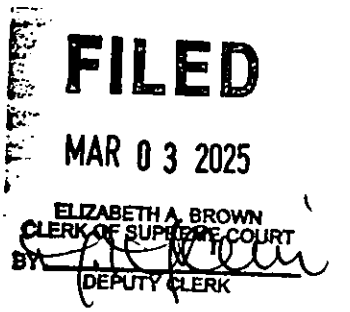
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONNA MAE YUKIE DEPONTE F/K/A DONNA MAE Y.D. OOMRIGAR,
Appellants,
vs.
JONATHAN Z. OOMRIGAR,
Respondent.

No. 87487-COA



ORDER OF AFFIRMANCE

Donna Mae Yukie Deponte, fka Donna Mae Y.D. Oomrigar, appeals from a district court order granting in part a motion for relief from a decree of divorce under NRCP 60(b). Eighth Judicial District Court, Family Division, Clark County; Mari D. Parlade, Judge.

Donna and respondent Jonathan Z. Oomrigar were married in 2010. In 2021, Donna filed a complaint for divorce and sought an "equitable division" of the parties' community property and debts. Jonathan filed an answer and counterclaim. On the eve of the trial, the attorneys for both parties negotiated a settlement over the phone and reportedly reached an agreement, which detailed the terms of the parties' property distribution. Donna's counsel then emailed Jonathan's counsel the terms of the settlement with which Jonathan's counsel agreed.

The following day, when the trial was scheduled to commence, counsel for both parties appeared without their clients and confirmed that a settlement had been reached. Donna's attorney presented the email exchange setting forth the terms of the settlement agreement, which the

district court "left-side filed," instead of placing the terms of the agreement on the record.[1] The court scheduled a status check and instructed the parties to draft a divorce decree outlining the terms of their agreement. Donna then prepared a stipulated divorce decree, which was supposedly consistent with the terms of the settlement, and sent it to Jonathan. However, during the status check, Jonathan's attorney informed the court that Jonathan did not agree with the proposed terms of the divorce decree and had refused to authorize him to sign it on his behalf. Subsequently, Jonathan's counsel filed a motion to withdraw. The district court granted that motion and directed Donna to file a motion to enforce the settlement agreement so that the divorce decree could be entered.

Donna moved to enforce the settlement, seeking entry of the stipulated divorce decree, primarily arguing that the email exchange between counsel constituted a binding settlement agreement between the parties and that Jonathan's refusal to sign the stipulated divorce decree was inconsequential to the enforcement of the agreement. With the assistance of new counsel, Jonathan opposed the motion and filed a countermotion to reopen discovery and set a new trial date.

At a subsequent hearing, the district court relied on Jonathan's failure to personally appear before the court on the trial date as a basis to conclude that he was aware of the settlement agreement's terms when his counsel accepted it, reasoning that Jonathan knew about the June 22, 2022, trial date and understood he was required to attend if the matter was not

[1]"Left-side filing" is a practice in which the district court retains a loose copy of a document without making it a part of the active record. *See Leavitt v. Neven*, No. 2:12-cv-00625-MMD-NJK, 2019 WL 532249, at *3 (D. Nev. Feb. 11, 2019) (stating the same).

settled, but he failed to appear. The court then entered a written order granting Donna's motion, finding that "[t]he material terms of the settlement agreement are set forth sufficiently in the [email exchange] to enforce the agreement." The district court therefore ordered Donna to submit a clean version of the divorce decree for execution.

Thereafter, on September 28, 2022, the district court entered the stipulated divorce decree without the signature of Jonathan or his counsel. The divorce decree divided various assets and debts between the parties in accordance with the settlement agreement. Notably, the divorce decree included a provision that, "[t]he parties . . . acknowledge that the division of assets and debts as provided herein constitutes an equal division of the same."

Nearly six months later, after hiring a new attorney, Jonathan moved to set aside the divorce decree after obtaining, for the first time, a forensic analysis, which revealed evidence of an unequal property distribution. Specifically, he contended that the decree allowed Donna to retain funds taken from his separate property Fidelity account without his knowledge, use community funds to pay off her personal credit card debts and post-separation expenses, and keep rental income that should have been partially allocated to him. Donna opposed the motion, asserting that Jonathan was attempting to relitigate the enforceability of the settlement agreement, which had already been resolved, and that claim preclusion should bar the court from granting relief under NRCP 60(b). She also disagreed with Jonathan's claims of an unequal distribution, referencing her own forensic analysis to counter his assertions.

Following evidentiary hearings, during which both parties presented expert testimony regarding their competing forensic accounting

analyses, the district court entered an order granting Jonathan's motion to set aside the divorce decree in part. The court determined that the divorce decree incorporated NRS 125.150(1)(b), which requires an equal division of community assets and debts unless specific findings justify an unequal distribution, by providing that "the division of assets and debts as provided herein constitutes an equal division of the same." The court further found that Jonathan's expert witness raised credible concerns about an unequal division of property. Specifically, the court concluded that the expert's testimony highlighted issues regarding Jonathan being assigned Donna's separate property debts, the commingling of separate property assets, and an unequal distribution of property that favored Donna. Thereafter, the court concluded that Jonathan "is entitled to relief pursuant to NRCP 60(b) because the salutary purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party." However, the district court indicated that it "remains to be seen at trial" whether Jonathan can prove that Donna engaged in fraudulent, misleading, or deceptive practices.

