

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

AMY LUCIANO,

Appellant,

v.

FRANK LUCIANO,

Respondent.

Electronically Filed  
Jan 29 2024 04:55 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court No.: 86782

District Court No.: D-19-598320-D

**APPEAL FROM ORDER ON MOTION TO SET ASIDE**

Eighth Judicial District Court of the State of Nevada  
In and for the County of Clark  
THE HONORABLE PERRY  
DISTRICT COURT JUDGE

---

**RESPONDENT'S ANSWERING BRIEF**

---

Emily McFarling, Esq.  
Nevada Bar Number 8567  
McFarling Law Group  
6230 W. Desert Inn Road, Las Vegas, NV 89146  
Phone: (702) 565-4335; Fax: (702) 732-9385  
eservice@mcfarlinglaw.com

*Attorney for Respondent, Frank Luciano*

## **I. TABLE OF CONTENTS**

I.	TABLE OF CONTENTS .....	i
II.	TABLE OF LEGAL AUTHORITIES .....	ii
III.	JURISDICTIONAL STATEMENT.....	1
IV.	ROUTING STATEMENT .....	1
V.	STATEMENT OF THE ISSUES .....	1
VI.	STATEMENT OF THE CASE .....	2
VII.	STATEMENT OF THE FACTS .....	4
VIII.	SUMMARY OF ARGUMENT.....	7
IX.	ARGUMENT.....	8
X.	CONCLUSION .....	13
XI.	CERTIFICATE OF COMPLIANCE .....	15
XII.	CERTIFICATE OF SERVICE.....	17

## II. TABLE OF LEGAL AUTHORITIES

### Case Law

*Williams v. Williams*, 120 Nev. 559, 556, 97 p.3d 1124, 1229 (2004).....8,10

*Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).....8, 10

*Cook v. Cook*, 112 Nev. 179, 181-182, 912 P.2d 264, 265 (1996).....9,10

### Rules

NRCP 60(b).....5,11,13

NRCP 60(c).....7,9,11

### **III. JURISDICTIONAL STATEMENT**

On December 4, 2023, this Court granted a second extension of time for Appellant to file the opening brief and the deadline was set on December 8, 2023. However, Appellant did not file her opening brief until December 28, 2023.

This court has jurisdiction pursuant to NRAP the 3A(b)(1), which permits a party to appeal from “[a] final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” The final order appealed from is an Order entered on May 11, 2023. (15ROA3192-3195) The notice of entry of order was filed on May 12, 2023. (15ROA3198-3199) Appellant filed a notice of appeal on June 11, 2023. (15ROA3025-3206).

### **IV. ROUTING STATEMENT**

This appeal is presumptively assigned to the Court of Appeals per NRAP 17(b)(10), because it involves an issue of family law.

### **V. STATEMENT OF THE ISSUES**

- A.** Whether the District Court erred in denying Appellant’s March 6, 2023 Motion to Set Aside the December 7, 2020 Decree of Divorce.
- B.** Whether the District Court erred in denying Appellant’s March 6, 2023 Motion to Set Aside August 10, 2021 Order.
- C.** Whether the District Court erred in denying Appellant’s March 6, 2023 Motion to Set Aside September 6, 2022 Order.

**D.** Whether the District Court erred in denying Appellant's January 10, 2023 Motion to Set Aside January 10, 2023 Order.

**VI. STATEMENT OF THE CASE**

This appeal arises from a District Court's Order (Re: Motions to Set Aside) - Amended. (15ROA3192-3195).

On October 21, 2019, Respondent, Frand Luciano (hereinafter "Frank") filed his Complaint for Divorce. (1ROA1-8) The parties were married on November 18, 2017, and they are the natural parents of one minor child, to wit: Gianna, born on September 24, 2014. (1ROA2).

On November 7, 2019, the District Court granted temporary joint legal and joint physical custody of the minor child to the parties. (1ROA187-193). Said Order was entered on December 2, 2019.(1ROA185-186)

On December 12, 2019, the District Court set this case for non-jury trial on May 19, 2020 while Appellant, Amy Luciano (hereinafter "Amy") was present in open court. (3ROA526). The December 12, 2019 Order was also clear that May 5, 2020 is the calendar date and failure to appear on the calendar day may result in a default judgment, or other sanctions, consistent with EDCR 2.69. (2ROA299).

