

1 IN THE SUPREME COURT FOR THE STATE OF NEVADA.

2
3 Frederick O. Silver,
Petitioner,

4 vs.

5 Candice Katie Towner,
6 Respondent.

Supreme Court No: 81982 / 81982-COA

District Court NO: D565588

PETITION FOR REVIEW

FILED

SEP 03 2021

8 PETITION FOR REVIEW.

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

10 Comes Now Frederick O. Silver, Petitioner / Appellant and Petitions this Court for review in
11 the above-captioned case.

12
13 This petition is based on the following memorandum of points and authorities and all
14 papers and pleadings on file herein. "Jurisdiction can be challenged at any time." and "Jurisdiction,
15 once challenged, cannot be assumed and must be decided." Basso v. Utah Power & Light Co., 495 F
16 2d 906, 910. "Defense of lack of jurisdiction over the subject matter may be raised at any time, even
17 on appeal." Hill Top Developers v. Holiday Pines Service Corp., 478 So. 2d. 368 (Fla 2nd DCA
18 1985)

19
20
21 Dated this 31st day of August 2021.

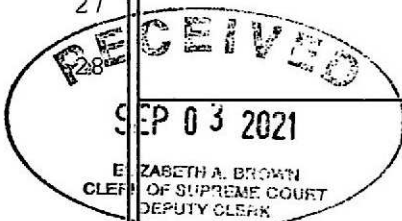
22
23 Respectfully Submitted By:

24 **Frederick O. Silver**

25 **7737 SKOLOUT STREET, APT 126.**

26 **SAN ANTONIO, TEXAS 78227.**

27 **E-mail: ASCLV1@gmail.com**



21-25773

1 **MEMORANDUM POINTS AND AUTHORITIES.**

2 The Petitioner, Frederick O Silver, petitions the Court to review the 08/30/2021,
3 Order/Dispositional Filed Order of Affirmance. "ORDER the judgment of the district court
4 AFFIRMED." fn1[We likewise have considered Silver's additional filings and deny all other pending
5 requests for relief in this matter.] Court of Appeals-MG/JT/BB (COA).
6

7 Pursuant to NRAP 40B, a party aggrieved by a decision of the Court of Appeals may file a
8 petition for review with the clerk of the Supreme Court within 18 days. The petition must state the
9 question presented for review and the reason review is warranted. Supreme Court review is not a
10 matter of right but of judicial discretion. The following, while neither controlling nor fully measuring
11 the Supreme Court's discretion, are factors that will be considered in the exercise of that discretion:
12 1) Whether the question presented is one of first impression of general statewide significance; 2)
13 Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals,
14 the Supreme Court Of Nevada, or the United States Supreme Court; or 3) Whether the case involves
15 fundamental issues of statewide public importance. NRAP 40B(a). The petition shall succinctly state
16 the precise basis on which the party seeks review by the Supreme Court of Nevada and may include
17 citation of authority in support of that contention.
18
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21 Per NRAP 40B(d), the Petitioner / Appellant has not attached a copy of the Filed Order of
22 Affirmance. "ORDER the judgment of the district court AFFIRMED." fn1[We likewise have
23 considered Silver's additional filings and deny all other pending requests for relief in this matter.]
24 Court of Appeals-MG/JT/BB (COA). The Petitioner / Appellant files the instant petition for review
25 on grounds that the Correct statutory interpretation of Personal Jurisdiction of the Person is a
26 fundamental issue of statewide public importance.
27
28

1 Personal jurisdiction refers to the power that a court must have to decide regarding the party
2 being sued in a case. Before a court can exercise power over a party, the U.S. Constitution requires
3 that the party has certain minimum contacts with the forum in which the court sits. International
4 Shoe v Washington, 326 US 310 (1945). if the plaintiff sues a defendant, that defendant can object to
5 the suit by arguing that the court does not have personal jurisdiction over the defendant. Obtaining
6 Personal Jurisdiction. Typically for a court to have personal jurisdiction over a defendant, the plaintiff
7 needs to serve the defendant in the state in which the court sits, and the defendant needs to voluntarily
8 appear in court. Federal Rules of Civil Procedure Rule 4(k) describes whether a state's courts would
9 have the authority to adjudicate a claim as it relates to personal jurisdiction.
10

