IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOUGLAS BROFMAN,
Appellant,
vs.
GINA FIORE,
Respondent.

No. 86673-COA

ORDER VACATING DISTRICT COURT ORDER, DISMISSING APPEAL IN PART, AND AFFIRMING IN PART

Douglas Brofman appeals from district court post-judgment orders entered in a child custody and support action. Eighth Judicial District Court, Family Division, Clark County; Dawn Throne, Judge.

The underlying proceeding primarily concerned a child custody and support dispute between Brofman and respondent Gina Fiore; however, Brofman also asserted a counterclaim against Fiore for repayment of loans he allegedly made to her. At an evidentiary hearing, the district court stated it would not hear Brofman's counterclaim because it was not properly pleaded and was barred by the statute of limitations. After the district court entered a child custody and support decree, which did not specifically address Brofman's counterclaim, he appealed the decision in November 2021, challenging the court's handling of the counterclaim.

Although this court initially heard Brofman's appeal from the child custody and support decree, *Brofman v. Fiore*, Docket Nos. 83807-COA & 83865-COA, 2023 WL 3476065 (Nev. Ct. App. May 15, 2023) (Order Dismissing Appeal in Part and Affirming in Part (Docket No. 83807-COA), and Dismissing Appeal (Docket No. 83865-COA)), he petitioned for review

of our decision, which the supreme court granted. In February 2024, the supreme court entered a decision in which it treated the child custody and support decree as the final judgment in this case in light of the district court's statement at the evidentiary hearing that it would not hear Brofman's counterclaim. *See Brofman*, Docket Nos. 83807 & 83865, 2024 WL 655241, at *2 (Nev. Feb. 15, 2024) (Order Affirming in Part, Vacating in Part and Remanding). In doing so, the supreme court vacated the child custody and support decree insofar as it related to the counterclaim and remanded for further proceedings, concluding that Brofman's pleading gave Fiore adequate notice that he sought reimbursement for loans he allegedly made to her and that it was impossible to determine whether the counterclaim was barred by the statute of limitations because the district court did not permit Brofman to present evidence or argument concerning the debts at issue. *Id.*

During the pendency of the November 2021 appeal in Docket Nos. 83807-COA & 83865-COA, Brofman argued before the district court that it had not previously resolved his counterclaim, and in January 2023, the court entered an order purporting to authorize Brofman to amend his counterclaim. Brofman then filed an amended pleading in which he asserted several tort and contract causes of action, which related to alleged loans he made to Fiore, debts she purportedly owed him, and Fiore's conduct in connection with those financial issues and the parties' custodial dispute. Fiore moved to dismiss Brofman's counterclaims pursuant to NRCP 12(b)(5), which Brofman opposed. Following a hearing on the matter, the court entered an order purporting to dismiss Brofman's counterclaims in April 2023, concluding that they were largely barred by the statute of limitations and doctrine of res judicata, and that, insofar as these bars did

not apply, Brofman's alleged damages fell below the jurisdictional threshold. This appeal followed.[1]

On appeal, Brofman presents extensive argument concerning the merits of the order purporting to dismiss his counterclaims. However, under the circumstances of this case, we cannot reach Brofman's arguments. "[W]hen an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before [Nevada's appellate courts,]" although the district court "retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal's merits." *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006). Because the timely filing of Brofman's November 2021 appeal divested the district court of jurisdiction to revisit matters resolved by the final judgment challenged therein, which the supreme court determined included Brofman's counterclaim, the district court was without jurisdiction to reopen Brofman's counterclaim during the pendency of the appeal. To the extent Brofman argues that the district court did not actually resolve his counterclaim or enter a final judgment before he filed the prior appeals, the supreme court determined otherwise in its order resolving those appeals,

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[1]Brofman's notice of appeal designates numerous district court orders as decisions being challenged in this appeal. However, while this appeal was pending before the supreme court, it dismissed Brofman's appeal on July 11, 2023, as to all but three of the challenged orders. And while Brofman sought relief from that decision, the supreme court denied his request. Thus, to the extent Brofman argues the merits of portions of his appeal that were dismissed by the supreme court's July 11 order, we conclude that his arguments are not properly before us.

see Brofman, Docket Nos. 83807 & 83865, 2024 WL 655241, at *2, which is the law of the case, *see Tien Fu Hsu v. Cnty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) ("When an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal." (alteration and internal quotation marks omitted)).

Thus, the district court's orders purporting to authorize Brofman to amend his pleading and dismissing his counterclaims, which were entered during the pendency of the November 2021 appeal, were void ab initio. *See Mack-Manley*, 122 Nev. at 855, 138 P.3d at 529-30; *Luboyeski v. Hill*, 872 P.2d 353, 355 (N.M. 1994) (concluding that an order granting a motion to amend the plaintiff's complaint to add a claim was void because it was entered during the pendency of an appeal from the final judgment, which divested the trial court of jurisdiction to take action affecting the final judgment). Consequently, we vacate the district court's April 2023 order and otherwise dismiss Brofman's appeal from the order purporting to dismiss his counterclaims.[2]

Finally, we turn to the two remaining orders still at issue in this appeal—the district court's May 18, 2023, orders regarding permission for international travel and attorney fees. *See supra* note 1. Here, Brofman does not develop any meaningful argument concerning those decisions in his appellate briefing. As a result, we decline to address his challenges to

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[2]Despite the circumstances that compel dismissal of this appeal, nothing precludes Brofman from litigating his original counterclaim in the underlying proceeding or moving for leave to amend it in light of the supreme court's decision in Docket Nos. 83807 & 83865.

these decisions, and we therefore affirm them. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

It is so ORDERED.[3]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Dawn Throne, District Judge, Family Division
McFarling Law Group
Chesnoff & Schonfeld
Eighth District Court Clerk

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[3]Insofar as Brofman requests that this court direct that the underlying proceeding be assigned to a different district court judge, we conclude he has not established a basis for reassignment. *See Smith v. Mulvaney*, 827 F.2d 558, 562-63 (9th Cir. 1987) (setting forth factors that appellate courts consider in evaluating whether to direct reassignment of a trial court proceeding); *Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 291 (Ct. App. 2023) (applying the *Mulvaney* factors to reassign a remanded family law case to a different district court judge).

And to the extent the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.