The district court partially set aside the divorce decree, striking language that included, among other things, (1) provisions waiving any claims between Donna and Jonathan, such as reimbursement for temporary spousal support, legal fees, alimony, and other property or financial claims; (2) acknowledgments stating that the parties understood the contents of the decree, entered into it willingly, and agreed that the division of assets and debts was equitable, having been reached through negotiation and compromise without undue influence or misrepresentation; and (3) provisions outlining the property division, including the distribution of bank accounts and proceeds from the sale of real property. The district

court's order reopened discovery limited to the disposition of the community assets and debts that were stricken from the order. Donna now appeals.

On appeal, Donna argues that the district court abused its discretion by partially setting aside the divorce decree, asserting that the court never found she had committed fraud or that there had been a mistake regarding the settlement agreement with Jonathan as required by NRCP 60(b) in order to set aside the decree. Furthermore, Donna argues that the court disregarded its prior determination that the parties had reached a valid settlement agreement and asserts claim or issue preclusion should have barred the setting aside of the divorce decree. In support, Donna cites *Martin v. Martin*, 138 Nev. 786, 793-94, 520 P.3d 813, 820 (2022), to argue that, because the parties had a valid contract, the district court should have treated the matter as fully litigated.

In turn, Jonathan argues that the divorce decree failed to equally divide the community assets and debts, contrary to a provision in the decree requiring an equal division of property. Jonathan contends that Donna has not presented a cogent argument against setting aside the decree under NRCP 60(b) or explained why claim or issue preclusion should apply. We address these arguments below.[2]

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[2]Jonathan additionally argues that this court lacks jurisdiction to hear this appeal because the order partially setting aside the decree is purportedly interlocutory, but this argument is without merit because the recent amendment to NRAP 3A(b)(8) authorizes appeals from "[a] special order entered after final judgment, *including* a post-judgment order . . . granting or denying relief under NRCP 60(b)." (Emphasis added.) This amendment, which took effect on August 15, 2024, applies to matters pending or filed on or after that date, including the present appeal. *See In re Creation of a Comm'n on the Nev. Rules of Appellate Proc.*, ADKT 0580 (Order Amending the Nevada Rules of Appellate Procedure, June 7, 2024).

The district court did not err in providing NRCP 60(b) relief

Courts have wide discretion to resolve a motion to set aside a judgment under NRCP 60(b). *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018). "The salutary purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party. Rule 60 should be liberally construed to effectuate that purpose." *Nev. Indus. Dev., Inc. v. Benedetti*, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987) (citations omitted).

In recognizing the preference of adjudicating cases on the merits, NRCP 60(b) contains a catchall provision allowing a court to relieve a party from a final judgment, order, or proceeding for "any other reason that justifies relief." NRCP 60(b)(6). The Nevada Supreme Court has held that relief under the catchall is only warranted in extraordinary circumstances and is unavailable when relief could be sought under other provisions of NRCP 60(b). *Vargas v. J Morales, Inc.*, 138 Nev. 384, 388-89, 510 P.3d 777, 781 (2022). Additionally, this court's policy preference favoring adjudication on the merits is heightened during domestic relations cases. *Price v. Dunn*, 106 Nev. 100, 105, 787 P.2d 785, 788 (1990).

We also note that other states with catchall provisions similar to NRCP 60(b)(6) have permitted trial courts to grant relief under their versions of the rule in cases where the original property division improperly disposed of marital assets. *See, e.g., Lacher v. Lacher*, 993 P.2d 413, 418-20 (Alaska 1999) (holding the trial court properly granted Rule 60(b)(6) relief to set aside the property distribution in a dissolution decree finding that the original division was "woefully incomplete" due to the omission of substantial marital assets); *Penland v. Warren*, 194 A.3d 755, 758 (Vt. 2018) (holding that a trial court has jurisdiction under Rule 60(b)(6) to modify a final divorce order's property division based on the mutual agreement of the

parties, where "extraordinary circumstances" warrant such relief to prevent hardship or injustice).

Here, the district court found that justice required it to partially set aside the decree, which had stated that it had equally divided the parties' community property, because the parties' conflicting forensic analyses suggested that an equal division may not have occurred. Therefore, the court found that partially setting aside the decree under NRCP 60(b) was warranted. We find no abuse of discretion in granting Jonathan's motion under these facts.

In this case, the district court found that there were legitimate questions about equity and fairness in the distribution of assets set forth in the decree, based in part on the conflicting forensic evidence presented by the parties. It also recognized that Jonathan had not signed the settlement agreement, and that Jonathan claimed that he did not authorize his attorney to enter into the settlement agreement and that his attorney may have mislead or "grossly taken advantage" of him. On these facts, we conclude that the court properly exercised its discretion in setting aside certain provisions of the decree under NRCP 60(b)(6). This relief was appropriate because the district court was concerned that an unequal division of the parties' assets and debts had occurred, contrary to the terms of the divorce decree, and that Jonathan had not actually agreed to the parties' stipulation, such that injustice may have occurred.[3] *See Vargas*, 138 Nev. at 388-89, 510 P.3d at 781.

