DA 18-0692

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 232N

IN RE THE MARRIAGE OF:

CHAD STONE,

Petitioner and Appellant,

and

LINDSEY STONE,

Respondent and Appellee.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DR 15-117
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Stone, Self-represented, Emigrant, Montana

For Appellee:

Karl Knuchel, Eric T. Oden, Attorneys at Law, Livingston, Montana

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Submitted on Briefs: August 21, 2019

Decided: October 1, 2019

Filed:

Clerk

Justice Dirk M. Sandefur delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Chad Stone (Chad) appeals the November 2018 judgments of the Montana Sixth Judicial District Court, Park County, finding him in contempt of court for failure to make a $20,000 marital property distribution installment payment and failing to pay off an outstanding 2013 marital estate income tax liability apportioned to him. Chad further appeals the Court's denial of his counter-motion for relief from the underlying June 2017 judgment that imposed those obligations. We affirm.

¶3 Chad and Lindsey Stone (Lindsey) were married in December of 2012. A child (F.S.) was born to them in December 2014. Chad suffers from significant physical disability and psychological trauma resulting from various causes including an accidental gunshot wound as a child, child abuse, a military service-related traumatic brain injury (TBI), a leg amputation incident to a violent car crash, and related post-traumatic stress syndrome. In 2015, the parties separated and Chad filed a district court petition for dissolution of the marriage, division of the marital estate, and a parenting plan for F.S.

Though both parties were initially represented by counsel, Chad stipulated to the withdrawal of his counsel in January 2017 and thereafter proceeded to bench trial pro se.[1]

¶4 At the time of the bench trial on April 10, 2017, Lindsey was thirty-one years old, employed as a food and beverage server at the Chico Hot Springs Resort, and had been similarly employed in the service industry throughout the marriage. Chad was forty years old and partially disabled. He was receiving a Veteran's disability benefit of $920 per month. After initially living together in Chad's home in Colorado, the parties sold the home in 2013 and moved to Emigrant, Montana. Chad purchased a new home in Emigrant in both parties' names and retained $71,032.41 from the proceeds of the Colorado sale. At trial, Lindsey valued the unencumbered marital home at $274,500. Chad did not dispute her valuation. The balance of the marital property included four motor vehicles, two trailers, and miscellaneous items of household and personal property.

¶5 Lindsey testified that the parties had no marital debt other than Chad's preexisting student loan debt and a related $1,994.26 federal tax liability for tax year 2013. Chad contrarily testified that the parties' outstanding tax debt was approximately $2,300, that it was a joint obligation, and that two other marital estate debts remained outstanding.

¶6 Chad and Lindsey sharply disputed the appropriate parenting plan for F.S. given his circumstances, needs, and the ongoing discord and hostility between them. Though the parties had earlier stipulated to an independent parenting evaluation and evaluator, Chad

[1] Chad was later represented by counsel in various post-trial contempt, parenting plan modification, and protective order proceedings in district court and on his appeal of a post-trial protective order (see *In re Marriage of Stone* (*Stone I*), DA 17-0728, 2018 MT 178N, 2018 Mont. LEXIS 238.

disputed the evaluator's findings and neutrality at trial. The parties further disputed the extent to which Chad remained capable of working and earning income in regard to child support.

¶7 On June 1, 2017, based on the trial evidence, the District Court entered detailed findings of fact, conclusions of law, judgment, and a final parenting plan: (1) valuing and apportioning the marital estate pursuant to § 40-4-202, MCA, and *In re Marriage of Funk*, 2012 MT 14, ¶ 17, 363 Mont. 352, 270 P.3d 39; (2) determining a parenting plan for F.S. pursuant to §§ 40-4-212, -234, MCA; (3) determining child support pursuant to § 40-4-204, MCA; and (4) denying Lindsey's request for attorney fees under § 40-4-110, MCA. Chad timely appealed, but the parties later entered into a mediated settlement agreement on appeal. We subsequently dismissed the appeal on Chad's motion on October 2, 2017.

¶8 On December 15, 2017, Lindsey filed a motion for contempt asserting that Chad had failed to make the first of three $20,000 marital estate distribution installment payments, the first of which was due on December 1, and that he failed to pay-off his apportioned 2013 tax liability.[2] In January 2018, Chad filed a counter-motion for relief from the original June 2017 marital estate distribution on the asserted grounds that he had limited income, was experiencing financial difficulty, was unable to work more than 50 hours a month due to his disability, and was unable to borrow on the unencumbered former marital home due to his limited income.

[2] The District Court previously found Chad in contempt and awarded attorney fees in November 2017 based on his failure to turn-over certain items of marital property apportioned to Lindsey.

