

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DWIGHT HILLYARD,
Appellant,
vs.
GLORIA HILLYARD,
Respondent.

No. 72108

FILED

AUG 27 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dwight Hillyard appeals from a district court order denying a motion to correct a clerical mistake under NRCP 60(a).¹ Eighth Judicial District Court, Family Court Division, Clark County; Lisa M. Brown, Judge.

In the underlying order modifying Dwight and respondent Gloria Hillyard's divorce decree, which was entered in 1984, the district court awarded Gloria fourteen-twentieths of Dwight's military retirement benefit and directed the relevant military service to make the appropriate

¹Before the present matter was transferred to this court, the supreme court directed Dwight to show cause why his appeal should not be dismissed for lack of jurisdiction on the ground that, among other things, the denial of NRCP 60(a) relief might not be appealable. *Hillyard v. Hillyard*, Docket No. 72108 (Order to Show Cause, May 19, 2017). The supreme court later reinstated briefing and transferred this appeal to this court, but explained that the matter would be subject to dismissal if it were later determined that jurisdiction was lacking. *Hillyard v. Hillyard*, Docket No. 72108 (Order Reinstating Briefing, October 9, 2017). We conclude jurisdiction over this matter is proper, as the supreme court has previously treated an order denying NRCP 60(a) relief as appealable by resolving an appeal from such a decision on the merits. See *Alamo Irrigation Co. v. United States*, 81 Nev. 390, 404 P.2d 5 (1965), *overruled on other grounds by Ford v. Showboat Operating Co.*, 110 Nev. 752, 877 P.2d 546 (1994).

monthly payments to her. Dwight did not challenge the 1984 order until over 32 years later when he moved for, as relevant here, relief under NRCP 60(a), alleging that the 1984 order included a clerical mistake because it awarded Gloria the entire community property portion of his military retirement benefit rather than dividing that portion equally between the parties.² To support that motion, the only materials that Dwight provided from the earlier proceedings were, as relevant here, the underlying divorce decree, Gloria's motion to modify that decree, and the 1984 order. Gloria opposed Dwight's request for NRCP 60(a) relief, and the district court denied it, finding that the record was insufficient for it to evaluate whether the 1984 order included a clerical mistake and that Dwight's delay in raising his concern prejudiced Gloria since a sufficient record was not available for the court's review. This appeal followed.

As he did below, Dwight contends on appeal that he was entitled to NRCP 60(a) relief because the district court made a clerical error in the 1984 order when it failed to divide the community property portion of his military retirement benefit equally between the parties.³ To establish that he was entitled to NRCP 60(a) relief, Dwight was required to demonstrate that some typographical error or omission, which was not the result of judicial discretion, caused the decision in the 1984 order to be different from the one that the district court actually made. *See Channel 13 of Las Vegas, Inc. v. Ettlenger*, 94 Nev. 578, 580, 583 P.2d 1085, 1086 (1978) (explaining what constitutes a clerical mistake for purposes of NRCP

²This motion was assigned to the Honorable Lisa M. Brown, as the judge who entered the 1984 order had retired.

³Gloria, who is proceeding on appeal in proper person, did not file an answering brief.

60(a)). But while Dwight advances several grounds in support of his contention that he was entitled to NRCP 60(a) relief, he does not identify anything in the materials that he provided the district court from the relevant period that demonstrates that the decision set forth in the 1984 order was anything other than what was intended by the district court. See *id.*


And while Dwight acknowledges that he does not have further record of the underlying proceedings, he did not—and does not—seek discovery on this issue. Moreover, Dwight does not challenge the district court's finding that his delay in raising his concern regarding the 1984 order prejudiced Gloria. Thus, given the foregoing and because Dwight bore the burden of demonstrating that he was entitled to NRCP 60(a) relief, see *Alamo Irrigation Co. v. United States*, 81 Nev. 390, 394, 404 P.2d 5, 7 (1965) (providing that the moving party bears the burden of establishing a clerical mistake), *overruled on other grounds by Ford v. Showboat Operating Co.*, 110 Nev. 752, 877 P.2d 546 (1994), we conclude that the district court did not abuse its discretion in denying his NRCP 60(a) motion. See NRCP 60(a) (providing that the district court may, on its own initiative or by motion of a party, correct a clerical mistake); *Frontier Ins. Serv., Inc. v. State ex rel. Gates*, 109 Nev. 231, 239, 849 P.2d 328, 333 (1993) (noting that NRCP 60(a) permits the district court to correct clerical mistakes).

Lastly, although Dwight's various appellate arguments may show that the division of his military retirement benefit in the 1984 order amounted to an abuse of discretion, see *Forrest v. Forrest*, 99 Nev. 602, 606, 668 P.2d 275, 278 (1983) (recognizing the district court's broad discretion to distribute community property), whether any such abuse occurred is not properly before us in the context of this appeal, as Dwight does not argue

that any of the procedural mechanisms to challenge such an abuse are still available to him at this late stage.⁴ See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Accordingly, we affirm the district court's order denying Dwight's request for NRCP 60(a) relief.⁵

It is so ORDERED.⁶


_____, C.J.
Silver


_____, J.
Gibbons

cc: Hon. Lisa M. Brown, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
Standish Law
Naimi & Cerceo
Gloria Hillyard
Eighth District Court Clerk

⁴In its show cause order referenced above, the supreme court suggested that Dwight's NRCP 60(a) motion could possibly be construed as initiating an independent action for equitable relief in the district court. But we decline to so construe Dwight's NRCP 60(a) motion, as Dwight's appellate briefing does not present any argument or explanation with regard to how the present matter fits within the standard for granting equitable relief in the context of an independent action. See *Doan v. Wilkerson*, 130 Nev. 449, 454, 327 P.3d 498, 501-02 (2014) ("An independent action for relief from a judgment that has become final or unreviewable is available only to prevent a grave miscarriage of justice." (internal quotation marks omitted)). Nevertheless, nothing in this order precludes Dwight from commencing an independent action for equitable relief in the district court.

⁵Given our disposition of this appeal, we need not address Dwight's remaining requests for relief.

⁶The Honorable Jerome T. Tao voluntarily recused himself from participation in the decision of this matter.