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[3]With regard to Donna's argument that the district court erred by not making findings of fraud or mistake in order to grant relief under NRCP 60(b), we decline to address the issue on appeal because relief was warranted under NRCP 60(b)(6). Moreover, the district court did not make

We further conclude that the court implicitly acted under the catchall provision of NRCP 60(b)(6) by indicating that relief was warranted to address an injustice related to the equal distribution of property. Although it would have been preferable for the district court to have cited NRCP 60(b)(6), the failure to do so does not warrant reversal. We now address claim and issue preclusion, which Donna asserts preclude NRCP 60(b) relief in this case.

Claim and issue preclusion do not bar NRCP 60(b) relief

We review the application of claim and issue preclusion de novo. *Kuptz-Blinkinsop v. Blinkinsop*, 136 Nev. 360, 364, 466 P.3d 1271, 1275 (2020); *Garcia v. Prudential Ins. Co. of Am.*, 129 Nev. 15, 19, 293 P.3d 869, 872 (2013). Additionally, we review interpretation of caselaw de novo. *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151, 321 P.3d 875, 877 (2014).

A number of states have held that claim and issue preclusion generally do not apply to Rule 60(b) motions. *See, e.g., PennyMac Corp. v. Godinez*, 474 P.3d 264, 270-72 (Haw. 2020); *Jones v. Murphy*, 772 A.2d 502, 505 (Vt. 2001); *Dixon v. Pouncy*, 979 P.2d 520, 524 (Alaska 1999); *New Maine Nat'l Bank v. Nemon*, 588 A.2d 1191, 1194 (Me. 1991); *Pepper v. Zions First Nat'l Bank, N.A.*, 801 P.2d 144, 150-51 (Utah 1990). Federal courts have likewise held that claim and issue preclusion generally do not bar FRCP 60(b) motions. *See Watts v. Pinckney*, 752 F.2d 406, 410 (9th Cir.

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findings with respect to fraud and mistake because it essentially determined that further proceedings were needed to evaluate those issues in light of the parties' conflicting evidence, and this court does not resolve these types of factual issues in the first instance. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well suited to make factual determinations in the first instance.").

1985) ("Res judicata does not preclude a litigant from making a direct attack under Rule 60(b) upon the judgment before the court which rendered it." (alteration omitted) (quoting *Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974))); *cf. Estrada-Rodriguez v. Lynch*, 825 F.3d 397, 402 (8th Cir. 2016) ("Collateral estoppel does not apply here because the . . . issue was not previously determined by a valid and final judgment in a prior action . . . . Instead, the . . . issue was determined at an earlier stage of the same action and was reconsidered pursuant to the reopening of the action." (emphasis omitted)). As the United States Supreme Court observed, "[i]t is clear that res judicata and collateral estoppel do not apply if a party moves the rendering court in the same proceeding to correct or modify its judgment." *Arizona v. California*, 460 U.S. 605, 619 (1983); *see also Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 285 n.2, 357 P.3d 966, 970 n.2 (Ct. App. 2015) ("Where the Nevada Rules of Civil Procedure parallel the Federal Rules of Civil Procedure, rulings of federal courts interpreting the federal rules are persuasive authority for this court in applying the Nevada Rules.").

In arguing claim and issue preclusion bar relief under NRCP 60(b), Donna relies on *Martin*, 138 Nev. at 793-94, 520 P.3d at 820, which provides that district courts may enforce a stipulated divorce decree based on claim preclusion. But *Martin* does not control here because that case concerned a party's refusal to comply with a divorce decree rather than an NRCP 60(b) motion to set aside a divorce decree. Thus, Jonathan was not precluded from seeking NRCP 60(b) relief based on *Martin,* even though Jonathan potentially could have retained a forensic accountant earlier. *See Carlson v. Carlson*, 108 Nev. 358, 361, 832 P.2d 380, 382 (1992) (addressing a post-decree dispute concerning the distribution of community property,

and excusing counsel's failure to more diligently pursue information concerning the value of an asset prior to the decree's entry in light of NRCP 60(b)'s "salutary purpose," which is to redress injustices resulting from excusable neglect or the wrongs of the opposing party).

As Jonathan argues, Donna provides no authority or convincing argument to explain how claim or issue preclusion apply in the context of an NRCP 60(b) motion. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the appellate courts need not consider claims that are not cogently argued). Therefore, consistent with precedent from other jurisdictions, we decline to apply claim or issue preclusion to bar NRCP 60(b) relief. Thus, in light of the foregoing, we conclude that the district court did not abuse its discretion by partially granting Donna's motion for NRCP 60(b) relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

[4]Insofar as Donna raises arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.

cc: Hon. Mari D. Parlade, District Judge
Ford & Friedman, LLC
Willick Law Group
Eighth District Court Clerk