On May 5, 2020, Amy failed to appear on May 5, 2020 for the calendar call, and the District Court invoked EDCR 2.69 and changed the May 19, 2020 trial date to prove up. (10ROA2008;2010-2011).

On May 19, 2020, Amy failed to appear again (9ROA1988-1989). Frank swore and testified (9ROA1990-2006). A Decree of Divorce was entered on June 8, 2020, and a Notice of Entry was sent to Amy in a sealed envelope in United States Mail on June 8, 2020. (5ROA1038-1052).

On July 21, 2020, Amy filed her first Motion to Set Aside post decree (5ROA1053-1058), which was denied on September 16, 2020 which Amy appeared via video(5ROA1104-1105). Said Order was entered on December 7, 2020. (5ROA1104-1112).

On May 31, 2021, Amy filed her second Motion to Set Aside (6ROA118-1141), which was denied on August 10, 2021.(9ROA1869-1871). Said Order was entered on August 10, 2021. (9ROA1872-1875).

On September 9, 2021, Amy filed her first notice of appeal under Supreme Court No. 83522-COA,(10ROA2101-2102) and the Court of Appeals of the State of Nevada issued its Order Dismissing in Part and Affirming in Part on July 7, 2022. (10ROA226 – 11ROA-2236).

On August 29, 2022, Amy appeared via Bluejeans, where the District Court made rulings on Amy's Motion for Immediate Visitation that modified Amy's visitation, child support, and ordered Amy to pick three providers to conduct psychological evaluation for both parties. (11ROA2278-2285). Said order was

entered on September 6, 2022, (11ROA2278-2285), and the Notice of Entry of Order was sent on September 6, 2022. (11ROA2286-2294).

On January 10, 2023, the District Court granted Amy's counsel request to withdraw, but on the same day, Amy filed her third Motion to Set Aside the Order of Withdrawal of Attorney of Record. (12ROA2477-2480; 2482-2485). On March 6, 2023, Amy filed her fourth, fifth and sixth Motion to Set Aside the Orders entered on December 17, 2020, August 10, 2021, and September 6, 2022. (14ROA3083-3086;3088-3091;3093-3097).

On May 11, 2023, the District Court denied all four Amy's Motion to Aside above. 15ROA3193-3194). Amy now appeals. (15ROA3205-3206).

## **VII. STATEMENT OF THE FACTS**

Frank initiated the divorce in October 2019, and Amy filed an answer. (1ROA1-8;173-177). In December of 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. (2ROA297) The Trial Management Order was provided to both parties in open court. (9ROA1947; 2ROA297).

Between December of 2019 to February of 2020, Amy refused to participate in any discovery exchange, and she failed to appear at her deposition scheduled for December 30, 2019. (4ROA872-878;2ROA617-633;10ROA2076).

On February 20, 2020, the District Court awarded Frank sole legal and sole physical custody of the minor child because Amy withheld the child from Frank during his custodial time. (5ROA932).

After Amy failed to appear at the calendar call, the District Court left the matter on the calendar for the May 19, 2020 trial date to allow Amy another chance to present, or if she did not appear, to allow Frank to prove up his claim and obtain a decree of divorce. (10ROA2008;2010-2011). Amy did not appear on May 19, 2020 either, and the District Court took evidence from Frank and entered a final Decree of Divorce. (5ROA1024-1037; 1026-1027;1109).

On July 21, 2020, Amy filed her first Motion to Set Aside the Decree of Divorce pursuant to NRCP 60(b). (5ROA1053-1057) The District Court held a hearing on Amy's Motion in September of 2020, and issued a written Order in December of 2020. (5ROA1104-1112). In the Order, the District Court concluded that there was no basis to set aside the Decree because the record was clear that Amy was provided written notice of the calendar call and trial date in open court but chose not to appear at either date. (5ROA1109-1111). However, the District Court noted that it would consider modifying the custody and support provision in the Decree should Amy file an appropriate motion. (5ROA1110).

In May of 2021, Amy filed her second Motion to Set Aside the Decree of Divorce pursuant to NRCP 60(b). (6ROA1118-1141). In its written Order, the



District Court found that Amy failed to provide any proof of service for the motion, and the District Court has previously considered the same argument from Amy in her first Motion to Set Aside, therefore, the second Motion to Set Aside was denied. (9ROA1869).

Post decree litigation went on, and one important step Amy has to take before modification of custody is for her to participate in a psychological evaluation, which Amy continues to refuse to do. (11ROA2283).