¶9 Following a November 2018 hearing,[3] the District Court denied Chad's motion for relief from the original marital property distribution. As grounds for the denial, the Court noted that: (1) he had yet to make any marital distribution payment to Lindsey; (2) he failed to "raise any [previously unknown] factors regarding his financial situation or earning capability"; (3) he presented "no evidence of a significant change in [his] mental and physical conditions since" trial in 2017; and (4) the court had previously considered "all of the factors of [Chad's] partial disability" when it originally apportioned the marital estate and determined child support. The Court thus concluded that Chad failed to show a sufficient basis for relief from the original judgment under M. R. Civ. P. 60(b) or § 40-4-208, MCA.

¶10 The District Court similarly found Chad in contempt of his obligation to make the first of his three $20,000 marital distribution installment payments and pay-off his apportioned 2013 tax liability. The Court found that his failure to pay off the tax liability caused Lindsey to suffer a $2,388.17 offset against her 2016 federal tax refund. While noting Chad's testimony that he had received medical advice to discontinue cutting firewood as a source of supplemental income due to resulting micro-abrasions affecting his amputated leg, the Court found that he failed to show that he "is incapable of part-time employment in some [other] capacity."

¶11 We review lower court findings of fact only for clear error. *Ray v. Nansel*, 2002 MT 191, ¶ 19, 311 Mont. 135, 53 P.3d 870. Findings of fact are clearly erroneous only if

[3] The Court noted that it did not conduct a hearing on the motions sooner due to the pendency of this matter on Chad's appeal of a protective order judgment issued in November 2017.

not supported by substantial evidence, the court misapprehended the effect of the evidence, or, based on our review of the record, we have a definite and firm conviction that the lower court was mistaken. *Larson v. State*, 2019 MT 28, ¶ 16, 394 Mont. 167, 434 P.3d 241; *Interstate Prod. Credit Ass'n of Great Falls v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991). We review conclusions and applications of law de novo for correctness. *In re Marriage of Bessette*, 2019 MT 35, ¶ 13, 394 Mont. 262, 434 P.3d 894; *Steer, Inc. v. Mont. Dep't of Revenue*, 245 Mont. 470, 475, 803 P.2d 601, 603 (1990). We review grants or denials of post-judgment relief under M. R. Civ. P. 60(b) for an abuse or manifest abuse of discretion. *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶¶ 16-17, 338 Mont. 423, 166 P.3d 451. A court abuses its discretion if it exercises granted discretion based on a clearly erroneous finding of material fact, an erroneous conclusion of law, or otherwise acts arbitrarily, without conscientious judgment or in excess of the bounds of reason, resulting in substantial injustice. *Larson*, ¶ 16; *City of Missoula v. Mountain Water Co.*, 2018 MT 139, ¶ 9, 391 Mont. 422, 419 P.3d 685. Lower court findings of fact, conclusions of law, and exercises of discretion are presumed correct. *Hellickson v. Barrett Mobile Home Transp., Inc.*, 161 Mont. 455, 459, 507 P.2d 523, 525 (1973). The appellant has the burden of demonstrating error on appeal. *In re Marriage of McMahon*, 2002 MT 198, ¶ 7, 311 Mont. 175, 53 P.3d 1266; *Hellickson*, 161 Mont. at 459, 507 P.2d at 525.

¶12 District courts may not revoke or modify marital estate distributions except "upon written consent of the parties" or a finding of "the existence of conditions that justify the reopening of a judgment under the laws of this state." Section 40-4-208(3), MCA. Relief

from a final civil judgment is generally available only as a discretionary matter on limited grounds including:

> (1) mistake, inadvertence, surprise, or excusable neglect;
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> (2) newly discovered evidence that, with reasonable diligence, could not have been [earlier] discovered . . . ;
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> (3) fraud . . . , misrepresentation, or misconduct by an opposing party;
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> (4) the judgment is void;
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> (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.

M. R. Civ. P. 60(b).

¶13 Chad asserts that the District Court erred on seven different grounds. The first six are assertions of error regarding various factual matters pertinent to the court's original 2017 apportionment of the marital estate, parenting plan, and child support determination. He essentially asserts that the Court misapprehended the trial evidence and was biased against him. However, all of the factual matters raised under Chad's first six assertions of error are matters that he could have raised and pressed to decision on appeal but did not. Having entered into a mediated settlement agreement on appeal, he waived his opportunity to further litigate those issues except as otherwise narrowly provided by M. R. Civ. P. 60(b). In that regard, Chad has not shown any newly discovered evidence that materially changes the complexion of the Court's original findings or apportionment of the marital estate, or that the court otherwise erred or was biased against him. He has not shown that

the original marital property division was inequitable under the totality of the circumstances then or now.

