IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF KATHERINE E. HILL, A/K/A, KATHERINE DIANE HILL, A/K/A KATHERINE DIANE HILL-FORD, A/K/A KATHERINE DIANE HAMMOND, A/K/A KATHERINE DIANE SCOTT, A/K/A CATHERINE DIANE HILL.

LAWRENCE W. FORD,
Appellant,
vs.
ANITA L. BUDDE,
Respondent.

No. 77763

FILED

OCT 08 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.[1]

It is so ORDERED.

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

[1]The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.

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cc: Hon. Lynne K. Simons, District Judge
Lawrence W. Ford
Robison, Sharp, Sullivan & Brust
Reed Law Offices, PLLC
Washoe District Court Clerk

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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF KATHERINE E. HILL, A/K/A KATHERINE DIANE HILL, A/K/A KATHERINE DIANE HILL-FORD, A/K/A KATHERINE DIANE HAMMOND, A/K/A KATHERINE DIANE SCOTT, A/K/A CATHERINE DIANE HILL.

LAWRENCE W. FORD,
Appellant,
vs.
ANITA L. BUDDE,
Respondent.

No. 77763-COA

FILED

AUG 24 2020

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

ORDER GRANTING REHEARING IN PART, DENYING IN PART, AND AFFIRMING

This is a petition for rehearing of this court's April 27, 2020, order of affirmance arising from an underlying probate matter. Having considered the petition and related filings, we conclude that rehearing of this matter is warranted only as it relates to appellant Lawrence W. Ford's argument regarding whether the district court considered his objection to respondent Anita L. Budde's petitions, which sought, among other things, to settle and approve the report of administration and estate accounting. Accordingly, we grant rehearing and reinstate this appeal for the limited purpose of revising the grounds on which this court addressed Ford's assertion that his objection was not considered. *See* NRAP 40(e). To the

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extent Ford seeks rehearing on other issues related to this court's April 27 order of affirmance, his petition is denied. *See* NRAP 40(c).

On appeal, Ford faults the district court for stating, at the hearing on Budde's petitions, that it had not seen an objection filed. Based upon that statement and the fact that the district court's order does not specifically address his objection or the arguments contained therein, he asserts that the district court did not properly review all of the evidence presented. But the relevant transcripts and the court's order indicate otherwise. While the district court judge did initially state that she did not see Ford's objection, the court subsequently corrected that statement after questioning from Budde's counsel, noting that she did, in fact, have the objection. Moreover, the district court judge correctly noted that Ford's objection only related to certain parts of the petition, which demonstrates that the court reviewed it. Additionally, the order noted the objection, noted when it was filed, stated that all of the pleadings and evidence on file were reviewed, and set forth that the report and accounting were approved over Ford's objection.[1]

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[1]To the extent Ford asserts that these statements in the district court's order cannot demonstrate that the judge reviewed the objection because the order was drafted by Budde's counsel, that argument lacks merit. *See Mortimer v. Pac. States Sav. & Loan Co.*, 62 Nev. 142, 153, 145 P.2d 733, 735-36 (1944) (holding that a district court's formal written order controls over a conflict with the minute order, regardless of the fact that the written order was prepared by one of the parties, and noting that the "court is presumed to read and know what it signs").

Under these circumstances, Ford's assertions that his objection was not considered are unfounded, and his argument in this regard lacks merit. Accordingly, we affirm the district court's resolution of Budde's petitions.

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
Lawrence W. Ford
Robison, Sharp, Sullivan & Brust
Reed Law Offices, PLLC
Washoe District Court Clerk

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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF KATHERINE E. HILL, A/K/A KATHERINE DIANE HILL, A/K/A KATHERINE DIANE HILL-FORD, A/K/A KATHERINE DIANE HAMMOND, A/K/A KATHERINE DIANE SCOTT, A/K/A CATHERINE DIANE HILL.

LAWRENCE W. FORD,
Appellant,
vs.
ANITA L. BUDDE,
Respondent.

No. 77763-COA

ORDER OF AFFIRMANCE

Lawrence W. Ford appeals from various orders entered in a probate matter. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Respondent Anita Budde filed a petition for probate of Katherine Diane Hill-Ford's will and issuance of letters testamentary. Ford filed an objection to probate and contest of will and issuance of letters testamentary. After an evidentiary hearing, the court entered an order on March 16, 2018, that admitted the will to probate and ordered that it be administered pursuant to its terms subject to revocation by the pretermitted spouse, Ford, per statute. The court further appointed Budde as the personal representative of the estate and directed that letters

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testamentary issue to her. In addition, the court ordered that the estate be distributed one-half to Ford and one-half to Budde, regardless of the characterization of the assets as community or separate property, and set aside all of the personal property located at the property where Hill-Ford had resided to Ford without limitation. Following the entry of this order on March 16, 2018, a notice of entry was served on March 19, 2018, but no appeal was taken from that determination.

Subsequently, Budde filed a document which included a report of administration, an estate accounting, and a petition to settle and approve the report of administration and estate accounting. It also included various petitions for payment or reimbursement of fees or expenses and a petition for final distribution of the estate. Budde also filed a motion for attorney fees and costs under NRCP 68.[1] Ford opposed Budde's filings. He also filed a motion to relieve and sanction Budde's counsel and, on September 28, 2018, he filed a motion for a new trial under NRCP 59 and for relief from judgment under NRCP 60(b). The motion for NRCP 59 and 60 relief related to the March 16, 2018, order, which Ford did not appeal. After a hearing on the matter, the district court approved Budde's petitions, granted her motion for costs under NRCP 68, denied her motion for attorney fees under NRCP 68 and denied Ford's motions. This appeal followed.

