

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERICK OMOYUMA SILVER,
Appellant,
vs.
CANDICE KATIE TOWNER,
Respondent.

No. 81982-COA

FILED

AUG 30 2021

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

ORDER OF AFFIRMANCE

Frederick Omoyuma Silver appeals from the denial of a motion to set aside in a post-decree family court matter. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

In the proceedings below, respondent Candice Towner filed a complaint to establish child custody, after having previously initiated a child support matter, against Silver. A clerk's default was entered in May 2018, but in July 2018, Silver filed a response to the complaint asserting that he was not the child's father, that he did not want custody of the child, and that Towner should have complete custody of the child. His responsive pleading demanded that his parental rights be terminated, and requested an award of punitive damages and costs. He also filed a motion to dismiss, counterclaim, and crossclaim asserting that the court lacked jurisdiction over him, and he filed a motion to terminate child support. Towner filed a combined opposition and countermotion to consolidate the custody case with Silver's separately filed termination of parental rights action, to determine custody, to confirm child support, and for attorney fees.

In September 2018, the district court entered an order on Silver's motion, finding that Silver was served with the summons and complaint, that the court had subject matter and personal jurisdiction over the matter, and noting that paternity was established in the underlying child support case. Accordingly, the district court denied Silver's motion to dismiss the action. The court then concluded that the motion to terminate child support would depend on the results of a DNA test—allowing Silver an opportunity to challenge paternity, despite paternity having already been established in the child support matter. Thus, the court ordered Silver to obtain a paternity test and concluded that should he not appear for the test or provide the results to the court, the court would apply a presumption in favor of paternity. The court denied Towner's countermotion to consolidate the actions, but concluded that the cases were related and would be linked moving forward.

In November 2018, after a return hearing regarding the paternity test—wherein Silver failed to provide any results of a paternity test to the district court—the district court entered a decree of custody. In it, the court concluded that Silver was the biological father of the subject minor based on Silver's failure to rebut the presumption in favor of paternity. The court awarded Towner sole legal and sole physical custody of the minor child, with no parenting time to Silver, pursuant to both parties' requests for the same in their pleadings, and confirmed Silver's monthly child support obligation.

Silver then filed numerous documents and several appeals, but as relevant here, in September 2020, Silver filed a motion to set aside the

September 2018 order pursuant to NRCP 60(b). In his motion, Silver asserted that he was not served with Towner's filings leading to the default order being entered, that Towner committed fraud by placing his name on the child's birth certificate without his knowledge or consent, that the court lacked subject matter and personal jurisdiction, and also raised challenges to the venue, process, service of process, and alleged Towner had failed to state a claim. The district court denied Silver's motion, noting that Silver had filed multiple motions to set aside the September 2018 order, and this appeal followed.

On appeal, Silver challenges the district court's order denying his motion to set aside, reasserting that the district court lacked jurisdiction, that the district court was the improper venue, that there was insufficient process, that there was insufficient service of process, and that Towner failed to state a claim. The district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

Here, Silver has failed to offer any cogent argument addressing the basis for the district court's denial of his motion to set aside. Thus, he has waived any such challenge. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived."). Moreover, based on our review of the record, we discern no abuse of discretion in the district court's decision to deny the motion to set aside when Silver's motion was filed nearly two years after the order he was challenging and the district court


had previously denied the same motion. *See* NRCP 60(c)(1) (providing that, as relevant here, a motion for relief based on mistake, inadvertence, excusable neglect, or fraud must be filed within six months after entry of the order, and that motions based on other grounds must be brought within a reasonable time); EDCR 2.24(a) (providing that motions may not be reheard without leave of court).

Additionally, to the extent Silver challenges the district court's order based on his allegation that the district court lacked jurisdiction, his argument is likewise without merit. The district court correctly determined it had personal jurisdiction over Silver in light of his affirmative requests for relief in this action and others filed in the Eighth Judicial District Court. *See Dogra v. Liles*, 129 Nev. 932, 939, 314 P.3d 952, 957 (2013) ("We assume without deciding that seeking affirmative relief from a court subjects a litigant to that court's jurisdiction and cannot simultaneously be done while the litigant objects to the court's exercise of jurisdiction."); *see also Dow Chemical Co. v. Calderon*, 422 F.3d 827, 834 (9th Cir. 2005) (recognizing, without deciding, "that personal jurisdiction exists where a defendant also independently seeks *affirmative* relief in a separate action before the same court concerning the same transaction or occurrence"). Similarly, the district court correctly determined it had subject matter jurisdiction over this matter, as the case involved parentage, child support, and child custody where Nevada was the child's home state. *See* NRS 3.223(1)(a), (e) (providing that the family court has original, exclusive jurisdiction in any proceeding brought to establish parentage of a minor, child custody, or child support).

Based on the foregoing, we cannot conclude that the district court abused its discretion in denying Silver's motion to set aside. *See Cook*, 112 Nev. at 181-82, 912 P.2d at 265. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Frederick Omoyuma Silver
Candice Katie Towner
Eighth District Court Clerk

¹Insofar as Silver raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal. We likewise have considered Silver's additional filings and deny all other pending requests for relief in this matter.