

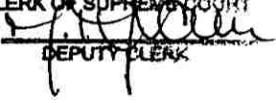
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALAA SOLIMAN ABOU ALHEIYAL,
Appellant,
vs.
SUSAN SWENSEN,
Respondent.

No. 88055-COA

FILED

OCT 14 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Alaa Soliman Abou Alheiyal appeals from a district court order denying a motion to set aside a divorce decree in a family law matter. Eighth Judicial District Court, Family Division, Clark County; Amy Mastin, Judge; Regina M. McConnell, Judge.

Alaa, a Syrian citizen, and respondent Susan Swensen, a United States (U.S.) citizen, were married in 2013 in the United Arab Emirates (UAE) and share a minor child, born in 2014 in the UAE. In 2017, Susan and the child relocated to the U.S., eventually settling in Nevada in July 2019. Alaa remained in the UAE, but the parties stayed in contact and amicably communicated over Facebook, email, and video calls. Susan initiated divorce and custody proceedings in May 2020, seeking, in relevant part, joint legal custody, primary physical custody, and to change the child's last name. Alaa was served, but declined to participate in the proceedings. Instead, he told Susan that he was not subject to the laws of the U.S. and that, if she did not agree to certain demands, UAE laws would apply to their divorce.

Because Alaa failed to respond to the complaint, Susan obtained a clerk's default in October 2020. In March 2021, the district court

entered a default decree of divorce, noting that Alaa had not responded to the complaint. The court awarded the parties joint legal custody and Susan primary physical custody. It also granted Susan's request to change the child's name. No appeal was taken from the divorce decree.

In October 2023, over two and a half years after the divorce decree was entered, Alaa filed a motion to set aside the divorce decree, for the return of the child to the child's home country, and for a court order to restore the birth name of the child. He requested that the child be returned to the UAE for a custody determination since Susan unlawfully removed her from the UAE, and that her name be changed back to her birth name. In that motion, Alaa claimed that he attempted to initiate divorce proceedings in the UAE in April 2020, but was informed that he could not begin until he produced a copy of the child's birth certificate and related documents, which were not in his possession. While he was attempting to locate the documents, Susan filed for divorce in Nevada. In August 2020, the UAE court issued a default decree of divorce, which Alaa emailed to Susan's attorney, but which was not presented to the district court prior to the entry of the divorce decree. The UAE court declined to make a custody determination.

Susan opposed the motion and filed a countermotion for an abduction prevention order. She asserted that motions to set aside are governed by NRCP 60 and Alaa failed to timely file his motion. She also asserted that Nevada was the child's home state, communications between the parties rebutted Alaa's claim that the child was abducted from the UAE without his consent, and he failed to demonstrate that undoing the change to the child's name was in her best interest. Alaa filed a reply, arguing that NRCP 60(b)(6) and NRCP 60(d)(3) warranted relief because Susan and her

attorney knew of the UAE divorce proceedings yet failed to disclose the proceedings to the district court, which constituted “withholding vital information.”

During the pendency of these proceedings, Susan filed a petition in a separate case seeking to terminate Alaa’s parental rights, and Alaa filed a motion to consolidate the cases.

Following a hearing on the motion to set aside, the district court entered a written order denying Alaa’s motion to set aside the divorce decree and to return the child to the UAE and granting Susan’s motion for abduction prevention. The court found that there was no factual or legal basis to set aside the divorce decree. The court noted that the parties communicated extensively after Susan and the child left the UAE and that she and the child had been in Nevada for more than six months at the time Susan filed for divorce. Further, the court found that there was no factual or legal basis to order the return of the child to the UAE since she had been in the U.S. since 2017 and in Nevada since July 2019. Based on those dates, the court found that Nevada was the “home state” of the child and the U.S. was the “home country” of the child and therefore the court had subject matter jurisdiction over the case. The court also found that Alaa had the ability to participate in the Nevada divorce proceedings but declined to do so and that he had not filed any requests seeking parenting time. The court declined to consolidate the divorce proceedings with the termination of parental rights proceedings but set a future trial date to deal with the request to terminate Alaa’s parental rights and stated that, if such proceedings were unsuccessful, the court would address issues regarding the child’s name change and parenting time. This appeal followed.

On appeal, Alaa challenges the district court's order denying his motion to set aside the divorce decree. "The district court has wide discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b)." *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 28 P.3d 255, 257 (2018) (quotation marks omitted). 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). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) (internal quotation marks omitted).

Alaa first contends that the district court should have set aside the divorce decree because the court failed to apply the UAE's laws on child custody since the child was born in the UAE and was unlawfully abducted by Susan.¹ Although not clearly articulated as such, Alaa's arguments in this regard appear to challenge the district court's exercise of subject matter jurisdiction over the child custody dispute. In response, Susan argues that jurisdiction was proper in Nevada because there were no custody proceedings or determinations pending in the UAE at the time the Nevada proceedings were initiated and that Alaa was properly served in the underlying case but failed to respond. Further, Susan disputes Alaa's allegation that she abducted the child and argues that the child had been

¹Because—as discussed below—we conclude that the district court properly exercised jurisdiction over the parties' child custody dispute, we do not address whether Alaa timely presented this issue to the district court within the reasonable time period required by NRCP 60(c)(1).

in the U.S. since 2017 and Alaa failed to initiate any proceedings for the return of the child.

