

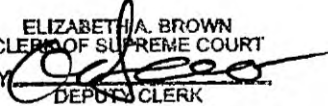
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHELLE FAUGHNAN,
Appellant,
vs.
KERRY FAUGHNAN,
Respondent.

No. 86279-COA

FILED

MAY 17 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michelle Faughnan appeals from a district court order denying a motion for relief from judgment and a motion to adjudicate an omitted asset. Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Michelle and respondent Kerry Faughnan were married in 2008. In 2021, Michelle filed a complaint for divorce and sought a division of the community property and an award of alimony. Kerry filed an answer and counterclaim. The district court subsequently issued a case management order providing for the close of discovery on March 23, 2022, and scheduling trial to commence on April 22, 2022. The court later reset the trial date to April 25, 2022.

On March 25, 2022, Michelle filed a motion to extend the discovery deadline and continue trial. Kerry opposed the motion and Michelle filed a reply. The district court thereafter issued a written order denying Michelle's motion. The court found that Michelle's motion was untimely filed pursuant to EDCR 2.35(a) and Michelle did not demonstrate that the delay was the result of excusable neglect. The court also found that Michelle did not include a statement listing the already completed

discovery, what specific discovery remained, or a proposed schedule for completing all remaining discovery as required by EDCR 2.35(b). Finally, the court concluded that Michelle failed to demonstrate good cause to continue the trial. *See* EDCR 7.30(a). Therefore, the district court denied Michelle's motion to extend the discovery deadline and continue trial.

The parties subsequently settled their disputes and the district court entered a decree of divorce containing the parties' agreements as to the division of community property and alimony. As relevant to this matter, the parties agreed that Kerry would provide alimony to Michelle. Kerry agreed to make the monthly payments for Michelle's vehicle in the amount of \$1,319 until the vehicle is paid off and provide additional monthly alimony payments of \$1,350 to Michelle during that time. The parties also agreed that, after the vehicle is fully paid for, Kerry will provide Michelle with monthly alimony payments in the amount of \$2,700 until April of 2027. After April 2027, Kerry's alimony obligation will cease. Moreover, the parties agreed that the alimony obligation will cease should Michelle remarry or if either party dies, but that the alimony obligation is otherwise non-modifiable.

Michelle subsequently filed a motion for relief from the decree pursuant to NRCP 60(b)(1). In her motion, Michelle contended that the alimony award was not sufficient to support her and requested that the district court revisit that issue. Michelle also claimed that the district court abused its discretion by denying her motion to extend the discovery deadline and continue trial. Michelle further asserted that the alimony award and the denial of her motion to extend the discovery deadline and continue trial constituted mistakes such that the decree of divorce should be set aside

pursuant to NRCP 60(b)(1). Michelle also filed a motion to adjudicate an omitted asset. Kerry opposed the motions.

The district court subsequently entered a written order denying both motions, finding that the parties agreed to settle the issues involved with their divorce, including alimony, and the entry of the decree of divorce resulted in a final adjudication of the parties' rights and responsibilities. The court further concluded that Michelle's request to modify the alimony award lacked merit. The court therefore concluded that Michelle failed to meet her burden to demonstrate that her motion for relief from the divorce decree was meritorious. The court also concluded that Michelle did not demonstrate that any assets were omitted from the decree of divorce. This appeal followed.

Michelle argues that the district court abused its discretion by denying her motion for relief from the divorce decree. She contends the court should have set aside the decree because she was forced to accept a settlement agreement after the court declined her request to extend the discovery deadline and thereafter declined her request to utilize exhibits that she had not disclosed during the discovery period. Michelle therefore contends that the denial of her motion to extend the discovery deadline and continue trial constituted a mistake that warranted relief pursuant to NRCP 60(b)(1). She also contends the alimony award was insufficient to support her financial needs and that it also constituted a mistake that should warrant relief pursuant to NRCP 60(b)(1).

