21CA0326 Parental Resp Conc BB 04-28-2022

COLORADO COURT OF APPEALS DATE FILED: April 28, 2022

Court of Appeals No. 21CA0326
El Paso County District Court No. 12DR2531
Honorable Chad Miller, Judge

In re the Parental Responsibilities Concerning B.B., a Child,

and Concerning William Muhr,

Appellant,

and

Dawna Braswell,

Appellee.

ORDERS AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART, APPEAL DISMISSED IN PART, AND CASE REMANDED WITH DIRECTIONS

Division VII
Opinion by JUDGE BERGER
Brown and Johnson, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced April 28, 2022

William Muhr, Pro Se

No Appearance for Appellee

¶ 1 In this post-decree allocation of parental responsibilities proceeding, William Muhr (father) appeals from twenty-nine district court orders dating back to 2013. Dawna Braswell (mother) did not participate in the appeal. We

- affirm the January 19 and 25, 2021, orders denying father's motion for recusal, and the April 12, 2021, order denying father's motion to reconsider an attorney fees award;
- reverse the April 2, 2021, order denying father's C.R.C.P. 60(a) motion, and remand for further proceedings;
- vacate the January 25, 2021, order modifying child support, and the April 2, 2021, order denying father's motion to reconsider that order; and
- dismiss the appeal as to all remaining orders for lack of jurisdiction.

I. Background

¶ 2 Father and mother are the unmarried parents of one child. When the child was ten years old, father sought an allocation of parental responsibilities and entry of a child support order.

¶ 3 The district court entered its permanent orders in 2013 which, as relevant here, required father to pay mother $1,905.50 in monthly child support.

¶ 4 In 2016, father moved to reduce his child support obligation because he lost his job and was living on $415 of weekly unemployment compensation (first motion). The parties appeared for a contested hearing in late 2017 and, on January 8, 2018, the court entered a written order denying father's first motion.

¶ 5 On January 17, 2018, mother requested a status conference with the court because she believed the court made a clerical error in resolving father's first motion and failed to address the costs for the child's extracurricular activities. That same day, the court entered a written order finding that the January 8 order "denying the motion to modify . . . was in error and has since been removed from the permanent record in this case."

¶ 6 At a February 2018 status conference, the court reiterated that it had erroneously denied father's first motion. The court found that it had improperly compared father's newly calculated support amount against his support obligation in another case and not against his existing support obligation in this case. The court

found that a correct calculation would have resulted in it granting father's first motion and modifying his support obligation retroactive to October 1, 2016. However, the court found that a pending appeal divested it of jurisdiction to enter the corrected order. The court instructed that if mother's counsel created a new child support worksheet and filed it with a stipulation or motion, the court would enter an order once it regained jurisdiction. The parties never filed a stipulation or motion and the court never entered a new order.

¶ 7 In 2020, father again moved for a child support modification (second motion). At the start of the contested hearing on this motion, father pointed out that the court never entered an order on his first motion. Mother's counsel responded that the court denied his first motion on January 8, 2018. The court seemingly agreed with mother, finding that the parties had failed to appeal the January 8 order and had abandoned any issues they had with it.

¶ 8 On January 25, 2021, the court entered a written order granting father's second motion and modifying his support obligation to $1,425 per month.

¶ 9 Father thereafter filed a motion to correct the January 8, 2018, order under C.R.C.P. 60(a) and 61. The court denied the motion on April 2, 2021, finding that the parties failed to appeal that order or attempt to correct it. Father's C.R.C.P. 60(a) and (b) motion to reconsider the January 25, 2021, order was denied on April 12, 2021.

II. April 2, 2021, Order Denying Father's C.R.C.P. 60(a) Request to Correct the January 8, 2018, Order

¶ 10 Because it is dispositive of other issues, we start by considering father's second appellate contention — that the court erred by denying his C.R.C.P. 60(a) motion to correct the January 8, 2018, order. Father contends, and we agree, that the court should have corrected the ministerial oversight from 2018 by entering the order resolving his first motion before considering his second motion. We therefore reverse the April 2 C.R.C.P. 60(a) denial and remand for the court to enter an order resolving father's first motion.

A. Applicable Law

¶ 11 C.R.C.P. 60(a) gives the court discretion to correct mistakes in judgments, orders, or other parts of the record and errors therein

arising from oversight or omission. The purpose of a C.R.C.P. 60(a) motion is to make the judgment speak the truth as originally intended; it does not entail a relitigation of matters which have already been decided. *Diamond Back Servs., Inc. v. Willowbrook Water & Sanitation Dist.*, 961 P.2d 1134, 1137 (Colo. App. 1997). The rule functions as a safety valve by allowing the district court to correct, at any time, an honestly mistaken judgment that does not represent the understanding and expectations of the court and the parties. *Reisbeck, LLC v. Levis*, 2014 COA 167, ¶ 8.