¶14 Chad's seventh and final assertion of error is an attempt to relitigate the District Court's November 2017 order of protection barring him from contact with Lindsey. However, he has already had full and fair opportunity to litigate all issues regarding the 2017 protective order before the District Court and on appeal of that matter. *See Stone I*, *supra*. As with his first six assertions of error, Chad has not shown that he is entitled to relief under any of the narrow grounds specified in M. R. Civ. P. 60(b). He has thus failed to meet his burden of showing that the District Court erroneously denied his motion for relief from the original marital estate distribution, erroneously granted Lindsey's motion for contempt, or otherwise abused its discretion. We affirm.

¶15 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

/S/ DIRK M. SANDEFUR

We concur:

/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ JIM RICE

Justice Beth Baker, concurring in part and dissenting in part.

¶16 I agree with the Court that, having stipulated to dismissal of his appeal of the District Court's Decree of Dissolution, Chad cannot now raise arguments about the findings,

conclusions, or orders in the original Decree. But his appeal of the District Court's denial of his motion for relief from judgment under M. R. Civ. P. 60(b) is properly before us, as are the District Court's orders on Lindsey's motions for contempt and to modify the Order of Protection. Chad has made some compelling arguments in his pro se attempt to plead his case that, in my view, warrant more studied consideration.

¶17 Rule 60(b) "is designed to be applied primarily as an exception to the finality of a judgment where a party was wronged through no fault of its own." *Wagenman v. Wagenman*, 2016 MT 176, ¶ 11, 384 Mont. 149, 376 P.3d 121 (quoting *In re Marriage of Hopper*, 1999 MT 310, ¶ 29, 297 Mont. 225, 991 P.2d 960). Relief under Rule 60(b)(6) "is appropriate only in extraordinary circumstances which go beyond those covered by the first five subsections." *Orcutt v. Orcutt*, 2011 MT 107, ¶ 10, 360 Mont. 353, 253 P.3d 884. It is not a substitute for appeal. "A motion under Rule 60(b)(6) must be more than a request for rehearing, or a request for the district court to change its mind; it must be shown that something prevented a full presentation of the cause or an accurate determination of the merits that for reasons of fairness and equity redress is justified." *Orcutt*, ¶ 11.

¶18 Applying these standards, we have granted Rule 60(b) relief to self-represented parties in marriage dissolution cases on other occasions. *Orcutt*, ¶ 18; *Wagenman*, ¶ 21; *Steyh v. Steyh*, 2013 MT 175, ¶ 14, 370 Mont. 494, 305 P.3d 50. Each case stands on its own facts, and none mandates a grant of relief to Chad in this case. But it is evident from the record that Chad has been hampered in the presentation of his arguments by the lack of legal representation.

¶19 Chad is a disabled veteran with traumatic brain injury and PTSD. During the hearing on Lindsey's motion for contempt and his motion for relief from judgment, Chad testified to the factors contributing to his inability to make the required payments on the court's ordered property distribution. He explained that he recently had been undergoing considerable treatment and therapies for his medical and mental health conditions, traveling six hours round trip to Fort Harrison in Helena. In addition, Chad had just been assigned a VA doctor in Colorado who specializes in prosthetics. Within the past year (since entry of the Decree), he had traveled to Denver ten times, for a total of forty days, to obtain treatment that included prosthetic fitment, dry-needle therapy, and upwards of four hundred injections into his residual limb. Chad described the treatments as often debilitating. His prosthetic physician advised him to discontinue cutting firewood for medical reasons. Chad told the court about the physical difficulties he had experienced since entry of the June 2017 Decree. He summarized:

> It is exhausting to live with the level of pain that I have to wake up and face every single day, due to the serious issues from my traumatic brain injury and the loss of my leg. In spite of these pain issues, I wake up, every day, and do the best I can to be a great dad, a good person, and work as hard as my disability allows me.

Chad attempted to obtain a home equity loan to enable him to meet his obligations under the Decree but was denied because of his lack of income. He had begun renting out the basement in the house to generate some income to qualify for new financing. Chad represents on appeal that the only thing keeping him from being homeless is that his home was paid for.

¶20 This Court has adopted a program and protocol for affording qualified self-represented litigants an opportunity for pro bono counsel on appeal. It allows the Court to refer a case for potential involvement of volunteer counsel for a financially eligible self-represented litigant if, after initial briefing, the Court determines there are one or more issues in which the Court could benefit from additional briefing. There are many attorneys who have volunteered to participate in this program. I would refer this appeal to the Pro Bono Appellate Program, limited to Chad's appeal of the District Court's denial of his motion for relief from the judgment regarding the $60,000 payment the court decreed he must pay Lindsey.

¶21 As the Court observes, much of Chad's appeal comes down to factual disputes that the District Court resolved in its initial Decree or issues that were not before the court during the November 2018 hearing. But whether Chad has a colorable claim that he was entitled to relief from the judgment directing him to pay Lindsey $60,000 for her share of the marital estate is a question that I am not comfortable answering without giving Chad the opportunity to obtain advice of pro bono counsel, should he qualify.

/S/ BETH BAKER