"We review the denial of an NRCP 60(b)(1) motion for an abuse of discretion." *Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 469, 469 P.3d 176, 179 (2020). "NRCP 60(b)(1) provides that a district court may relieve a party or its legal representative from a final judgment, order, or

proceeding based on a finding of mistake, inadvertence, surprise, or excusable neglect.” *Id.* at 470, 469 P.3d at 179 (internal quotation marks and emphasis omitted). The movant has the burden to establish, by a preponderance of the evidence, “that sufficient grounds exist to set aside a final judgment, order or proceeding.” *Id.* at 470, 469 P.3d at 179-80 (internal quotation marks omitted).

First, we consider Michelle’s contention that the district court abused its discretion by rejecting her assertion that the denial of her motion to extend the discovery deadline and continue trial constituted a mistake that warranted setting aside the divorce decree pursuant to NRCP 60(b)(1). Michelle asserts that because the district court denied her request, she was unable to adequately obtain discovery from Kerry. She also asserts that she was prejudiced by the court’s refusal to extend the discovery deadline because the court later refused to permit her to utilize exhibits that she did not disclose during the discovery period. Michelle further argues that the decree of divorce should be set aside because these events resulted in her being denied her right to due process as she was deprived of the ability to meaningfully present her case.

“Discovery matters are within the district court’s sound discretion, and we will not disturb a district court’s ruling regarding discovery unless the court has clearly abused its discretion.” *Club Vista Fin. Servs. v. Eighth Jud. Dist. Ct.*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012); *see also Bongiovi v. Sullivan*, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006) (explaining that this court reviews a “district court’s decision on a motion for continuance for an abuse of discretion”). “There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances

present in every case.” *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964); *see also Mesi v. Mesi*, 136 Nev. 748, 750, 478 P.3d 366, 369 (2020) (providing that “[d]ue process is satisfied where interested parties are given an opportunity to be heard at a meaningful time and in a meaningful manner” (internal quotation marks omitted)).

“When considering whether there is good cause to modify a scheduling order, the district court must first consider the moving party’s diligence.” *Torremoro v. Eighth Jud. Dist. Ct.*, 138 Nev., Adv. Op. 54, 512 P.3d 765, 769 (2022); *see also* NRS 16.010 (explaining a party’s failure to diligently procure discovery will weigh against granting that party’s motion for a continuance). Illness may be grounds for a continuance, but a party will not be entitled to a continuance if that party has not proceeded in a diligent manner. *Cf. Bongiovi*, 122 Nev. at 570, 138 P.3d at 444 (stating that “[g]enerally, an attorney’s illness is good grounds for a continuance. And when that attorney has not been dilatory in conducting his case, the district court’s denial of a continuance may be an abuse of discretion”).

Michelle moved to extend the discovery deadline and continue trial. In her motion, Michelle requested additional time to conduct discovery based on the assertion that Kerry did not adequately disclose important information related to the marital community’s assets, his income, and his criminal charges. She explained that she suffers from various long-term medical problems and generally stated that she needed additional time to obtain discovery. Michelle’s counsel also submitted a declaration stating that he has various health issues, which cause him to work less hours and to be mindful of his stress levels. Counsel also noted that he had not yet completed his review of documents Michelle gave to him and he therefore had not disclosed those documents to Kerry.

As explained previously, the district court denied Michelle's motion because it was untimely filed. *See* EDCR 2.35(a) (stating a motion to extend discovery must be filed no later than 21 days before the close of discovery). The court noted that Michelle alleged that she needed additional time to complete discovery due to medical issues but found that her allegations were insufficient to demonstrate that her delay was the result of excusable neglect. *See id.* (stating that when a party makes an untimely request to extend the discovery period, the district court may only grant relief upon a showing that the failure to timely request the extension was due to excusable neglect). In addition, the court denied Michelle's request to continue the trial because she did not show good cause as required by EDCR 7.30(a).

