

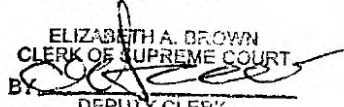
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMY C. LUCIANO,
Appellant,
vs.
FRANK LUCIANO,
Respondent.

No. 86782-COA

FILED

AUG 13 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Amy C. Luciano (n/k/a Amy Hanley) appeals from a district court order denying four separate NRCP 60(b) motions. Eighth Judicial District Court, Family Division, Clark County; Mary D. Perry, Judge.

Amy and respondent Frank Luciano were involved in divorce and child custody proceedings in October 2019. After Amy failed to appear at the calendar call and at the trial, the district court entered a final decree of divorce in June 2020. In July 2020, Amy filed a motion to set aside the decree pursuant to NRCP 60(b), asserting that she had not been served with the summons, complaint, or any order in the case, and that the decree was thus fraudulently entered. The district court denied Amy's motion in a December 2020 written order concluding that there was no basis to set aside the decree as the record established Amy was provided notice of the calendar call and trial date in open court. In May 2021, Amy filed a second NRCP 60(b) motion, seeking to set aside several prior orders, including the previous order denying her first motion to set aside. In August 2021, the court denied the motion, finding that Amy failed to provide any proof of

service for the motion and that the district court had previously considered the same arguments in Amy's first NRCP 60(b) motion. Amy subsequently filed an appeal challenging the decree of divorce and the two orders denying her NRCP 60(b) motions. *See Luciano v. Luciano*, No. 83522-COA, 2022 WL 2590009 (Nev. Ct. App. July 7, 2022) (Order Dismissing in Part and Affirming in Part). This court dismissed the appeal insofar as it challenged the decree of divorce because Amy did not timely appeal from the decree. *Id.* However, this court affirmed the district court's denial of Amy's two NRCP 60(b) motions, concluding that Amy failed to offer any cogent argument or relevant authority to support her assertions. *Id.*

In May 2022, Amy filed a motion seeking to modify physical custody and requested that the district court vacate the existing child support order. In September 2022, the district court issued a written order granting Amy's motion in part. Subsequently, on December 23, 2022, Amy's attorney, that was retained for the first appeal, filed a motion to withdraw as her counsel. The district court granted this motion on January 10, 2023, and on that same day, Amy filed a motion to set aside the order of withdrawal. In her motion, Amy argued that she did not receive the motion until December 30, 2022, and that counsel committed fraud because the motion to withdraw did not state the fact that her counsel had sent her a draft substitution of attorney, which she did not execute. Amy's motion also contained various factual allegations regarding Frank. The attorney filed an opposition to her motion to set aside.

In March 2023, Amy filed three additional motions to set aside: a motion to set aside the district court's September 2022 order temporarily

modifying parenting time and modifying child support; a motion to set aside the August 2021 order denying Amy's second NRCP 60(b) motion; and a motion to set aside the district court's December 2020 order denying Amy's first NRCP 60(b) motion to set aside the decree of divorce. In her motions, Amy broadly asserted that Frank purportedly failed to serve documents, failed to file an updated financial disclosure form, and that he made false assertions to the district court. Thereafter, the district court entered an order addressing Amy's four pending motions to set aside. The court found that while Amy's motion to set aside the order allowing her attorney to withdraw was timely filed, her arguments did not relate to any actual opposition to her attorney seeking to withdraw. The court found that Amy's motions to set aside the December 2020 and August 2021 orders were untimely and raised issues that had no merit. The court then found that Amy's motion as to the September 2022 order was frivolous and did not provide a basis to set aside that order. Thus, the district court denied all four motions to set aside. This appeal followed.

On appeal, Amy's arguments largely focus on the June 2020 divorce decree, which she contends was devoid of findings of fact and conclusions of law. She further argues that service of various filings and submissions was not effectuated, and she was not allowed to participate in multiple hearings from 2019 through 2020. She also asserts that Frank made false allegations throughout the proceedings, misrepresented his financial disclosure form, and that the district court failed to consider her pleadings. Additionally, Amy argues that Frank did not file any oppositions to the motions to set aside the various orders. Conversely, Frank argues

that the district court did not abuse its discretion in denying the motions to set aside.

