DAOOD V. ALI

MARIAM DAOOD,
Petitioner-Appellee,
v.
HAMZA ABDU LATEEF ALI,
Respondent-Appellant.

No. A-1-CA-35886

COURT OF APPEALS OF NEW MEXICO

December 26, 2017

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, Matthew J. Wilson, District Judge

COUNSEL

New Mexico Legal Aid, Inc., Kate Merwald, Santa Fe, NM, for Appellee

Hamza Abdu Lateef Ali, Taos, NM, Pro Se Appellant

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, HENRY M. BOHNHOFF, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

{1} Father appeals the district court's decisions concerning custody and visitation matters. We issued a notice proposing to dismiss the appeal in part and to affirm in part. Father has responded with a memorandum in opposition that we have carefully considered. However, we remain persuaded that our original proposed disposition is

correct, and we therefore dismiss in part and affirm in part for the reasons stated in this opinion, as well as those outlined in the notice of proposed summary disposition.

{2} We proposed to dismiss Father's appeal insofar as he is attempting to appeal orders filed prior to August 2016. The basis of the proposed dismissal of several of the orders was the fact that Father's notice of appeal was not filed until September 9, 2016. We also proposed to hold that the district court's original order, filed in October 2015, was not a final, appealable order because it established only temporary custody and visitation arrangements. In his memorandum in opposition, Father does not contest the fact that his notice of appeal was not timely filed. Instead, he requests that we consider all of the orders he is attempting to appeal due to the circumstances and the unusual nature of this case. [MIO 2]

{3} He argues that the district court erred in assuming jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), NMSA 1978, §§ 40-10A-101 to -403 (2001), and in issuing its original interlocutory order filed in October 2015 and that we should redress that error in this appeal. [Id.] As we stated in the notice of proposed summary disposition, the filing of a notice of appeal within thirty days is a mandatory precondition to the exercise of our jurisdiction over an appeal. *See Trujillo v. Serrano*, 1994-NMSC-024, ¶ 14, 117 N.M. 273, 871 P.2d 369. Failure to meet this mandatory requirement has only been forgiven where the failure was outside the control of the appellant, such as where the failure is due to court error. *See id.* ¶¶ 16-18. That is not the situation here; Father simply did not file his notice of appeal in a timely fashion. The existence of significant legal or factual issues in a case does not excuse a late-filed notice of appeal. We therefore dismiss the appeal as to all orders except the August 15, 2016 order denying Father's Rule 1-060(B) NMRA motion.

{4} With respect to the Rule 1-060(B) motion, in our notice of proposed summary disposition we pointed out that the motion was directed at the temporary custody and visitation order entered by the district court in October 2015. Since that order has been superseded by later custody and visitation orders, we proposed to hold that the Rule 1-060(B) motion was moot. In addition, we emphasized the fact that Rule 1-060(B)(6) authorizes relief only in exceptional circumstances and proposed to hold that Father had failed to demonstrate the existence of such exceptional circumstances in his Rule 1-060(B)(6) motion.

{5} In response to the notice, Father presents extensive argument concerning the district court's original assumption of jurisdiction in this UCCJEA case, as well as the merits of that court's orders regarding custody and visitation. [MIO 5-10] However, a Rule 1-060(B)(6) motion is not an opportunity to re-argue the underlying merits of a case and is not to be used as a substitute for appeal. *Gedeon v. Gedeon*, 1981-NMSC-065, ¶ 17, 96 N.M. 315, 630 P.2d 267 ("It is well established that a motion for relief from a judgment or order under Rule [1-060(B)] is not intended to extend the time for taking an appeal and cannot be used as a substitute for appeal."). All of Father's arguments could and should have been presented in a timely appeal from the orders filed prior to August 2016; since that did not occur, he cannot obtain appellate review of them now by

simply filing a Rule 1-060(B)(6) motion and appealing the denial of that motion. *See Gedeon*, 1981-NMSC-065, ¶ 17. In other words, the mere existence of possibly meritorious arguments for appeal does not constitute exceptional circumstances requiring a court to reopen a judgment under Rule 1-060(B)(6).

{6} We note Father's suggestion that he did not receive effective assistance of counsel. [MIO 11-12] In a civil case such as this one, however, neither party has a right to counsel at all, *see Bruce v. Lester*, 1999-NMCA-051, ¶ 4, 127 N.M. 301, 980 P.2d 84, and thus the lack of effective assistance of counsel is not a basis for relief from this civil judgment. *See Patterson v. LeMaster*, 2001-NMSC-013, ¶ 16, 130 N.M. 179, 21 P.3d 1032 (noting that right to effective counsel is guaranteed by the Sixth Amendment in order to ensure fairness in criminal proceedings).

{7} Based on the foregoing, as well as the discussion set out in the notice of proposed summary disposition, we affirm the district court's denial of relief under Rule 1-060(B)(6) and we dismiss the appeal with respect to the district court's other orders.

{8} IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

LINDA M. VANZI, Chief Judge

HENRY M. BOHNHOFF, Judge