11
12 The essential facts are highly and strongly disputed, Petitioner / Appellant is not a domicile or
13 resident of the State of Nevada. THE CONSTITUTION OF THE STATE OF NEVADA: ARTICLE.
14 1. - Declaration of Rights.: Section. 1. Inalienable rights. All men are by Nature free and equal and
15 have certain inalienable rights among which are those of enjoying and defending life and liberty;
16 Acquiring, Possessing and Protecting property and pursuing and obtaining safety and happiness[.]
17 Sec: 3. Trial by jury. The right of trial by Jury shall be secured to all and remain inviolate forever.
18
19

20 Bonnie Bulla, Michael P. Gibbons, Jerome Tao who are the Nevada Court of Appeals Judges,
21 never cited any part of the records on appeals to which it based its decisions. Under Nevada rules of
22 appellate procedure, the Respondent has failed to file the fast-track response; accordingly, this appeal
23 will be resolved without a fast-track response from respondent. Instead, Bonnie Bulla, Michael P.
24 Gibbons, Jerome Tao, acted as attorneys for the Respondent.
25

26
27 Petitioner / Appellant was never served with the summons and complaint, there was no proof
28 of service on the record and no witness was called to testify under oath penalty of perjury.

REMEDIAL RIGHTS.

Judgment in D565588 is void ab initio, which means "to be treated as invalid from the outset,".

Reinstatement, Restitution and Discharge. "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." Melo v. US, 505 F2d 1026. "The law requires proof of jurisdiction to appear on the record of all Court / Legal proceedings." Hagans v. Lavine, 415 U. S. 533. A judgment rendered by a court without personal jurisdiction over the defendant is void. It is a nullity. [A judgment shown to be void for lack of personal service on the defendant is a nullity.] Sramek v. Sramek, 17 Kan. App. 2d 573, 576-77, 840 P.2d 553 (1992), rev. denied 252 Kan. 1093 (1993). "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court" OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8, 27 S. Ct. 236 (1907). "There is no discretion to ignore lack of jurisdiction." Joyce v. U.S. 474 2D 215. "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." Latana v. Hopper, 102 F. 2d 188; Chicago v. New York, 37 F Supp. 150. "The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." Main v. Thiboutot, 100 S. Ct. 2502 (1980). "Jurisdiction can be challenged at any time." and "Jurisdiction, once challenged, cannot be assumed and must be decided." Basso v. Utah Power & Light Co., 495 F 2d 906, 910. "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." Hill Top Developers v. Holiday Pines Service Corp., 478 So. 2d. 368 (Fla 2nd DCA 1985) "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." Stuck v. Medical Examiners, 94 Ca 2d 751. 211 P2d 389. "There is no discretion to ignore that lack of jurisdiction." Joyce v. US, 474 F2d 215. "The burden shifts to the court to prove jurisdiction." Rosemond v. Lambert, 469 F2d 416. "A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property." Norwood v. Renfield, 34 C 329; Ex parte Giambonini, 49 P. 732. "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." In Re Application of Wyatt, 300 P. 132; Re Cavitt, 118 P2d 846. "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." Dillon v. Dillon, 187 P 27. "A court has no jurisdiction to determine

1 its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the
2 authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8;
3 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409. "A departure by a court from those recognized and established
4 requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect
5 of depriving one of a constitutional right, is an excess of jurisdiction." *Wuest v. Wuest*, 127 P2d 934, 937. "Where a
6 court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." *Merritt v.*
7 *Hunter, C.A. Kansas* 170 F2d 739.

