IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMY COLLEEN LUCIANO, N/K/A AMY HANLEY,
Appellant,
vs.
FRANK LUCIANO,
Respondent.

No. 83522-COA

FILED

JUL 07 2022

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

ORDER DISMISSING IN PART AND AFFIRMING IN PART

Amy Colleen Luciano (n/k/a Amy Hanley) appeals from a decree of divorce and two post-decree orders denying NRCP 60(b) relief. Eighth Judicial District Court, Family Court Division, Clark County; Heidi Almase, Judge.[1]

Respondent Frank Luciano initiated the underlying divorce and child custody proceedings in October 2019. Amy filed an answer, and litigation ensued. In December 2019, the district court held a case management conference and issued a trial management order, setting calendar call for May 5, 2020, and trial for May 19, 2020. The trial management order was provided to both parties in open court. After Amy

[1]This case was initially assigned to the Honorable Charles J. Hoskin, District Judge, and was subsequently reassigned to the Honorable Heidi Almase, District Judge. Judge Hoskin issued two of the orders at issue in this appeal, while Judge Almase issued the third order, issued immediately prior to the notice of appeal in this matter.

failed to appear at the calendar call, the district court left the matter on calendar for the May 19 trial date to allow Amy another chance to present evidence or, if she did not appear, to allow Frank to prove up his claim and obtain a decree of divorce. Amy likewise did not appear at the May 19 trial, and the district court took evidence from Frank before entering a final decree of divorce. Pursuant to the decree, entered in June 2020, the district court awarded Frank sole legal and sole physical custody of the parties' minor child, with Amy having parenting time in Frank's sole discretion. The court noted that if Amy brought the matter back before the court, it would consider evidence to re-establish contact between Amy and the child.

On July 21, 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 and complaint, or any other order in the case, and that the decree was entered as a result of fraud, misrepresentation, or misconduct. She also asserted that Frank previously committed domestic violence against her, that she did not consent to the proceedings, that her substantial rights had been infringed upon, that she had been assaulted by bailiffs at the family court, and that all of her email accounts had been hacked, amongst other things. The district court held a hearing on the motion in September 2020 and issued a written order denying the motion in December 2020. In the order, the district court concluded that there was no basis to set aside the decree as the record established Amy was provided written notice of the calendar call and trial date in open court, that she failed to appear at either hearing, and that she failed to demonstrate any basis for setting aside the

decree. The district court noted, however, that it would consider modifying custody and support should Amy file an appropriate motion.

In May 2021, Amy filed a second NRCP 60(b) motion, seeking to set aside several prior orders, including the order entered in December 2020. Amy again argued that her rights were violated, that she had not been properly served with several documents in the case, that Frank committed domestic violence against her, and that it was in the child's best interest for her to have custodial time. In its written order, the district court found that Amy failed to provide any proof of service for the motion and that the district court previously considered the same arguments in Amy's first NRCP 60(b) motion, and it therefore denied the second NRCP 60(b) motion. This appeal followed.

On appeal, Amy challenges the decree of divorce and the district court's two orders denying both of her NRCP 60(b) motions to set aside. As an initial matter, we note that our review of the documents transmitted to this court as part of Amy's appeal reveals a jurisdictional defect. In her notice of appeal, Amy asserts that she is appealing from the decree of divorce, but her September 17, 2021, notice of appeal is untimely as to the decree of divorce, the notice of entry of which was served on June 8, 2020. *See* NRAP 4(a)(1) (providing that the notice of appeal must be filed within 30 days of service of the notice of entry). And her NRCP 60(b) motions were not filed within the time period necessary for them to be treated as tolling motions, such that they cannot toll the time to appeal from the divorce decree. *See* NRAP 4(a)(4) (providing when the time to file a notice of appeal may be tolled); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585,

245 P.3d 1190, 1195 (2010) (explaining when post-judgment motions will be given tolling effect). Thus, we lack jurisdiction to consider Amy's appeal and dismiss it insofar as it challenges the decree of divorce. *See Healy v. Volkswagenwerk Aktiengesellschaft*, 103 Nev. 329, 331, 741 P.2d 432, 433 (1987) (noting that an untimely notice of appeal fails to vest jurisdiction in the appellate courts); *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 alone).

