

IN THE SUPREME COURT OF THE STATE OF NEVADA


YUSUF DAWOOD NURI,
Appellant,
vs.
FASIKA YADETO JARSO,
Respondent.

No. 84127

FILED

MAY 12 2023

ORDER OF AFFIRMANCE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This is an appeal from a district court order granting a motion to set aside a divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Soonhee Bailey, Judge.

In 2018, appellant Yusef Dawood Nuri filed a complaint for divorce from respondent Fasika Yadeto Jarso. Although Nuri was aware that Jarso was in another state on an extended vacation at the time, Nuri nonetheless claimed he did not know where to find Jarso. Based on Nuri's representations, the district court allowed Nuri to serve Jarso by publication. After Jarso did not respond, the court entered a divorce by default. Thereafter, the parties continued to live together. Several years later, Jarso learned about the divorce and the district court granted her motion to set aside the divorce decree because she was never served.

As a preliminary matter, we agree with Nuri that we have jurisdiction over this appeal pursuant to NRAP 3A(b)(8) because the district court's order setting aside the divorce decree is a special order after final judgment. *See Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (providing that this court "may only consider appeals authorized by statute or court rule"); *Peck v. Crouser*, 129 Nev. 120, 123, 295 P.3d 586, 587-88 (2013) (defining a special order after final judgment

as one that affects the rights of the parties arising out of the subject judgment). Although Jarso’s motion for relief from the divorce decree was styled as one seeking relief pursuant to NRCP 60(b), the substance of that motion and of the district court’s order indicates that the district court instead relied on NRCP 60(d)(3), which permits the district court to “set aside a judgment for fraud upon the court.”¹ *See Brown*, 129 Nev. at 345, 301 P.3d at 851 (2013) (explaining that this court looks to the substance of a district court order for purposes of determining appealability). And while NRAP 3A(b)(8) limits our jurisdiction over orders granting relief pursuant to NRCP 60(b), *see Vargas v. J Morales, Inc.*, 138 Nev., Adv. Op. 38, 510 P.3d 777, 778 (2022) (recognizing that the rule gives this court jurisdiction over “all orders granting NRCP 60(b)(1) motions filed more than 60 days after entry of the judgment”); *Est. of Adams ex rel. Adams v. Fallini*, 132 Nev. 814, 818, 386 P.3d 621, 624 (2016) (concluding that an order granting relief from a judgment pursuant to NRCP 60(b)(3) is not independently appealable), it does not limit our jurisdiction to consider orders granting relief pursuant to NRCP 60(d)(3).

Turning to the merits of Nuri’s appeal, we conclude that the district court did not abuse its discretion by granting Jarso relief from the default divorce decree. *See Price v. Dunn*, 106 Nev. 100, 103, 787 P.2d 785, 787 (1990) (providing that this court reviews a district court’s decision to set aside a default judgment for an abuse of discretion). There is substantial evidence in the record to support the district court’s finding that Nuri not

¹While NRCP 60 contains two provisions allowing the district court to relieve a party from a judgment due to fraud, *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 650-51, 218 P.3d 853, 856 (2009), the district court’s order indicates it granted relief due to “fraud upon the court” rather than fraud or misrepresentation by an opposing party.

only failed to serve Jarso with the complaint for divorce or the resulting divorce decree, but that Nuri obtained the divorce decree by committing a fraud upon the court. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (“The district court’s factual findings . . . will be upheld if not clearly erroneous and if supported by substantial evidence.”). Despite knowing that Jarso was outside of Nevada and knowing when she would return, Nuri represented to the district court that he did not know where Jarso could be found and obtained an order allowing him to accomplish service by publication.² In so doing, Nuri committed a fraud on the court as contemplated by NRCP 60(d)(3). *See Price*, 106 Nev. at 103-05, 787 P.2d at 787-88 (concluding that a plaintiff committed a fraud on the court where she failed to “ma[k]e additional, simple efforts to locate” the defendant before serving him by publication). Specifically, through his actions, Nuri “intentionally kept [Jarso] away from the hearing” and “prevented a real trial on the issues.” *Id.* at 104, 787 P.2d at 787-88; *see also Savage v. Salzmann*, 88 Nev. 193, 195, 495 P.2d 367, 368 (1972) (explaining that “fraud upon the court” under a former version of NRCP 60(d)(3) “consists of fraud by the other party to the suit which prevents the losing party either from knowing about his rights or defenses, or from having a fair opportunity of presenting them upon the trial” (quoting *Murphy v. Murphy*, 65 Nev. 264, 271, 193 P.2d 850, 854 (1948))). And although Nuri waived his right to challenge the timeliness of Jarso’s motion, *see Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (providing that an argument, other

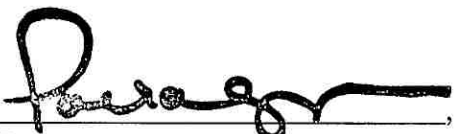
²Importantly, at the time Nuri sought to serve Jarso by publication, the applicable rule of civil procedure provided that the district court may only allow such service where the plaintiff demonstrated that he did not know where the defendant currently resided *or could be found*. *See NRCP 4(e)(1)(i)* (2018).

than a challenge to the court's jurisdiction, not raised in the district court is "waived and will not be considered on appeal"), we conclude that Jarso filed her motion within a reasonable time because she did so within a week of learning about the default divorce, *see Kaur v. Singh*, 136 Nev. 653, 655-66, 477 P.3d 358, 361-62 (2020) (explaining that a motion for relief from a judgment due to fraud on the court must be brought "within a reasonable time"). Lastly, we reject Nuri's argument that the district court's order should be set aside because it did not analyze and make findings on the *Yochum*³ factors, given that the district court did not grant Jarso relief pursuant to NRCP 60(b)(1). *See Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 470, 469 P.3d 176, 179-80 (2020) (holding that "a district court must address the *Yochum* factors when determining [whether] . . . sufficient grounds exist to set aside 'a final judgment, order, or proceeding'" pursuant to NRCP 60(b)(1)). Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

³*Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997).

cc: Hon. Soonhee Bailey, District Judge, Family Court Division
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