the time to appeal any appealable order, not just a final judgment); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010) (holding that a timely written motion for reconsideration that requests a substantive change to the judgment will be treated as an NRCP 59(e) tolling motion). As to the merits of that denial, while the district court addressed appellant's arguments regarding the primary physical custody designation, the court also concluded that each of respondent's arguments regarding timeliness, bad faith, and improper purpose had merit. Each of these arguments provided an independent basis for denying the first NRCP 60(b) motion. *See Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 307 (1993) (explaining that, in order to satisfy the requirements of NRCP 60(b)(1), a party must show, among other things, that he or she made "a prompt application to remove the judgment," did not intend to delay the proceedings, and filed the motion in good faith). But appellant has not presented any arguments on appeal challenging the timeliness, bad faith, and improper purpose findings. As a result, we conclude that he has waived any such arguments, *see Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that an issue not raised on appeal is deemed waived), and thus, we necessarily affirm the denial of the first NRCP 60(b) motion without reaching appellant's arguments as to the merits of the underlying custody order.

Similarly, as to the denial of appellant's second NRCP 60(b) motion, appellant does not make any arguments on appeal that the district court improperly denied that motion based on preclusion principles. Thus, appellant has also waived the ability to challenge that

conclusion, *see Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3, and so we necessarily affirm the district court's denial of the second NRCP 60(b) motion without reaching appellant's arguments as to the merits of the underlying custody order.

It is so ORDERED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Rebecca Burton, District Judge, Family Court Division
Isaac Charles Richardson
Kainen Law Group
Eighth District Court Clerk

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[3]To the extent that appellant has challenged the district court's award of attorney fees to respondent for having to defend against the second NRCP 60(b) motion, we affirm the award of attorney fees. *See Rivero v. Rivero*, 125 Nev. 410, 440, 216 P.3d 213, 234 (2009) ("[T]he district court's discretion to award attorney fees as a sanction under NRS 18.010(2)(b), for bringing a frivolous motion, promotes the efficient administration of justice without undue delay and compensates a party for having to defend a frivolous motion.").