IN THE SUPREME COURT OF THE STATE OF NEVADA

DAWNETTE R. DAVIDSON,

Appellant,

vs.

CHRISTOPHER B. DAVIDSON,

Respondent.

Supreme Court No. 67698

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District Court Case No. D365382

Appeal

From the 8th Judicial District Court (Family Division), Clark County
Honorable Vincent Ochoa, District Court Judge

Respondent's Answering Brief

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Jurisdictional Statement

Appellant's opening brief lacks the jurisdictional statement required by NRAP 28(a)(4) setting forth the basis for this Court's appellate jurisdiction. Respondent, having reviewed the appellant's brief, respectfully asserts that this Court is without appellate jurisdiction as there is no rule or statute authorizing an appeal from the order from which this appeal purports to lie—the district court's February 20, 2015 Decision and Order denying appellant's motion for enforcement of provisions of the parties' 2006 final Decree of Divorce. App. 165-69.

This Court has appellate jurisdiction to review decisions of the district courts. Nev. Const. art. 6, § 4. But this Court's appellate jurisdiction is limited, *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994), and it may only consider appeals authorized by statute or court rule. *Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984); *accord Brown v. MHC Stagecoach*, 129 Nev. —, —, 301 P.3d 850, 851 (2013). No statute or court rule directly provides for an appeal from an order denying a motion for enforcement of judgment, *see* NRAP 3A(b) (designating the judgments and orders from which an appeal may be taken).

Pursuant to NRAP 3A(b)(8), an appeal may be taken from any "special order entered after final judgment." However, to qualify as a substantively appealable order under NRAP 3A(b)(8), the order must be "an order affecting the rights of some

party to the action, growing out of the judgment previously entered." *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002). The order from which appellant purports to appeal in this case construes the previous entered final divorce decree to some extent, but does not amend it. It denies appellant's motion for enforcement, leaving the decree unchanged and the parties—and their rights—unaffected. Accordingly, the order is not an appealable special order after judgment under NRAP 3A(b)(8), and this appeal should be dismissed for lack of appellate jurisdiction. *Compare Koester v. Estate of Koester*, 101 Nev. 68, 72, 693 P.2d 569, 572–73 (1985) (portion of order construing original and amended divorce decrees not appealable as special order, but portion entering original decree nunc pro tunc is); *Resnick v. Valente*, 97 Nev. 615, 615–16, 637 P.2d 1205, 1205 (1981) (considering an appeal from an order granting a motion to enforce a settlement agreement where a judgment was also entered pursuant to the motion); *Bongiovi v. Bongiovi*, 94 Nev. 321, 322, 579 P.2d 1246, 1246 (1978) (Considering an appeal where arrearages accruing on obligations in divorce decree reduced to judgment). *cf. also Brown v. MHC Stagecoach*, 129 Nev. —, —, 301 P.3d 850, 853 (2013) (absent statute or court rule, order statistically closing a case not appealable; appeal dismissed for lack of jurisdiction); *Alvis v. State, Gaming Control Bd.*, 99 Nev. 184, 186, 660 P.2d 980, 981 (1983) (order denying rehearing not appealable as special order, though order granting rehearing is); and *Katleman v. Katleman*, 74 Nev. 141,

325 P.2d 420 (1958) (order denying wife's post-decree motion for allowances also not substantively appealable as special order).[1]

Issues Presented

1. Whether the district court's February 20, 2015 Decision and Order denying appellant's motion for enforcement of provisions of the parties' 2006 final Decree of Divorce is an appealable order or whether, instead, this appeal must be dismissed for lack of appellate jurisdiction.

2. Whether the district court abused its discretion in denying appellant's motion for putative enforcement of provisions of the parties' 2006 final Decree of Divorce.

[1] It is, of course, well established that, even after a notice of appeal is filed, the district court retains jurisdiction to decide matters collateral to or independent from the issues on appeal, to enforce orders that are before this court on appeal, and to hold hearings concerning matters that are pending before this court. *Foster v. Dingwall*, 126 Nev. ——, ——, 228 P.3d 453, 455 (2010); *Mack–Manley v. Manley*, 122 Nev. 849, 855, 858, 138 P.3d 525, 531, 532 (2006) (providing that the district court has the authority to resolve matters that are collateral to and independent of the issues on appeal, "i.e., matters that in no way affect the appeal's merits," and explaining that a "district court has the power to enforce" its order being challenged on appeal).

Routing Statement

This is not an automatic Court of Appeals case. Respondent has no objection to assignment of this case to the Court of Appeals.

This does not imply that the district court was without jurisdiction to consider and act upon appellant's motion had it chosen to do so—only that the district court's decision to deny the motion—brought long after the final decree—is not subject to review by this Court by means of a direct appeal.