8
9 **The following Six (6) issues are Petitions for Judicial Review.**

10 1) ***Lack of Subject-Matter Jurisdiction.*** (2) ***Lack of Personal Jurisdiction.*** (3) ***Improper Venue.*** (4)
11 ***Insufficient Process.*** (5) ***Insufficient Service of Process.*** (6) ***Failure to State a Claim upon which***
12 ***relief can be Granted*** 7 Essential Elements of Subject Matter Jurisdiction

13 (Four 'legs' to the 'Subject Matter Jurisdiction' 'Table'... if any leg is missing the table 'will not stand'
14 = Court Has / Had No Jurisdiction)

15 **Leg 1:** 1. Court of proper Venue, 2. Judge with Oath of Office. **Leg 2:** 3. Plaintiff with Injury, 4.
16 Sworn Complaint / Affidavit. **Leg 3:** 5. Competent Witness, 6. Sworn Affidavit. **Leg 4:** 7. 'In
17 Personam' Jurisdiction over the Defendant, 8. Insufficient Service of Process; No Service of process

18
19 **DEMAND / REQUEST FOR RELIEF.**

20
21 WHEREFORE, Petitioner, Frederick O Silver, ask this Court to render void the Court Order
22 for Lack of Personal Jurisdiction over the person of the Petitioner, Frederick O Silver, void ab initio,
23 which means "to be treated as invalid from the outset," • That the Name of Petitioner, Frederick
24 Omoyuma Silver be removed from the Nevada Birth Certificate of the bastard Child with Name:
25 Towner, Gabriel William, who is a ward of the State of Nevada.

26 Dated this 31st Day of August 2021
27
28


"WITHOUT PREJUDICE UCC §1-308"

I: A Man known to use the Name Frederick-O: Silver
In the Interest of
Frederick O Silver
7737 Skolout St, Apt 126
San Antonio TX 78227
Email: ASCLV1@gmail.com

Hale v. Henkel 201 U.S. 43 at 89 (1906) the Decision of the United States Supreme Court states:

"The "individual" may stand upon "his Constitutional Rights" as a CITIZEN. He is entitled to carry on his "private" business in his own way. "His power to contract is unlimited." He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to incriminate him. He owes no duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. "His rights" are such as "existed" by the Law of the Land (Common Law) "long antecedent" to the organization of the State" and can only be taken from him by "due process of law", and "in accordance with the Constitution." "He owes nothing" to the public so long as he does not trespass upon their rights."

CERTIFICATE OF COMPLIANCE.

1. I hereby certify that this petition for review complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2021 in 14 point font of the Times New Roman style.

2. I further certify that this petition complies with the type-volume limitations of NRAP 40, 40A and 40B because it is proportionately spaced, has a typeface of 14 points and contains no more than 1,985 words.

Dated this 31st day of August 2021.

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this petition for review upon all parties to the appeal as follows: By mailing it by first-class mail with sufficient postage prepaid to:

Candice Katie Towner:
8216 MT BRODIE CIR,
LAS VEGAS, NV 89145-4559

Dated this 31st day of August 2021. Respectfully submitted

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERICK OMOYUMA SILVER,
Appellant,
vs.
CANDICE KATIE TOWNER,
Respondent.

No. 81982-COA

FILED

AUG 30 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Frederick Omoyuma Silver appeals from the denial of a motion to set aside in a post-decree family court matter. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

In the proceedings below, respondent Candice Towner filed a complaint to establish child custody, after having previously initiated a child support matter, against Silver. A clerk's default was entered in May 2018, but in July 2018, Silver filed a response to the complaint asserting that he was not the child's father, that he did not want custody of the child, and that Towner should have complete custody of the child. His responsive pleading demanded that his parental rights be terminated, and requested an award of punitive damages and costs. He also filed a motion to dismiss, counterclaim, and crossclaim asserting that the court lacked jurisdiction over him, and he filed a motion to terminate child support. Towner filed a combined opposition and countermotion to consolidate the custody case with Silver's separately filed termination of parental rights action, to determine custody, to confirm child support, and for attorney fees.

