IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDREW LARSON,
Appellant,
vs.
PAULENE TRAUTMAN; JOYCE EVELYN MADRID; AND PAUL JOSEPH MADRID,
Respondents.

No. 89636-COA

FILED

SEP 25 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Melissa Heller
DEPUTY CLERK

ORDER OF AFFIRMANCE

Andrew Larson appeals from a district court order denying a post-judgment motion to set aside a decree of termination of domestic partnership. Eighth Judicial District Court, Family Division, Clark County; Bill Henderson, Judge.

Larson and respondent Paulene Trautman entered into a domestic partnership in 2016. In September 2022, Trautman filed a complaint to terminate the partnership. Larson thereafter filed an answer, asking that the district court divide the parties' community assets, in particular a property located at 3511 Bagnoli Court (Bagnoli property), and a counterclaim against Trautman's parents, respondents Janice Evelyn Madrid and Paul Joseph Madrid, who were part-owners of the Bagnoli property. Larson alleged that the Madrids and Trautman purchased the Bagnoli property in 2017 and that he had a community property interest in Trautman's portion.

The case proceeded to trial, but following the first day of trial, the parties attended a judicial settlement conference and reached an

agreement. The parties placed the settlement terms on the record. The record indicates, in relevant part, that the parties agreed that they would each keep their respective personal property, bank accounts, retirement accounts, and debts. Trautman and the Madrids would keep their interests in the Bagnoli property. Trautman would also keep the parties' pets and would give Larson $17,000 from her individual retirement account, transferred pursuant to a qualified domestic relations order (QDRO) which would "be prepared within the next 30 days of [the] decree being filed." Further, the parties agreed to include comprehensive waiver and release language in the decree. The district court ordered Trautman's attorney to prepare the stipulated decree.

Following the settlement proceedings, the parties could not agree on the final language in the decree and after some motion practice and a hearing in the district court, Trautman submitted a proposed decree memorializing the settlement terms, which Larson refused to approve or provide suggested revisions. The district court adopted and entered the decree, which conformed with the settlement terms placed on the record.

Shortly thereafter, Trautman's counsel submitted a proposed QDRO to Larson's attorney, who approved it. Despite this, on April 26, 2024—less than 30 days after the entry of the decree—Larson filed a motion to set aside the stipulated decree pursuant to NRCP 60(b)(1) arguing that the terms set forth in the decree were inconsistent with the parties' agreement and he had not received the settlement payment at that time. Trautman opposed the motion, arguing there was no basis to set aside the decree and that Larson had accepted the settlement payment after delaying the entry of the decree.

Larson's counsel thereafter withdrew from this matter and Larson subsequently proceeded pro se. Larson filed a second motion to set aside the decree pursuant to NRCP 60(b)(1), (2), (3), (6) and 60(d), arguing that the settlement agreement was unfair and he was seeking a more equitable distribution of the community assets in excess of the agreement. Larson argued that, following the settlement conference, he became aware of "new, extremely material information" that had been fraudulently concealed from him. Larson claimed he had recently learned that the Madrids did not financially contribute to the Bagnoli property and therefore had no ownership interest in it. He also argued that he was entitled to one of the parties' pets because Trautman testified at trial that their dog was an emotional support animal but referred to the dog as a "pet" in her deposition.

The district court held a hearing on the various pending motions. Following the hearing, the district court entered a written order denying Larson's motions to set aside. The court found that a review of the settlement transcript revealed Larson did not object to the fairness of the settlement, agreed to the terms, and was fully canvassed by the settlement judge. Further, there was nothing to show that the Madrids' financial involvement in the Bagnoli property was a factor in reaching the settlement agreement, and the information concerning the Madrids was from Trautman's deposition, which was available to Larson prior to the settlement proceedings. Moreover, there was evidence at trial regarding the Madrids' financial involvement with the property, so Larson could not show fraud or the concealment of evidence. Additionally, the court found Larson accepted the $17,000 payment and his argument regarding the

timing of the payment was not a basis to set aside the decree. This appeal followed.

On appeal, Larson argues that the parties' stipulated decree should be set aside because it was inequitable, the product of undue influence, and based on fraud and misrepresentations from Trautman regarding the Bagnoli property and the parties' pets. Respondents counter that the parties reached an enforceable settlement agreement, and the district court properly denied Larson's motions to set aside the decree.

We review a district court's denial of an NRCP 60(b) motion for an abuse of discretion and will uphold the district court's decision to deny an NRCP 60(b) motion if sufficient evidence in the record supports that decision. *Kahn v. Orme*, 108 Nev. 510, 513, 835 P.2d 790, 792 (1992), *overruled on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997); *Smith v. Smith*, 102 Nev. 110, 111-12, 716 P.2d 229, 230 (1986) (recognizing that this court will uphold the decision of the district court granting or denying an NRCP 60(b) motion if there is sufficient evidence in the record to support the decision). NRCP 60 allows the district court to set aside a final order for various reasons, including mistake or excusable neglect; newly discovered evidence that, with reasonable diligence could not have been discovered in time to move for a new trial; or fraud, misrepresentation, or misconduct by an opposing party. NRCP 60(b)(1), (2), (3).

Moreover, a settlement agreement is a contract, and "its construction and enforcement are governed by principles of contract law." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). While this court reviews contract interpretation de novo, "the question of whether a

contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence." *Id.* at 672-73, 119 P.3d at 1257.