¶ 12 We review a court's decision concerning the correction of clerical errors under C.R.C.P. 60(a) for an abuse of discretion. *Id.* at ¶ 7.

B. Analysis

¶ 13 The court denied father's first motion on January 8, 2018, but almost immediately rescinded that order by finding that it was entered in error. The court found that a mathematical mistake on its part led it to deny father's motion when it should have granted the motion and modified father's support obligation back to the date of the motion (October 1, 2016). Believing that it lacked jurisdiction, the court declined to enter an order at the time and

told the parties to prepare a new child support worksheet which it would sign once it regained jurisdiction. The court said that it would not make substantive changes to its findings and that all the parties had to do to prepare the worksheet was "plug[] the numbers into the child support software."

¶ 14 It is apparent from this discussion that the court did not intend for the January 8, 2018, order to act as the judgment on father's first motion. The court clearly expressed that it made a mistake by entering that order, that it should have granted the first motion, and that it would enter a new order once it regained jurisdiction. Because of oversight or mistake, an order never entered as expected by the court. This is the type of mistake that C.R.C.P. 60(a) is intended to remedy, because it allows the court to enter a corrective order that would "speak the truth as originally intended." *Diamond Back Servs., Inc.*, 961 P.2d at 1137.

¶ 15 We therefore conclude that the court erred by denying father's Rule 60(a) motion on the basis that the January 8, 2018, order resolved his first motion. When presented with father's Rule 60(a) motion, the court should have undertaken the ministerial task of

"plugging the numbers" into a new child support worksheet and entering the order that the district court planned to enter in 2018.

¶ 16 We therefore reverse the April 2 order denying father's C.R.C.P. 60(a) motion, and remand the case for the court to grant the motion and enter the order resolving father's first motion as expressed by the court in February 2018. No additional evidence will be required, as the February 2018 transcript and January 8 order contain the information required for the court to create a new child support worksheet and determine father's support obligation for the relevant time periods between October 2016 and February 2018.

III. January 25, 2021, and April 2, 2021, Orders Concerning Father's Second Motion to Modify Child Support

¶ 17 Because we are reversing the case and remanding for the court to enter an order resolving father's first motion, we cannot consider father's arguments concerning the court's orders addressing his second motion. Determining father's second motion required the court to consider his current support obligation which, at the time of the 2020 hearing, should have been the modified amount resulting from the ruling on his first motion, not the

original amount ordered in 2013. *See* § 14-10-122(1)(a)-(b), C.R.S. 2021 (allowing child support modification on a showing of substantial and continuing change of circumstances, which will not occur if the new child support order results in less than a ten percent change in the amount of support due per month); *see also In re Parental Responsibilities Concerning M.G.C.-G.*, 228 P.3d 271, 272 (Colo. App. 2010) (sections 14-10-122(1)(a) and (b) refer to the amount of child support "currently in effect" at the time of the modification).

¶ 18 Therefore, the court on remand must reconsider father's second motion in light of the new order resolving his first motion.

¶ 19 Because child support is based on the parties' and child's current financial circumstances, the court should allow each party to present evidence on their financial positions at the time of remand. *See In re Marriage of Salby*, 126 P.3d 291, 301 (Colo. App. 2005) (parties on remand should be given a full opportunity to present all relevant evidence affecting child support and maintenance); *In re Marriage of Berry*, 660 P.2d 512, 513 (Colo. App. 1983) (directing court on remand to determine the needs of the children at the time of the hearing).

IV. January 19, 2021 and January 25, 2021, Orders Denying Father's Request to Recuse Judge Miller and Change Venue

¶ 20 Father contends that Judge Miller lacked jurisdiction to enter orders in this proceeding because he improperly accepted the case assignment from Judge Bain. Father also contends that Judge Miller erred by denying his motion to recuse. We disagree with both arguments.

A. Additional Facts

¶ 21 In February 2020, father filed a verified motion and affidavit requesting that Judge Bain, who had been presiding over the case, disqualify himself. Judge Bain granted the motion and recused himself from the case. In his recusal order, Judge Bain wrote that "[t]he Clerk of Court will randomly re-assign this case . . . to new judges." The next day, Judge Bain entered an order transferring the case to Division 6. Judge Miller was assigned to Division 6 at the time of the transfer. There's no suggestion that the case was not reassigned randomly.