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[1]The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Accordingly, we cite the prior version of the rules herein.

In probate matters, we defer to the district court's findings of fact and review legal questions de novo. *See Waldman v. Maini*, 124 Nev. 1121, 1129-30, 195 P.3d 850, 856 (2008). On appeal, Ford first argues that the district court made errors in its approval of Budde's petitions and that collectively, these errors show a lack of diligence which requires reversal. Specifically, Ford argues that the court erred when it stated that the residence was titled and acquired prior to his marriage to Hill-Ford when it was actually acquired and titled after the marriage. But this statement was made at the evidentiary hearing resulting in the March 16, 2018, order, not the hearing on Budde's petitions. And since Ford did not appeal the March 16 order, this issue is not properly before us.

Additionally, Ford faults the court for stating at the hearing on Budde's petitions that it had not seen an objection filed to the petitions. Based upon that statement and the fact that the order does not specifically address his objection, or the arguments contained therein, he asserts that the district court did not properly review all of the evidence presented. But the relevant transcripts and the order indicate otherwise. Specifically, while the judge initially made the statement Ford asserts was in error, at a later hearing, just prior to giving the ruling on the matter, the judge stated that she had spent quite a bit of time reviewing everything in the case and that the report and accounting were approved over Ford's objection. Additionally, the order noted the objection, noted when it was filed, stated all of the pleadings and evidence on file were reviewed and set forth that the report and accounting were approved over Ford's objection. Therefore, as Ford's assertions are unfounded, his argument in this regard lacks merit.

Ford also argues the district court erred by awarding Budde reimbursement for the cost of a stove she incurred to replace the stove that Ford took from the property where Hill-Ford had resided. He argues that since he was awarded all personal property at the residence he had a right to take the stove and therefore, the cost to replace it should not be reimbursed. But, regardless of whether the stove would be considered personal property, NRS 150.010 states that a personal representative, such as Budde, must be allowed all necessary expenses in the administration of the estate. And we discern no abuse of discretion in the court's decision to allow reimbursement of this expense, as it was incurred in preparing the residence for sale. Thus, for the reasons set forth above, we discern no error in the district court's resolution of Budde's petitions.

Ford further argues that the district court abused its discretion in denying his motion to disqualify counsel based upon an alleged conflict of interest. Based upon our review of the arguments and record before us, we cannot say that the district court manifestly abused its discretion in denying the motion to disqualify. *See Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 123 Nev. 44, 54, 152 P.3d 737, 743 (2007) (noting that the district court has broad discretion in matters of disqualification and that a district court's order on disqualification will not be set aside absent a manifest abuse of that discretion).

Ford also asserts that the district court abused its discretion in denying his motion for a new trial and for relief from judgment related to the March 16, 2018, order entered following the evidentiary hearing. But

that motion was not timely filed and thus, it was properly denied.[2] *See* NRCP 59(b) (providing that "[a] motion for a new trial shall be filed no later than 10 days after service of written notice of the entry of the judgment"); NRCP 60(b) (providing that motions under subsection (b)(1), (2), or (3) must be filed no more than 6 months from the date written notice of entry was served); *see also Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (providing that the appellate courts "will affirm the order of the district court if it reached the correct result, albeit for different reasons.").

Lastly, Ford argues that the district court abused its discretion in awarding costs under NRCP 68 because the court failed to analyze the factors set forth in *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). We note that the court expressly stated that it had "spent quite a bit of time reviewing everything in th[e] case" and gave careful consideration as to whether to award fees and costs under NRCP 68. And Budde's motion requesting attorney fees and costs under NRCP 68 contains significant discussion of the *Beattie* factors, including specifically addressing them with regard to the request for costs. While the court did not explicitly discuss the *Beattie* factors at the hearing, with the exception of whether the fees sought were reasonable and justified in amount, we cannot say that the district court, in light of its extensive review, failed to

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[2]To the extent Ford argues that there was fraud upon the court which would allow the NRCP 60(b) motion to be filed past the 6 month limitation period, that argument is without merit. *See NC-DSH, Inc. v. Garner*, 125 Nev. 647, 218 P.3d 853 (2009) (discussing the requirements for showing fraud upon the court such that relief may be obtained beyond NRCP 60(b)'s six-month limitation period).

consider the *Beattie* factors in awarding costs to Budde. Based on the foregoing, and given that the award is otherwise supported by substantial evidence, including the verified cost memorandum, we affirm that decision. *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. 235, 245, 416 P.3d 249, 258-59 (2018) (setting forth the requirements for upholding an NRCP 68 based award in the absence of explicit findings as to the *Beattie* factors).

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[3]To the extent that Ford raises arguments that are not specifically addressed herein, we have considered the same and conclude they do not provide a basis for relief.

cc: Hon. Lynne K. Simons, District Judge
Lawrence W. Ford
Robison, Sharp, Sullivan & Brust
Reed Law Offices, PLLC
Washoe District Court Clerk