

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEEJAY CHRISTOPHER EVANS,
Appellant,
vs.
EYDIE MARIE EVANS,
Respondent.

No. 72480

FILED

DEC 29 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Deejay Evans appeals an order finding that a payment on an insurance claim is not an omitted asset and is the sole and separate property of Eydie Evans. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

Eydie filed an insurance claim under the couple's insurance policy for damage to personal property that occurred during a home break-in while the parties were still married.¹ The break-in occurred in 2011 sometime after Deejay moved out of the house and a day after Eydie obtained a temporary restraining order against Deejay. Eydie received two insurance reimbursement checks for the break-in. Both checks were received before the parties finalized their divorce decree. The first check was for a smaller amount and both parties agree it was presented at a pre-decree hearing at which Deejay refused to sign the check. The second check was for \$47,986.44 and was received about two months later. It appears that Eydie did not directly disclose to Deejay that she received the check and neither payment is mentioned in the final divorce decree. The damaged property upon which the insurance claim was based was included in the decree and awarded to Eydie.

¹We do not recount the facts except as necessary to our disposition.

Deejay argues he did not discover that a second check was given to Eydie until 2016 when he was applying for renter's insurance with the same insurance company and received a claims history. Shortly after, he filed a motion that requested, in part, the district court address the \$47,986.44 check as an omitted asset. After a hearing, the district court issued an order determining that the asset was not an omitted asset because Deejay "deferred on the issue" at a prior hearing and "the insurance claim and payment" was Eydie's "sole and separate property" per the divorce decree. On appeal, Deejay requests that this court remand for an evidentiary hearing as to the alleged omitted asset because his motion was timely and the \$47,986.44 check was an omitted asset.

Deejay waived his opportunity to request an evidentiary hearing

When a party does not request an evidentiary hearing below, he may waive his right to one. *See Diversified Capital Corp. v. City of N. Las Vegas*, 95 Nev. 15, 21, 590 P.2d 146, 149. (1979) (concluding that appellant's failure to request an evidentiary hearing "militate[s] against appellant's claim that the procedures below violated its right to due process."). In *Diversified*, the appellant never requested a formal evidentiary hearing and the court concluded it waived its right to one. *Id.*

Deejay asked to be heard on the matter of the omitted asset, but he did not request an evidentiary hearing. Deejay did not request an evidentiary hearing before the district court and, as a result, we conclude that he waived his opportunity to request one. *See id.*²

²On appeal, Deejay does not cite any authority to show he is entitled to an evidentiary hearing, and we need not address it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330, n.38, 130 P.3d 1280, 1288, n.38 (2006).

Deejay failed to assert facts to support a request for an evidentiary hearing

Even if Deejay requested an evidentiary hearing, we must determine whether he demonstrated adequate cause to support this request.


A district court has discretion to decide property issues relating to a divorce. *Doan v. Wilkerson*, 130 Nev. 449, 453, 327 P.3d 498, 501 (2014). Given this discretion, a district court also has discretion to deny a motion regarding alleged omitted assets without holding a hearing if the movant has failed to demonstrate “adequate cause” in his pleadings. *See also Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993).³ “Adequate cause’ requires something more than allegations which, if proven, might permit inferences sufficient to establish grounds [to modify].” *Id.* at 543, 853 P.2d at 125. “Adequate cause’ arises where the moving party presents a prima facie case for modification.” *Id.* It follows that if a district court has the discretion to deny a motion without a hearing if adequate cause is lacking, then it also has the discretion to deny a motion without holding an evidentiary hearing if adequate cause is lacking.

Deejay states in his motion that he “learned only now” about the alleged omitted check, but he does not make the same statement in his sworn affidavit or a specific statement about the timing of his discovery of the claim or check. While Deejay’s affidavit includes a general statement that his motion is “true and correct to the best of [his] knowledge and belief,” this statement could be construed as vague. Without a specific fact as to

³*Rooney* was decided in the context of a district court’s decision to deny a motion to modify custody without a custody hearing, but can be applied here by analogy to determine when a district court should grant a hearing on a motion.

the timing of Deejay's discovery of the claim or check, or what additional evidence would be presented at a hearing, the district court could decide that there were only allegations of timing or insufficient factual allegations to repel the court record, and did not abuse its discretion in failing to set an evidentiary hearing. *See id.* Under this standard of review, we conclude the district court did not abuse its discretion by making its finding without holding an evidentiary hearing.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Silver


_____, J.
Gibbons

cc: Hon. William S. Potter, District Judge, Family Court Division
Standish Naimi Law Group
The Grigsby Law Group
Eighth District Court Clerk

⁴Even if this issue were properly before this court, the district court had substantial evidence based on the entire record created below to determine the issue on the merits. *See Doan*, 130 Nev. at 453, 327 P.3d at 501. As Deejay's request on appeal was for an evidentiary hearing, we decline to address his remaining arguments.

⁵Judge Jerome Tao voluntarily recused himself from this case.