¶ 22 In January 2021, father filed a motion to disqualify Judge Miller and obtain a change of venue. Among others, father's motion alleged that Judge Miller improperly accepted an assignment that

Judge Bain had no jurisdiction to convey and that Judge Miller would continue the "brotherhood of judicial abuse" started by Judge Bain if left on the case.

¶ 23 Judge Miller denied the motion on January 19, 2021, finding no basis to disqualify himself or change venue. Judge Miller amended the order on January 25, 2021, to correct the parties' designations.

B. Judge Bain's Assignment to Division 6

¶ 24 Father argues that Judge Miller lacked jurisdiction to issue orders in this case because he improperly accepted the assignment from Judge Bain after Judge Bain recused himself. Put another way, father argues that Judge Bain lacked jurisdiction to assign the case to Judge Miller once he had recused. We do not agree.

¶ 25 When a district court judge is recused, he or she loses jurisdiction over subsequent rulings requiring the exercise of judicial discretion. *People v. Arledge*, 938 P.2d 160, 167 (Colo. 1997). However, the power to assign judges is administrative and involves none of the substantive rights of the litigants. *People v. Rodriguez*, 799 P.2d 452, 453 (Colo. App. 1990).

¶ 26 Chief Justice Directive 95-01 delegates to the chief judge the authority to assign judges and issue orders of an administrative nature to assure that the district court is able to reasonably perform its judicial functions. *See* Chief Justice Directive 95-01, Authority and Responsibility of Chief Judges (amended Sept. 2020); *People ex rel. Sullivan v. Swihart*, 897 P.2d 822, 826 (Colo. 1995); *see also In re Marriage of Glenn*, 60 P.3d 775, 777 (Colo. App. 2002) ("The chief judge is specifically authorized to assign a judge to a particular court, or to a division within a court, to try a specific case, or hear or decide all or any part of a case."). A Chief Justice Directive is binding upon the courts and judges when it deals with matters of court administration that fall within the chief justice's authority. *People v. Jachnik*, 116 P.3d 1276, 1277 (Colo. App. 2005).

¶ 27 Judge Bain served as chief judge of the judicial district when he recused himself from the case. Once he recused from the case, Judge Bain lost jurisdiction to enter rulings requiring the exercise of judicial discretion. But he could still exercise the administrative powers delegated to him by the Chief Justice Directive to assign the case to Division 6, and by extension, to Judge Miller. There is no

evidence (or suggestion) in the record to indicate that Judge Bain, acting in his capacity as chief judge, engaged in improper procedures or went beyond the authority delegated to him by the Chief Justice Directive when he entered this administrative order. We therefore reject father's first argument.

C. Merits of the Recusal Motion

¶ 28 A judge must be disqualified if interested or prejudiced in an action. C.R.C.P. 97. Even if a trial judge is confident he or she is impartial, the judge's duty is to "eliminate every semblance of *reasonable* doubt or suspicion that a trial by a fair and impartial tribunal may be denied." *Johnson v. Dist. Ct.*, 674 P.2d 952, 956 (Colo. 1984).

¶ 29 The test for disqualification under this rule is whether the motion and supporting affidavits allege sufficient facts from which it may reasonably be inferred that the judge is prejudiced or biased, or appears to be prejudiced or biased, against a party to the litigation. *Bruce v. City of Colorado Springs*, 252 P.3d 30, 36 (Colo. App. 2010). In passing on the sufficiency of the motion for disqualification, the judge must accept the factual statements in the

motion and affidavits as true, even if he or she believes them to be false or erroneous. *Id.*

¶ 30 Whether a judge should be disqualified in a civil action is a matter within the discretion of the district court, whose decision we will not overturn absent a showing of an abuse of that discretion. *Zoline v. Telluride Lodge Ass'n*, 732 P.2d 635, 639 (Colo. 1987). However, the sufficiency of a motion for recusal is a legal determination we review independently. *Bruce*, 252 P.3d at 36.

¶ 31 We have read father's motion and affidavit and, taking as true the allegations made against Judge Miller (as opposed to those allegations made against Judge Bain and Magistrates Cord and Trujillo) in this case (as opposed to father's other case), we conclude that father did not allege facts from which it could reasonably be inferred that Judge Miller harbored bias or prejudice against him. Father's allegations of bias and prejudice stem from Judge Miller's rulings, or lack thereof, and the way that Judge Miller managed his docket. However, "it is well established that adverse legal rulings, standing alone, do not constitute grounds for claiming prejudice or bias." *Bocian v. Owners Ins. Co.*, 2020 COA 98, ¶ 23.