As to the two orders denying NRCP 60(b) relief, Amy contends that the district court improperly denied these motions by failing to hold an evidentiary hearing to consider whether Frank previously committed domestic violence against Amy, by failing to consider all of the NRS 125C.0035(4) best interest factors, and by awarding Frank custody as a sanction against Amy for her failure to appear. This court reviews the district court's decisions in divorce and child custody proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004); *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Similarly, the district court has broad discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b), 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, Amy argues that the district court erred in denying her NRCP 60(b) motions but fails to offer any cogent argument or relevant authority to support her assertions. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that the appellate courts need not consider claims that are not cogently argued or supported by relevant authority). For example, Amy contends that the district court, in considering both of Amy's motions, erred in failing to consider and make findings regarding her allegation that Frank committed domestic violence, and otherwise failed to make sufficient best interest findings. While true that the district court must make specific best interest findings, including whether domestic violence has occurred, when making a child custody determination, *see* NRS 125C.0035; *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015), Amy's arguments appear to challenge, and would be more appropriately raised in a direct challenge to, the underlying custody determination made as part of the decree of divorce, which, as noted above, was not timely appealed. And Amy has offered no argument or authority to support the assertion that the district court must make such findings when considering a motion pursuant to NRCP 60(b). *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Moreover, Amy has failed to cite any authority regarding NRCP 60(b) or otherwise demonstrate why she was entitled to NRCP 60(b) relief. In this regard, we note that, below, Amy asserted she was entitled to NRCP 60(b) relief because she was never served with the summons and other filings in the case; the opposing party "committed fraud, misrepresentation, or misconduct," resulting in the order; and because new evidence existed.

Based on these arguments, it appears Amy sought relief pursuant to NRCP 60(b)(4) (allowing relief from a judgment that is void); (b)(3) (allowing relief from a judgment where the opposing party committed fraud, misrepresentation, or other misconduct); and (b)(2) (allowing relief from a judgment based on newly discovered evidence). But the record demonstrates that Amy was served with the summons and complaint, and was properly served with the other relevant orders in this matter. And Amy has failed to offer any argument on appeal demonstrating that the district court abused its discretion in finding the same. *See Cook*, 112 Nev. at 181-82, 912 P.2d at 265. Amy has also failed to offer any argument as to what purported fraud, misrepresentation, or other misconduct Frank engaged in, aside from her assertion that she was not properly served, which as noted is belied by the record. Similarly, Amy has failed to offer any argument as to how the district court abused its discretion in denying her motion based on her argument that there was newly discovered evidence, or otherwise argue why such evidence could not have been discovered in time to move for a new trial. *See id.*; *see also* NRCP 60(b)(2).

Further, as to Amy's assertion that the district court abused its discretion by denying her second NRCP 60(b) motion on the basis that the issues were previously addressed by the order denying Amy's first NRCP 60(b) motion, we likewise discern no basis for relief. Amy contends the district court's conclusion that the issues were previously addressed was erroneous because Amy's allegation of domestic violence was not previously considered by the district court in making its custody determination. But contrary to Amy's position on appeal, the district court concluded that the

arguments she raised in her second NRCP 60(b) motion, including her allegation that Frank committed domestic violence, were previously considered by the district court in deciding her first NRCP 60(b) motion, not that the allegations had been previously considered when making the custody determination. But, regardless of this conclusion, the district court also concluded that Amy's second NRCP 60(b) motion must be denied because she failed to serve the same on Frank. *See* NRCP 5(a)(1)(D) (requiring written motions to be served on all parties unless the motion is to be heard ex parte). Because Amy has failed to challenge the district court's finding in this regard, we necessarily affirm the order on this basis. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that "[i]ssues not raised in an appellant's opening brief are deemed waived"); *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; *see also AED, Inc. v. KDC Invs., LLC*, 307 P.3d 176, 181 (Idaho 2013) (explaining that when a district court sets forth multiple grounds for its decision, the appellant must successfully challenge all of them in order to prevail).

Finally, Amy asserts that the district court improperly granted Frank custody as a sanction to punish Amy's conduct during litigation. Although this argument appears to challenge the divorce decree, which is not properly before this court, to the extent Amy offers this argument to challenge the district court's orders denying NRCP 60(b) relief, the record does not support her assertion. Rather, the record here demonstrates that the district court made its custody determination after hearing evidence at the time and date set for trial, despite the fact that Amy failed to appear

and present any evidence, or challenge Frank's evidence. Thus, because the district court took evidence before making its custody determination and did not award custody on a default basis without an evidentiary hearing, we cannot conclude that the district court awarded custody as a means of punishment and discern no basis for relief on these grounds. *See Blanco v. Blanco*, 129 Nev. 723, 730-31, 311 P.3d 1170, 1175 (2013) (explaining that the district court cannot enter a child custody order on a default basis without a prove-up hearing or evidentiary hearing to consider the evidence and without making findings as to the child's best interest).

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[2]Nothing in this order should be construed as precluding the district court from considering the parties' arguments or evidence in a properly filed motion to modify custody, should either party file the same. Moreover, insofar as the parties raise 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.

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Hon. Heidi Almase, District Judge, Family Court Division
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