In September 2018, the district court entered an order on Silver's motion, finding that Silver was served with the summons and complaint, that the court had subject matter and personal jurisdiction over the matter, and noting that paternity was established in the underlying child support case. Accordingly, the district court denied Silver's motion to dismiss the action. The court then concluded that the motion to terminate child support would depend on the results of a DNA test—allowing Silver an opportunity to challenge paternity, despite paternity having already been established in the child support matter. Thus, the court ordered Silver to obtain a paternity test and concluded that should he not appear for the test or provide the results to the court, the court would apply a presumption in favor of paternity. The court denied Towner's countermotion to consolidate the actions, but concluded that the cases were related and would be linked moving forward.

In November 2018, after a return hearing regarding the paternity test—wherein Silver failed to provide any results of a paternity test to the district court—the district court entered a decree of custody. In it, the court concluded that Silver was the biological father of the subject minor based on Silver's failure to rebut the presumption in favor of paternity. The court awarded Towner sole legal and sole physical custody of the minor child, with no parenting time to Silver, pursuant to both parties' requests for the same in their pleadings, and confirmed Silver's monthly child support obligation.

Silver then filed numerous documents and several appeals, but as relevant here, in September 2020, Silver filed a motion to set aside the

September 2018 order pursuant to NRCP 60(b). In his motion, Silver asserted that he was not served with Towner's filings leading to the default order being entered, that Towner committed fraud by placing his name on the child's birth certificate without his knowledge or consent, that the court lacked subject matter and personal jurisdiction, and also raised challenges to the venue, process, service of process, and alleged Towner had failed to state a claim. The district court denied Silver's motion, noting that Silver had filed multiple motions to set aside the September 2018 order, and this appeal followed.

On appeal, Silver challenges the district court's order denying his motion to set aside, reasserting that the district court lacked jurisdiction, that the district court was the improper venue, that there was insufficient process, that there was insufficient service of process, and that Towner failed to state a claim. The district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and 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).

Here, Silver has failed to offer any cogent argument addressing the basis for the district court's denial of his motion to set aside. Thus, he has waived any such challenge. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived."). Moreover, based on our review of the record, we discern no abuse of discretion in the district court's decision to deny the motion to set aside when Silver's motion was filed nearly two years after the order he was challenging and the district court

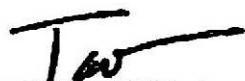
had previously denied the same motion. *See* NRCP 60(c)(1) (providing that, as relevant here, a motion for relief based on mistake, inadvertence, excusable neglect, or fraud must be filed within six months after entry of the order, and that motions based on other grounds must be brought within a reasonable time); EDCR 2.24(a) (providing that motions may not be reheard without leave of court).

Additionally, to the extent Silver challenges the district court's order based on his allegation that the district court lacked jurisdiction, his argument is likewise without merit. The district court correctly determined it had personal jurisdiction over Silver in light of his affirmative requests for relief in this action and others filed in the Eighth Judicial District Court. *See Dogra v. Liles*, 129 Nev. 932, 939, 314 P.3d 952, 957 (2013) ("We assume without deciding that seeking affirmative relief from a court subjects a litigant to that court's jurisdiction and cannot simultaneously be done while the litigant objects to the court's exercise of jurisdiction."); *see also Dow Chemical Co. v. Calderon*, 422 F.3d 827, 834 (9th Cir. 2005) (recognizing, without deciding, "that personal jurisdiction exists where a defendant also independently seeks *affirmative* relief in a separate action before the same court concerning the same transaction or occurrence"). Similarly, the district court correctly determined it had subject matter jurisdiction over this matter, as the case involved parentage, child support, and child custody where Nevada was the child's home state. *See* NRS 3.223(1)(a), (e) (providing that the family court has original, exclusive jurisdiction in any proceeding brought to establish parentage of a minor, child custody, or child support).

Based on the foregoing, we cannot conclude that the district court abused its discretion in denying Silver's motion to set aside. *See Cook*, 112 Nev. at 181-82, 912 P.2d at 265. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Frederick Omoyuma Silver
Candice Katie Towner
Eighth District Court Clerk

¹Insofar as Silver raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal. We likewise have considered Silver's additional filings and deny all other pending requests for relief in this matter.