On August 29, 2022, Amy appeared via Bluejeans, where the District Court made rulings on Amy's Motion for Immediate Visitation that modified Amy's visitation, child support, and ordered Amy to pick three providers to conduct psychological evaluation for both parties. (11ROA2283) Said order was entered on September 6, 2022, and the Notice of Entry of Order was sent on September 6, 2022. (11ROA2286-2294)

On January 10, 2023, the District Court granted Amy's counsel request to withdraw, but on the same day, Amy filed her third Motion to Set Aside the Order of Withdrawal of Attorney of Record. (12ROA2477)

On March 6, 2023, Amy filed her fourth, fifth and sixth Motion to Set Aside the Orders entered on December 17, 2020 (Decree of Divorce), August 10, 2021 (Order denying second Motion to Set Aside), and September 1, 2022 (Order regarding Evaluation). (14ROA3083-3086;3088-3091;3093-3097).

The District Court finds Amy's Motion to Set Aside January 10, 2024 Order was timely filed, but the arguments are non-persuasive. (12ROA3192-3195) Her Argument from other proceedings from years past do not relate whatsoever to any opposition to her counsel seeking to withdraw from his representation of her. (12ROA3192-3195)

The District Court finds Amy's Motion to Set Aside December 20, 2020 Order is frivolous and seeks to set aside an Order from over two years ago. (12ROA3192-3195) The District Court finds her motion is untimely and the arguments speak to issues that have no merit in setting aside the Order in question. (12ROA3192-3195)

The District Court finds Amy's Motion to Set Aside August 10, 2021 Order filed untimely, and September 1, 2022 Order filed timely. (12ROA3192-3195) However, her motions are frivolous and self-serving. The District Court finds her arguments have no merit in setting aside the Orders in question. (12ROA3192-3195)

## **VIII. SUMMARY OF ARGUMENT**

Amy filed four Motions to Set Aside four different orders. The set aside of December 17, 2020 Decree of Divorce and August 10, 2021 were part of Amy's previous appeals and the District Court decisions to deny them was affirmed. Further, Amy's motions to set aside 2020 and 2021 Orders were not made within a reasonable time pursuant to NRCP 60(c).

Although the Motions to set aside September 6, 2022 Order and January 10, 2023 Order may be made within six months, however, the Motions were denied by the District Court on its merit as Amy failed to present any valid ground to set aside these Orders. In sum, the District Court's decision not to set aside any Orders should be affirmed.

## **IX. ARGUMENT**

### **A. THE DISTRICT COURT DID NOT ERR IN DENYING APPELLANT'S MARCH 6, 2023 MOTION TO SET ASIDE DECEMBER 7, 2020 DECREE.**

Amy has appealed a decision denying her Motion to Set Aside December 7, 2020 Decree under the Supreme Court No. 83522-COA. On July 7, 2022, Amy's appeal was dismissed and the District Court decision not to set aside the December 7, 2020 Decree of Divorce was affirmed.

#### **Rule 60 – Relief from a Judgment or Order.**

- a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.
- b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

c) Timing and Effect of the Motion.

(1)Timing. A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

(2)Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

Here, the Motion to Set Aside December 7, 2020 Decree was filed on March 6, 2023 way beyond the six month reasonable time pursuant to NRCP 60(c).

Therefore, the District Court decision not to set aside December 7, 2020 Decree must be affirmed.

**B. THE DISTRICT COURT DID NOT ERR IN DENYING APPELLANT'S MARCH 6, 2023 MOTION TO SET ASIDE AUGUST 10, 2021 ORDER.**

Amy has appealed a decision denying her Motion to Set Aside August 10, 2021 Order under the Supreme Court No. 83522-COA. On July 7, 2022, Amy's

appeal was dismissed and the District Court decision not to set aside the August 10, 2021 was affirmed.

### **Rule 60 – Relief from a Judgment or Order.**

a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

c) Timing and Effect of the Motion.

(1)Timing. A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

(2)Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

Here, the Motion to Set Aside August 10, 2021 Order was filed on March 6, 2023 way beyond the six month reasonable time pursuant to NRCP 60(c).

Therefore, the District Court decision not to set aside August 10, 2021 Order must be affirmed.