Respondent's Answering Brief

Statement of the Case

The Parties appellant Dawnette Davidson ("Appellant") and respondent Christopher Davidson ("Respondent") were divorced on November 16, 2006. (App. 1-13; 165-70) Pursuant to the decree of divorce ("Decree"), an appraisal of the real property ("Marital Residence") located at 4683 Clay Peak Drive, Las Vegas, Nevada was to be conducted and Respondent was to pay Appellant her share of the equity based upon the appraisal. (App. 10, 166) The Decree mandated Appellant to execute and deliver a quit claim to Respondent. (App. 10-11) In 2006, the former Marital Residence was appraised. (App. 167) In early 2007, Appellant executed and delivered a quit claim to Respondent. (App. 167) In March of 2007, Respondent refinanced the Marital Residence. (App. 167)

In September, 2014, Appellant filed a lis pendens on the former Marital Residence. (App. 14-16; 52, 53, 55) On September 11, 2014, Appellant filed a motion before the district court claiming she did not receive payment for her share of the marital assets from the sale of a business or payment from the refinance of the marital residence. (App. 17-41) Respondent disputes both allegations and provided Appellant with over 400 pages of documents showing that Appellant received the payments. (App. 42-62; 71-76)

On February 20, 2015, the district court issued a decision and order denying Appellant's motion. (App. 163) This appeal followed.

Argument

I.

This Court Lacks Appellate Jurisdiction to Hear this Appeal

For the reasons set forth in Respondent's Jurisdictional Statement, above, the order from which appellant purports to appeal is not substantively appealable. Accordingly, it is respectfully submitted that this Court must dismiss the appeal for lack of appellate jurisdiction.

II.

The District Court Did Not Abuse its Discretion in Denying Appellant's Motion Putatively Seeking Enforcement Of the Parties' 2006 Final Decree of Divorce

The substantive issue in this appeal is simple and straight forward. As the district court clearly recognized, the relief requested in appellant's motion for putative enforcement of the Parties' 2006 final Decree of Divorce is barred by the six year statute of limitations set forth in NRS 11.190(1)(a). Accordingly, the district

court was compelled to deny appellant's motion and did not abuse its discretion in doing so.

Pursuant to NRS §11.190, an action upon a decree must be commenced within six years. *See Bongiovi v. Bongiovi*, 94 Nev. 321, 321, 579 P.2d 1246, 1247 (1978) (applying NRS §11.190 to a divorce decree). The six-year limitations period commences on the date of "the last transaction or the last item charged or last credit given." NRS §11.200; *see also see Borden v. Clow*, 21 Nev. 275, 278, 30 P. 821 (1892) (The statute of limitations begins to run when the debt is due, and an action can be instituted upon it. When there was no agreement between the parties as to when the indebtedness should be paid; the statute begins to run immediately upon the delivery of the deed). In early 2007, Appellant executed and delivered a quit claim to Respondent. (App. 167)

Under NRS §11.190(1)(a) the latest date when the six-year limitations period commenced was March of 2007, when the former Marital Residence was refinanced. (App. 167) *See* NRS §11.200. The motion at issue, without dispute, was filed on September 11, 2014, more than six years after that date. (App. 17-41) Thus, the putative enforcement motion is barred by the statute.

Appellant raises several arguments in an attempt to avoid application of the clear statutory bar. Each, however, is without merit. Appellant claims, for example, that the continuing jurisdiction of the family court somehow renders the statute of

limitations a nullity. All courts, not just family courts, have the inherent continuing jurisdiction over certain matters, including the enforcement of their decrees. But that is not an exception to the statute of limitations; rather, that is why statutes of limitations exist—to cut off what might otherwise be a court's endless authority. Appellant also suggests that the statute of limitations never began to run because there was no express deadline set forth in the decree. But, as noted above, it is the statute of limitations itself (notably NRS §11.200) that establishes when the time begins to run. That is a clear rule and should not be deemed to create "absurd consequences" simply because appellant (accepting *arguendo* her clearly rebutted claims of nonpayment) chose to sit on her rights past the running of the statutory limitations period.

Conclusion

For the reasons set forth above it is respectfully requested this Court affirm the judgment of the district court.

DATED this 16th day of December 2015.

HOFLAND & TOMSHECK

/s/ Bradley Hofland

By: _____

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Certificate of Compliance

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[**X**] This brief has been prepared in a proportionally spaced typeface using **Microsoft Word 2010 Times New Roman 14—point font**.

2. I further certify that this Brief complies with the page or type—volume limitations of NRAP 32(a)(7). Excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[**X**] Does not exceed 30 pages; or

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3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 16th day of December 2015.

/s/ Bradley Hofland

Bradley Hofland
Counsel for Respondent

Certificate of Service

I hereby certify that on this date, the 16th day of December 2015, I submitted the foregoing Respondent's Answering Brief for filing and service via the Court's Eflex electronic filing system. Electronic notification will be sent to the following:

Bradley Hofland
Daniel Anderson

/s/ Bradley Hofland

Bradley Hofland