Having carefully reviewed the record, we conclude the district court did not abuse its discretion by denying Larson's motions to set aside the stipulated decree. The record shows the parties attended a judicial settlement conference, reached an agreement, and placed the agreed-upon terms on the record, thereby entering into a binding agreement, which was later reduced to a written decree and, therefore, enforceable. *See* EDCR 5.601(b), (d) (allowing stipulations in family law proceedings to be placed on the record in court and providing that, "[a] stipulation adopted by the court shall be binding on the parties immediately, and shall become an enforceable order once written, signed by the court, and filed").

Larson moved to set aside the decree on the basis that the terms allegedly did not comport with the parties' agreement because he did not agree to any waiver or relinquishment provisions, he did not receive the settlement money within 30 days of the settlement conference, the terms were unfair, and because he discovered the Madrids did not financially contribute toward the Bagnoli property. The district court rejected these arguments and concluded there was no basis to set aside the decree. The court explained the significance of the waiver provisions and found that Larson received the $17,000 he was entitled to under the agreement. Further, the "newly discovered evidence" regarding the Madrids was available to him prior to the settlement conference and therefore not concealed, and nothing in the settlement transcript demonstrated that the Madrid's financial contributions were a basis on which Larson relied in

agreeing to the settlement terms. Critically, the court found Larson was fully canvassed by the settlement judge on the record. The court found that Larson's issues with the decree amounted to "buyer's remorse" but that was insufficient to set aside the decree.

The record supports these determinations. Larson acknowledged at the motion hearing that he received the settlement money and that he learned about the Madrids' financial involvement in the Bagnoli property from Trautman's deposition testimony, which, as the district court noted, occurred in advance of, and was available to him prior to, both the trial and settlement proceedings. *See* NRCP 60(b)(2) (requiring that newly discovered evidence could not have been discovered earlier with due diligence).

Similarly, Larson fails to demonstrate fraud as a basis to set aside the decree based on his claims that Trautman fraudulently concealed the Madrids' involvement in the Bagnoli property and fraudulently testified at trial that the parties' dog was an emotional support animal because the information he relies on for his allegations was either available or known to him at the time he entered into the settlement agreement. Federal courts have held that for a party to obtain relief from judgment under FRCP 60(b)(3)—the identical federal analog to NRCP 60(b)(3)—the fraud must "not be discoverable by due diligence before or during the proceedings." *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) (quoting *Pac. & Arctic Ry. and Nav. Co. v. United Transp. Union*, 952 F.2d 1144, 1148 (9th Cir. 1991)); *see also Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) (recognizing that federal cases are persuasive authority in interpreting the Nevada Rules of Civil Procedure).

Although Larson appears to argue he was pressured into an unfair settlement, the district court found that argument belied by the transcript of the proceedings, which revealed he did not state any objection to the fairness of the agreement during that hearing. Contrary to Larson's assertions, the court found that the record showed Larson agreed to the terms and was willing to abide by them. *Cf. Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1118-19, 197 P.3d 1032, 1042-43 (2008) (explaining that when parties mutually agree to a settlement and the settlement is entered into before the court without any objections from the parties, and reduced to writing in an order, the settlement is enforceable); *see also Harrison v. Harrison*, 132 Nev. 564, 570, 376 P.3d 173, 177 (2016) ("It is the contracting parties' duty to agree to what they intend."). To the extent Larson disputes this finding, he has failed to provide this court with a transcript from the settlement hearing, and thus we necessarily presume that it supports the district court's determination. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[ ] the district court's decision"). Under these circumstances, we conclude that the record supports the district court's decisions to deny Larson's motions to set aside and that the parties reached an enforceable settlement agreement, and we thus discern

no abuse of discretion.[1] *See Kahn*, 108 Nev. at 513, 835 P.2d at 792; *May*, 121 Nev. at 672, 119 P.3d at 1257.

Next, Larson argues the district court exhibited bias against him during the underlying proceedings. Having reviewed the record, we conclude relief is unwarranted based on this argument because Larson has not demonstrated that any alleged bias was based on knowledge acquired outside of the proceedings, and the challenged decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *See Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that, unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings, which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally

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[1]We recognize that our supreme court has previously determined that a district court must 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*, 113 Nev. at 1405, 950 P.2d at 773, in denying a request for NRCP 60(b) relief. *See Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 471, 469 P.3d 176, 180 (2020). Larson has not presented any argument regarding a failure to address or make findings regarding the *Yochum* factors; thus, he has forfeited this issue on appeal and we do not address it. *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 forfeited).

cognizable grounds for disqualification"); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (noting that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 404-05, 535 P.3d 1167, 1171 (2023).

It is so ORDERED.[2]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

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[2]Larson also argues he received ineffective assistance of counsel. However, there is generally no right to the effective assistance of counsel in civil cases. *See Garcia v. Scolari's Food & Drug*, 125 Nev. 48, 57 n.7, 200 P.3d 514, 520 n.7 (2009) ("[W]e find no support . . . for the proposition that the right to an ineffective-assistance-of-counsel argument exists in civil cases."); *see also Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985) (noting "the presumption that, unless [an] indigent litigant may lose his physical liberty if he loses the litigation, there is generally no right to counsel in a civil case"). Moreover, to the extent Larson is attempting to assert a legal malpractice claim, that is not properly raised in this appeal. *See Hewitt v. Allen*, 118 Nev. 216, 221, 43 P.3d 345, 348 (2002) ("In the context of litigation malpractice, that is, legal malpractice committed in the representation of a party to a lawsuit, damages do not begin to accrue until the underlying legal action has been resolved.").

Insofar as Larson raises 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 or need not be reached given our disposition.

cc: Hon. Bill Henderson, District Judge, Family Division
Andrew Larson
Jones & LoBello
Eighth District Court Clerk