We review questions of subject matter jurisdiction de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). “The district court’s factual findings, however, are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence.” *Id.* at 668, 221 P.3d at 704. The Uniform Child Custody Jurisdiction and Enforcement Act, which Nevada has codified as NRS Chapter 125A, exclusively governs subject matter jurisdiction over child custody issues. NRS 125A.305(2); *Friedman v. Eighth Jud. Dist. Ct.*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011). Pursuant to NRS 125A.305(1)(a), Nevada courts have jurisdiction over a child custody determination if Nevada was the child’s home state when the action was commenced. A child’s home state is the “state in which a child lived with a parent . . . for at least 6 consecutive months . . . immediately before the commencement of a child custody proceeding.” NRS 125A.085.

Here, in its order denying Alaa’s motion to set aside, the district court found, as it had when it entered the decree, that Nevada was the child’s home state because she had been living in Nevada with Susan since July 2019, more than six months before Susan initiated the underlying proceedings in May 2020. *See* NRS 125A.305(1)(a); *see also* NRS 125A.085. And, by Alaa’s own admission, there were no simultaneous custody proceedings at the time the district court assumed jurisdiction over the case. *See* NRS 125A.355(1) (providing that “a court of this state may not exercise its jurisdiction . . . if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with

the provisions of this chapter”). Indeed, the record demonstrates that Alaa had not initiated divorce proceedings in the UAE at the time Susan initiated divorce proceedings in Nevada and the UAE court later expressly declined to address child custody. Thus, we cannot say that the district court’s home-state-determination was clearly erroneous, *see Ogawa*, 125 Nev. at 668, 221 P.3d at 704, and, therefore, it properly exercised jurisdiction over the custody proceedings pursuant to NRS 125A.305(1)(a). As a result, we conclude that the district court did not abuse its discretion in declining to set aside the divorce decree on this basis. *See Cook*, 112 Nev. at 181-82, 912 P.2d at 265.

In reaching this conclusion, we reject Alaa’s contention that the divorce decree should be set aside because the district court should not have made a custody determination over an allegedly abducted child. As noted above, the court had jurisdiction over the custody proceedings and Alaa was properly served with the complaint for divorce but declined to participate in the proceedings where he could have raised that argument. Instead, Alaa informed Susan’s counsel that he was not subject to the laws of the U.S. Moreover, the district court implicitly rejected Alaa’s abduction claim given that it denied his motion to set aside—which expressly raised this issue—finding that the parties had engaged in extensive communication following Susan’s relocation to the U.S. with the child and that there was “no factual or legal basis” for returning the child to the UAE. The messages between the parties contained in the record support this finding and undermine Alaa’s abduction contention, as the messages reflect that the parties spoke amicably for several years before he made his abduction claim, with Alaa even assisting Susan with obtaining necessary UAE documents for her employment in the U.S. *See Ogawa*, 125 Nev at 668, 221 P.3d at 704.

Alaa next argues that the district court erred by denying his motion to set aside the judgment based on NRCP 60(b)(1) (providing that the district court may set aside a judgment based on excusable neglect). In response to Alaa's NRCP 60(b)(1) argument, Susan contends that he waived any argument regarding excusable neglect because he did not raise that before the district court and his motion was untimely under NRCP 60.

We decline to address Alaa's argument in this regard on appeal as he failed to raise any NRCP 60(b)(1)-based excusable neglect arguments before the district court.² *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). But, even if we were to consider this argument, relief would be unavailable under this provision because a request for relief under this provision would be untimely. *See* NRCP 60(c)(1) (providing that a motion under Rule 60(b)(1) must be made no more than six months after the date of the proceeding or the date of service of written notice of entry of the order). And while he attempts to change paths in his reply brief and argue that relief was warranted under NRCP 60(b)(6) or (d)(3), these arguments are likewise not properly before us as he failed to argue relief was warranted under those provisions in his opening brief. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3

²We note that Alaa did not rely on or reference NRCP 60 in his motion to set aside before the district court. And when Susan pointed out that NRCP 60(b) relief would generally be untimely in her opposition to that motion he argued, for the first time, that relief was warranted under NRCP 60(b)(6) and (d)(3). But as discussed above, in his fast track statement Alaa abandoned these provisions, arguing instead, for the first time, that relief was warranted under NRCP 60(b)(1), before improperly reverting to arguing for relief under NRCP 60(b)(6) and (d)(3) in his fast track reply.

(2011) ("Issues not raised in an appellant's opening brief are deemed waived.").³ Moreover, even if we were to consider his arguments under these provisions, Alaa fails to explain how any request for relief under NRCP 60(b)(6) or (d)(3) was timely brought within a reasonable time, given the two-and-a-half year delay in filing the motion to set aside the divorce decree. *See* NRCP 60(c)(1).

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

³Alaa has filed two motions in this court. In his first motion, he seeks to unseal the case and requests oral argument. Given that the case was not sealed, and in light of our disposition, we deny this motion. In his second motion, Alaa asks this court to sanction Susan and her attorney for conduct that took place in the district court. However, that request is improperly made in this court, as opposed to the district court, and thus we likewise deny that motion.

Additionally, insofar as Alaa 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.

cc: Hon. Amy Mastin, District Judge, Family Division
Hon. Regina M. McConnell, District Judge, Family Division
Alaa Soliman Abou Alheiyal
Roberts Stoffel Family Law Group
Eighth District Court Clerk