Below, Michelle did not explain why she waited until after the discovery deadline to seek an extension of the discovery period. Moreover, her counsel admitted in the declaration he filed with the motion that he failed to review discovery material in a timely manner and that admission demonstrated that he did not diligently pursue this matter. Thus, under the circumstances presented here, the district court's findings that the medical issues noted by Michelle and her counsel's decision to work less hours due to health reasons did not constitute excusable neglect warranting extending the discovery deadline are supported by substantial evidence. *See Torremoro*, 138 Nev., Adv. Op. 54, 512 P.3d at 769 (stating that excusable neglect may not be based on "the party's own carelessness, inattention, or willful disregard of the court's process, but because of some unexpected or unavoidable hindrance"). In addition, the record supports the district court's finding that, in light of the untimely nature of her request and failure to explain her delay, Michelle did not demonstrate good

cause to continue the trial. Based on the forgoing analysis, we conclude that Michelle did not demonstrate that the district court's denial of her request to extend the discovery deadline and continue trial was erroneous or that it deprived her of her right to due process. *See Club Vista Fin. Servs.*, 128 Nev. at 228, 276 P.3d at 249; *Bongiovi*, 122 Nev. at 570, 138 P.3d at 444; *Ungar*, 376 U.S. at 589. Accordingly, the district court did not abuse its discretion by concluding the denial of Michelle's underlying motion did not constitute a mistake warranting relief pursuant to NRCP 60(b)(1).¹ *See Willard*, 136 Nev. at 469, 469 P.3d at 179.

Turning to Michelle's request to set aside the divorce decree and modify the alimony award, she similarly argues that the alimony award constitutes a mistake warranting setting aside the decree pursuant to NRCP 60(b)(1). Michelle contends that she is unable to earn a substantial salary because she suffers from various health problems she sustained during the parties' marriage and that the alimony award therefore does not adequately support her needs.

"This court reviews district court decisions concerning divorce proceedings, such as [alimony], for an abuse of discretion." *Davitian-Kostanian v. Kostanian*, 139 Nev., Adv. Op. 27, 534 P.3d 700, 705 (2023) (internal quotation marks omitted). "NRS 125.150(8) provides that unaccrued alimony payments may be modified upon a showing of changed

¹To the extent Michelle also argues the district court's decision to preclude her from utilizing exhibits at trial based on her failure to timely disclose them was a mistake warranting setting aside the decree of divorce, she does not provide cogent argument or relevant authority regarding this issue, and as a result, we decline to consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument or relevant authority).

circumstances.” *Id.* (internal quotation marks and emphasis omitted). To that end, the district court may “analyze any factors the court considers relevant” when it weighs whether to modify the alimony award. *Id.*

Here, the district court found that the parties reached an agreement as to the appropriate alimony award. And the parties agreed that the alimony award was not modifiable. Even if the award was modifiable, the district court found that Michelle had not demonstrated changed circumstances to support modification of the alimony award. The court therefore rejected Michelle’s request to modify the award. Substantial evidence supports the district court’s findings on these points, and thus we conclude that the district court did not abuse its discretion by denying Michelle’s request to set aside the decree of divorce to modify the alimony award. *See id.*; *Willard*, 136 Nev. at 469, 469 P.3d at 179.

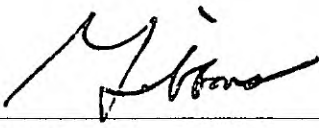
Based on the foregoing analysis, we conclude that the district court did not abuse its discretion by denying her motion for NRCP 60(b)(1) relief. *See Willard*, 136 Nev. at 470, 469 P.3d at 180. We therefore affirm that determination.²

Finally, to the extent that Michelle purports to challenge the district court’s denial of her motion to adjudicate an omitted asset, she does

²We recognize that our supreme court has previously determined that a district court’s failure to address and make express findings regarding the factors set forth in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in part by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997), in denying a request for NRCP 60(b) relief warrants reversal of that decision. *See Willard*, 136 Nev. at 471, 469 P.3d at 180. However, given that Michelle failed to present any argument urging reversal for failure to address or make findings regarding the *Yochum* factors, she has waived this issue on appeal. *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).

not present any arguments concerning the district court's decision on this issue, and she has therefore waived any challenge to that decision as a result. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Division
Robert W. Lueck, Ltd.
Kerry Faughnan
Eighth District Court Clerk

³We have considered Kerry's request for this court to sanction Michelle pursuant to NRAP 38 on the ground that this appeal is frivolous. We conclude that Kerry is not entitled to relief and deny his request.

In addition, we have reviewed Kerry's motion to expedite this decision and conclude no relief is warranted.