

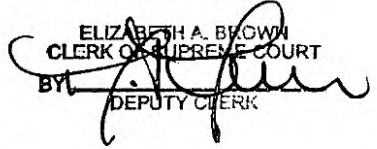
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JULIE LACHELL HAMMER,
Appellant,
vs.
MARY JOHANNA RASMUSSEN,
Respondent.

No. 82977-COA

FILED

OCT 27 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Julie Lachell Hammer appeals from a district court order denying a motion for NRCP 60(b) relief in a child custody matter. Eighth Judicial District Court, Family Court Division, Clark County; Mathew Harter, Judge.¹

In 2012, respondent Mary Johanna Rasmussen initiated the underlying action against Hammer by filing a verified complaint for joint legal and physical custody of a minor child. Hammer had given birth to the child while in a nonmarital relationship with Rasmussen, and both parties' names were initially included on the child's birth certificate, with Hammer listed as the mother and Rasmussen as the father, despite the fact that she is not the child's biological father. After Rasmussen filed a motion seeking temporary orders regarding child custody and support, Hammer opposed the motion and sought dismissal of the complaint, arguing that Rasmussen

¹The underlying district court case has been reassigned multiple times over the course of the proceedings. Judge Harter entered the specific order challenged in this appeal, but former district court judge, the Honorable Gayle Nathan, entered the original parentage and custody orders that Judge Harter declined to set aside.

lacked a parental relationship with the child and that the district court lacked jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act. The district court then entered a written order determining that it had jurisdiction over the case and the parties, concluding that both Hammer and Rasmussen were the child's parents, establishing a temporary custody arrangement, and ordering the parties to mediation to work out a parenting agreement.

Hammer filed a motion for reconsideration of the district court's order, contending that the court should dismiss Rasmussen's complaint on its merits or, in the alternative, set the matter for an evidentiary hearing on parentage. In response, the district court entered an order denying Hammer's request for dismissal, but it deferred ruling on her request to set aside the initial parentage determination, and it set the matter for an evidentiary hearing on the issues of parentage, custody, and support.

Further litigation ensued, including the appointment of a guardian ad litem on the child's behalf and the joinder of the child's biological father, Gonzalo Galindo. Ultimately, at the evidentiary hearing, Hammer, Rasmussen, and Galindo stipulated to the custody arrangement reflected in the district court's subsequent "Final Order Resolving Parent Child Issues" entered in November 2013. The order provided that all three parties would share joint legal custody of the child, while Hammer and Rasmussen would have joint physical custody and Galindo would have limited parenting time. The order also provided that the parties waived their rights to appeal from the order or seek to have it set aside or otherwise altered under NRCP 52, NRCP 59, or NRCP 60.

Following further post-judgment litigation, the district court entered an order requiring the issuance of a new birth certificate for the

child identifying Hammer, Rasmussen, and Galindo as the child's parents without designating any of them as mother or father. Hammer appealed from that order, and the supreme court vacated it and remanded the matter with instructions. *Hammer v. Rasmussen*, No. 67368, 2017 WL 2819994, at *1-2 (Nev. June 27, 2017) (Order Vacating Judgment and Remanding). In relevant part, the supreme court concluded that “the [district] court failed to consider whether Nevada law permits a child to have more than two legal parents before entering its order directing the amendment of the child’s birth certificate to reflect three legal parents.” *Id.* at *1. The supreme court therefore directed the district court to hold an evidentiary hearing on the issue, and it identified various procedural matters the district court would need to address on remand, including “whether [Hammer] may seek to remove [Rasmussen]’s name from the birth certificate when [Rasmussen]’s parentage was previously established and [Hammer] failed to appeal from that order.” *Id.* at *2.

Proceedings in the district court continued, but litigation concerning other matters—primarily Hammer’s failure to comply with the operative custody order—delayed resolution of the issues addressed in the supreme court’s order vacating and remanding.² As relevant to this appeal, Hammer ultimately filed a motion seeking relief under NRCF 60(b) from the district court’s original orders establishing parentage and custody, arguing for various reasons that the district court lacked jurisdiction to enter the orders and that they are therefore void. The district court denied

²According to the record before this court and Rasmussen’s representations in her answering brief, as of the time of briefing in this appeal, the district court had yet to conduct the evidentiary hearing in accordance with the supreme court’s mandate in Docket No. 67368.

the motion, concluding Hammer was precluded from challenging the validity of the original orders, particularly in light of the supreme court's refusal to consider such challenges in prior appeals on grounds that Hammer failed to timely file them and therefore failed to invoke the supreme court's jurisdiction. *See, e.g., Hammer v. Rasmussen*, No. 78858, 2019 WL 2725663 (Nev. June 24, 2019) (Order Dismissing Appeal); *id.*, No. 73999, 2017 WL 4410819 (Nev. Oct. 3, 2017) (Order Dismissing Appeal). This appeal followed.

On appeal, Hammer sets forth multiple arguments as to why she believes the district court lacked jurisdiction to determine the issues of parentage and custody in its original 2012 and 2013 orders. She contends the district court wrongly failed to consider these challenges on their merits because subject matter jurisdiction can be raised at any time and cannot be waived. For the reasons set forth herein, we agree with the district court that Hammer's jurisdictional challenges come too late, and we affirm its order denying NRCP 60(b) relief.

We review a district court's decision to deny NRCP 60(b) relief for an abuse of discretion. *Ford v. Branch Banking & Tr. Co.*, 131 Nev. 526, 528, 353 P.3d 1200, 1202 (2015). Under NRCP 60(b)(4), a party may file a motion to set aside "a final judgment, order, or proceeding" on grounds that "the judgment is void." Such a motion therefore provides a mechanism for challenging a judgment entered without jurisdiction. *See Gassett v. Snappy Car Rental*, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995) (acknowledging the general principle that a judgment entered without jurisdiction is void), *superseded by rule on other grounds as stated in Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 654-56, 6 P.3d 982, 984-85 (2000). But a party must bring a motion under NRCP 60(b)(4) "within a reasonable

time.” NRCPC 60(c)(1); *In re Harrison Living Tr.*, 121 Nev. 217, 224, 112 P.3d 1058, 1063 (2005).