“The district court has wide discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b).” *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 28 P.3d 255, 257 (2018) (quotation marks omitted). 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). “An abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) (internal quotation marks omitted).

Having considered the parties’ arguments and reviewed the record on appeal, we conclude that the district court did not abuse its discretion by denying Amy’s motions to set aside.¹ As a preliminary matter, we are unpersuaded by Amy’s contention that the district court should have granted her motions to set aside because Frank failed to file oppositions. While a district court has discretion to construe a party’s failure to file an opposition as an admission that the motion is meritorious, *see King v.*

¹To the extent Amy challenges the denial of her motion to set aside the post-divorce decree order allowing her attorney to withdraw, this part of the challenged order is not appealable as a special order after judgment because it did not arise out of the final judgment (the divorce decree). *See* NRAP 3A(b); *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (noting that a special order appealable under NRAP 3A(b)(8) “must be an order affecting the rights of some party to the action, growing out of the judgment previously entered.”). Thus, we lack jurisdiction to consider her challenge to this portion of the order.

Carlidge, 121 Nev. 926, 927, 124 P.3d 1161, 1162 (2005), a district court is not required to do so. *See also* EDCR 5.702(a) (providing that the district court may deny a motion at any time).

Additionally, the district court did not abuse its discretion in denying Amy's motions to set aside the December 2020 and August 2021 orders, which denied Amy's first two motions for NRCP 60(b) relief. This court previously rejected Amy's largely identical arguments regarding the purported lack of findings and conclusions of law in the divorce decree and other issues related to the decree in resolving her appeal from the December 2020 and August 2021 orders. *See Luciano*, 2022 WL 2590009, at *2. That determination is the law of the case on those issues, which bars Amy from relitigating those points in her underlying NRCP 60(b) motions and in this appeal. *See Tien Fu Hsu v. Cnty. of Clark*, 123 Nev. 625, 630, 173 P.3d 724, 728 (2007) (recognizing the law of the case doctrine "is designed to ensure judicial consistency and to prevent the reconsideration, during the course of a single continuous lawsuit, of those decisions which are intended to put a particular matter to rest" (quotation marks omitted)).

To the extent that Amy attempts to present arguments beyond those raised in her prior appeal in arguing that these orders should have been set aside, she fails to present any cogent argument demonstrating that the district court should have granted her motions to set aside the December 2020 and August 2021 orders. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that we need not consider arguments that the parties fail to cogently argue). Thus, the district court did not abuse its discretion in denying Amy's motions to


set aside these orders. *See Pack v. LaTourette*, 128 Nev. 264, 267, 277 P.3d 1246, 1248 (2012) (holding that appellate courts may affirm a district court order on different grounds than those used by the district court).²

Next, with respect to the denial of the motion to set aside the September 2022 order partially granting Amy's motion to modify physical custody and child support, Amy fails to offer any cogent argument to support her challenge to this decision. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. For example, although Amy asserts that Frank did not serve her with court pleadings, she does not explain how this alleged issue impacted the decision set forth in the court's September 2022 order such that that decision should be set aside. Amy further asserts that Frank made misrepresentations to the district court, but she fails to specify what exactly Frank misrepresented that lead to the September 2022 court order and how it related to her request for NRCP 60(b) relief as to that decision. Moreover, Amy has failed to cite any authority regarding NRCP 60(b) or otherwise demonstrate its applicability with respect to the September 2022


²To the extent Amy purports to directly challenge the decree of divorce, that decision is not properly before us. As noted above, Amy's previous appeal from that order was dismissed as untimely. *See Luciano*, 2022 WL 2590009, at *2. And with regard to the instant appeal, such a challenge is beyond the scope of our review in this matter, which is confined to the district court's order denying her requests for 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).

order. *See id.* Thus, the district court did not abuse its discretion in denying the NRCP 60(b) motion to set aside the September 2022 order.

As we see no basis for reversal of the district court's order, we
ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Mary D. Perry, District Judge, Family Division
Amy C. Luciano
McFarling Law Group
Eighth District Court Clerk

³To the extent Amy raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.