**C. THE DISTRICT COURT DID NOT ERR IN DENYING APPELLANT’S MARCH 6, 2023 MOTION TO SET ASIDE SEPTEMBER 6, 2022 ORDER.**

Standard of review the District Court’s decision in divorce and child custody proceedings is an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 556, 97 p.3d 1124, 1229 (2004); *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). The District Court has broad discretion in its decision whether to grant or deny a motion to set aside a judgment under NRCP 60(b), and the Supreme Court should not disturb that decision absent an abuse of discretion. *Cook v. Cook*, 112 Nev. 179, 181-182, 912 P.2d 264, 265 (1996).

The September 6, 2022 Order modified Amy’s visitation, child support, and ordered Amy to pick up three providers to conduct psychological evaluation for both parties. The hearing was on August 29, 2022, and the Notice of Enter of Order was sent on September 6, 2022.

It appears that Amy argues that she was not served with Frank's court papers that led to the court Order on September 6, 2022. However, it was Amy's Motion for Immediate Visitation and Amy appeared via BlueJeans August 29, 2022 for the hearing.

It appears that Amy argues that Frank committed fraud, misrepresentation or misconduct that resulted in the Order. However, as the Order was almost entirely related to custody issues and Amy's child support obligation (Frank is the custodian parent), the alleged that Frank misrepresented in his Financial Disclosure Form certainly did not result in the Order that Amy dislikes.

It appears that Amy argues other reasons related to the history of the case are not valid grounds to set aside a Court Order from a hearing that Amy appeared and participated in.

Therefore, the District Court decision not to set aside the September 6, 2022 Order must be affirmed.

**D. THE DISTRICT COURT DID NOT ERR IN DENYING APPELLANT'S JANUARY 10, 2023 MOTION TO SET ASIDE JANUARY 10, 2023 ORDER.**

Standard of review the District Court's decision in divorce and child custody proceedings is an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 556, 97 p.3d 1124, 1229 (2004); *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). The District Court has broad discretion in its decision whether to grant

or deny a motion to set aside a judgment under NRCP 60(b), and the Supreme Court should not disturb that decision absent an abuse of discretion. *Cook v. Cook*, 112 Nev. 179, 181-182, 912 P.2d 264, 265 (1996).

On January 10, 2023, the District Court granted Amy's prior counsel Law Offices of Charles R. Zeh to terminate its representation of Amy. Mr. Zeh's Motion Terminate Representation was filed on December 23, 2022, after Amy sent emails directly to her counsel discharging its service.

It appears that Amy argues that she did not receive the Motion in mail until December 30, 2022 and she would have to January 16, 2023 to file an opposition. However, the District Court found this reason not persuasive and other alleged grounds regarding the history of this case are not relevant to set aside an Order for Amy's prior counsel to terminate representation.

Therefore, the District Court decision not to set aside the January 10, 2023 Order must be affirmed.

## **X. CONCLUSION**

For these reasons, the District Court's Order (Re: Motion to Set Aside) - Amended filed on May 11, 2023 should be the affirmed.

DATED this 29<sup>th</sup> day of January, 2024.

**MCFARLING LAW GROUP**

/s/ Emily McFarling

EMILY MCFARLING, Esq.



---

Nevada Bar Number 8567  
6230 W. Desert Inn Road  
Las Vegas, NV 89146  
(702) 565-4335  
*Attorney for Respondent,*  
*Frank Luciano*

## **XI. CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word–Office 365 Business in font type Times New Roman size 14.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more and contains 3,090 words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains \_\_\_\_ words or \_\_\_\_ lines of text; or

☐ Does not exceed \_\_\_\_ pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a

reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure

DATED this 29<sup>th</sup> day of January, 2024.

**MCFARLING LAW GROUP**

/s/ Emily McFarling

EMILY MCFARLING, Esq.

Nevada Bar Number 8567

6230 W. Desert Inn Road

Las Vegas, NV 89146

(702) 565-4335

*Attorney for Respondent,*

*Frank Luciano*

## **XII. CERTIFICATE OF SERVICE**

I, an employee of McFarling Law Group, hereby certify that on the 29<sup>th</sup> day of January, 2024, I served a true and correct copy of this Respondent's Answering Brief as follows:

☒ by United States mail in Las Vegas, Nevada, with First-Class postage prepaid and addressed as follows:

Amy Colleen Luciano, Pro Se  
10628 Foxberry Park Dr.  
Reno, Nv 89521

☐ via the Supreme Court's electronic filing and service system (eFlex):

/s/ Alex Aguilar  
Alex Aguilar