At the outset, we note that the district court essentially determined that, because Hammer failed to appeal from the initial final order establishing parentage, custody, and the district court’s jurisdiction, she is now legally precluded from challenging those determinations. While it is generally true that a party waives any right to challenge an appealable order when she fails to appeal from it, *see Verner v. Joufflas*, 95 Nev. 69, 70-71, 589 P.2d 1025, 1026 (1979), it is well settled in Nevada that—as Hammer argues—“subject matter jurisdiction cannot be waived and may be raised at any time,” *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 276, 44 P.3d 506, 515-16 (2002), *abrogated on other grounds by Senjab v. Alhulaibi*, 137 Nev., Adv. Op. 64, 497 P.3d 618, 620 (2021). However, due to the procedural posture of this matter and existing Nevada precedent concerning NRCPC 60(b)(4), we need not decide whether the district court was correct in determining that Hammer was legally precluded from raising her jurisdictional challenges by her earlier failure to appeal,³ and we instead affirm the district court’s order on alternative grounds. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (recognizing that this court may affirm the district court on any ground supported by the record, even if not relied upon by the district court).

In *Harrison Living Trust*, our supreme court held that, while courts should generally set aside void judgments under NRCPC 60(b)(4),

³We likewise need not decide whether Hammer’s waiver of the right to appeal or seek NRCPC 60(b) relief in the original final order is enforceable. For purposes of our disposition, we assume it is not.

there is “no reason to ignore the express language of [the] rule that requires the district courts to consider the timeliness of a motion to set aside a void judgment when determining whether exceptional circumstances, such as lack of diligence . . . , exist to justify denying the motion.” 121 Nev. at 222, 112 P.3d at 1061. Based on the record before us, and assuming without deciding that Hammer’s jurisdictional challenges have merit, the district court was justified in denying Hammer’s NRCP 60(b) motion under the principles set forth in *Harrison Living Trust*.

Hammer asserts in her reply brief that it took her nearly a decade to discover that NRCP 60(b) provides a proper mechanism for challenging void judgments, but she offers no further explanation for her delay in filing the motion. And the fact that Hammer did not know about NRCP 60(b) and proceeded in pro se for much of the underlying litigation does not excuse her from the obligation to bring a motion under NRCP 60(b)(4) within a reasonable time. *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 255, 258-59 (2018) (noting that procedural rules cannot be applied differently to pro se litigants and that “a pro se litigant cannot use h[er] alleged ignorance as a shield to protect h[er] from the consequences of failing to comply with basic procedural requirements”). Nevertheless, Hammer essentially seeks to undo a decade of contentious child custody litigation, despite her failure to appeal from the original final order or file a proper NRCP 60(b) motion—based upon legal arguments and information accessible to her since the time the original order was entered—until years later. Under existing precedent governing NRCP 60(b)(4), Hammer’s lack of diligence in seeking relief under the rule justifies the district court’s denial of her motion. *See Harrison Living Tr.*, 121 Nev. at 224, 112 P.3d at 1062 (concluding the district court did not abuse its

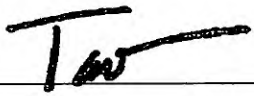
discretion in denying an NRCP 60(b)(4) motion because, among other things, appellant “did not appeal the initial probate court order, although she learned of the ruling promptly after the hearing,” and she did not file her motion “until eighteen months after the probate hearing and more than a year after the distribution of all the Trust property”); *see also River Glider Ave. Tr. v. Wells Fargo Bank, N.A.*, No. 82065, 2022 WL 141814, at *1 (Nev. Jan. 14, 2022) (Order of Affirmance) (reaffirming that even allegedly void judgments are subject to the reasonable-time requirement under NRCP 60(c)(1) and affirming the district court’s denial of an NRCP 60(b)(4) motion where there was a “13-month delay in seeking relief”).

We note that, in addition to her jurisdictional arguments, Hammer also challenges the district court’s parentage and custody determinations on their merits. But such challenges are beyond the scope of our review in this matter, which is confined to the district court’s order denying relief under NRCP 60(b). *See Holiday Inn Downtown v. Barnett*, 103 Nev. 60, 63, 732 P.2d 1376, 1378-79 (1987) (concluding that the court lacked jurisdiction to consider the appeal as a direct challenge to the final judgment where the appeal was not timely taken from that judgment and was instead taken from an order denying NRCP 60(b) relief, and limiting the scope of review to that order only). Accordingly, nothing in our disposition should be construed as passing upon the merits of any order other than the district court’s denial of NRCP 60(b) relief. Rather, we simply conclude that Hammer is barred under lack-of-diligence principles from challenging the district court’s jurisdiction to enter the original orders in this case, and we take no position as to whether those orders are otherwise legally correct.

In light of the foregoing, we affirm the district court's order denying Hammer's NRCP 60(b)(4) motion.⁴

It is so ORDERED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mathew Harter, District Judge
Julie Lachell Hammer
Jones & LoBello
Eighth District Court Clerk

⁴We grant Hammer's July 21, 2022, motion requesting that we take judicial notice of additional legal authorities, which is essentially a notice of supplemental authorities under NRAP 31(e). However, although we have considered these authorities, they do not affect the outcome of our disposition.

Additionally, we deny Rasmussen's request in her answering brief that we deem Hammer a vexatious litigant.

⁵Insofar as the parties present 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.