¶ 32 Father also alleges that Judge Miller was biased and prejudiced because he had an agenda to advance Judge Bain's personal biases since Judge Bain could reward him with preferential case assignments and positive job performance reviews. Allegations that are based on "[s]uspicion, surmise, speculation, rationalization, conjecture, innuendo, and statements of mere conclusions of the pleader" may not form the basis of a legally sufficient motion to disqualify. *See Carr v. Barnes,* 196 Colo. 70, 73, 580 P.2d 803, 805 (1978) (quoting *Walker v. People*, 126 Colo. 135, 148, 248 P.2d 287, 295 (1952)); *see also Zoline*, 732 P.2d at 639 ("Facts are required; conclusory statements, conjecture, and inuendo do not suffice."); *Bocian*, ¶ 15 ("Where the motion and supporting affidavits merely allege opinions or conclusions, unsubstantiated by facts supporting a reasonable inference of actual or apparent bias or prejudice, they are not legally sufficient to require disqualification.").

¶ 33 We conclude that father's motion and affidavit failed to establish a basis to disqualify Judge Miller. Therefore, Judge Miller did not abuse his discretion in denying the recusal motion. *See Zoline*, 732 P.2d at 639. Since father has not addressed that part of

the recusal order denying his request for a change of venue, we consider any such argument abandoned. *See In re Marriage of Marson*, 929 P.2d 51, 54 (Colo. App. 1996) (issue not briefed is abandoned).

V. Remaining Orders

¶ 34 We affirm the April 12, 2021, denial of father's motion to reconsider an attorney fees award to mother. Father offers no argument why the court erred in denying that motion. *See Mauldin v. Lowery*, 127 Colo. 234, 236, 255 P.2d 976, 977 (1953) (failure to inform reviewing court of specific errors and the grounds and supporting facts and authorities therefor will result in affirmance).

¶ 35 We lack jurisdiction to consider all other orders not already discussed in this opinion. Father did not file a timely notice of appeal as to any order entered before December 14, 2020, and he did not amend his notice of appeal to include the district court's May 14, 2021, order adopting the magistrate's denial of father's motion for summary judgment. "Failure to file a notice of appeal within the prescribed time deprives the appellate court of jurisdiction and precludes a review of the merits." *Widener v. Dist. Ct.*, 200 Colo. 398, 400, 615 P.2d 33, 34 (1980). We therefore

dismiss the appeal as to all remaining orders for lack of jurisdiction. *See id.*

VI. Conclusion

¶ 36 The April 12, 2021, order denying father's C.R.C.P. 60(a) motion is reversed, and the case is remanded with directions for the court to enter a corrective order resolving father's first motion.

¶ 37 The January 25, 2021, child support modification order, and the April 2, 2021, order denying father's motion to reconsider that order are vacated.

¶ 38 The January 19 and 25, 2021, orders denying father's recusal motion and the April 2, 2021, order denying father's motion to reconsider an attorney fees award are affirmed.

¶ 39 In all other respects, the appeal is dismissed.

¶ 40 The existing child support order will remain in place until the court has entered new orders on remand.

JUDGE BROWN and JUDGE JOHNSON concur.

PETITIONS FOR REHEARING

Court of Appeals No. 19CA2232

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Felimon Landeros-Ramos,

Defendant-Appellant.

Petition for Rehearing DENIED

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

Court of Appeals No. 21CA0326

In re the Parental Responsibilities Concerning B.B., a Child,

and Concerning William Muhr,

Appellant,

and

Dawna Braswell,

Appellee.

Petition for Rehearing DENIED

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

Notice to self-represented parties**: You may be able to obtain help for your civil appeal from a volunteer lawyer through The Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at **www.cobar.org/appellate-pro-bono** or contact the Court's self-represented litigant coordinator at 720-625-5107 or **appeals.selfhelp@judicial.state.co.us.

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: January 9, 2023 CASE NUMBER: 2012DR2531
Certiorari to the Court of Appeals, 2021CA326 District Court, El Paso County, 2012DR2531	
In re the Parental Responsibilities Concerning B.B., a Child **Petitioner:** William Muhr, **and** **Respondent:** Dawna Braswell.	Supreme Court Case No: 2022SC517
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, JANUARY 9, 2023.

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: January 17, 2023 CASE NUMBER: 2012DR2531
El Paso County 2012DR2531	
In re the Parental Responsibilities Concerning **Child:** B B, **Appellant:** William Muhr, **and** **Appellee:** Dawna Braswell.	Court of Appeals Case Number: 2021CA326
MANDATE	

This proceeding was presented to this Court on the record on appeal. In accordance with its announced opinion, the Court of Appeals hereby ORDERS:

ORDERS AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART, APPEAL DISMISSED IN PART, AND CASE REMANDED WITH DIRECTIONS

POLLY BROCK
CLERK OF THE COURT OF APPEALS

DATE: JANUARY 17, 2023