IN THE SUPREME COURT OF THE STATE OF NEVADA

YOAV EGOSI,

Appellant,

vs.

PATRICIA EGOSI,

Respondent.

No. 76144

RESPONDENT'S REPLY TO APPELLANT'S RESPONSE TO THIS COURT'S ORDER TO SHOW CAUSE

COMES NOW, Respondent, Patricia Egosi, by and through her attorney, Emily McFarling, Esq. of McFarling Law Group, and hereby submits this Reply to Appellant's Response to Order to Show Cause entered on December 23, 2019:

DATED this 14th day of February, 2020.

MCFARLING LAW GROUP

/s/ Emily McFarling

Emily McFarling, Esq.
Nevada Bar Number 8567
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
Attorney for Respondent,
Patricia Egosi

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

On June 13 and June 14, 2017, the District Court heard evidence on Plaintiff-Respondent's Motion to Invalidate the Prenuptial Agreement, for a Business Valuation, for Spousal Support Arrears, and for Attorney's Fees and Costs and Defendant-Appellant's Motion to Validate the Prenuptial Agreement. On September 4, 2018, the District Court issued Findings of Fact, Conclusions of Law and Orders, holding that the prenuptial agreement is valid only as to the assets specifically disclosed therein.

On September 10, 2018, Defendant-Appellant filed an Amended Notice of Appeal of the decision. On December 23, 2019, this Court issued an Order to Show Cause why the appeal from the September 4, 2018 order should not be dismissed for lack of jurisdiction. Appellant filed his response to the Order to Show Cause on January 21, 2020.

II. LEGAL ARGUMENT

A. This Appeal Should Be Dismissed for Lack of Jurisdiction Because the District Court's September 4, 2018 Order is Not a Final Order.

Per NRAP 3A(b)(1), an appeal may be taken from a final judgment in a proceeding commenced in the district court. In a divorce proceeding such as the one

presented here, the final judgment is one that finally resolves all issues pertaining to the dissolution of the parties' marriage, including issues pertaining to child support. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (recognizing that "a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs."). Whether the district court's decision is entitled a "judgment" or an "order" is not dispositive in determining whether it is appealable; what is dispositive is whether the decision is final. *Id.* at 427, 996 P.2d at 418. In the interests of judicial economy and avoiding piecemeal appellate review, this Court has consistently looked past labels in interpreting NRAP 3A(b)(1) in favor of a functional view of finality. *Id.*

In *C.D. v. Glenn G.*, this Court relied on *Lee* to conclude that an appellant's challenge to the entry of a stipulation between respondents was premature: entry of the stipulation was not a final, appealable order because it did not dispose of all issues in the case. No. 62551, 2013 Nev. Unpub. LEXIS 454, at *1 (Mar. 7, 2013) (unpublished disposition).

More recently, in *Las Vegas Metro. Police Dep't v. Jenkins*, this Court held that an original award of attorney fees did not finally resolve the issue of fees and costs because it did not include a specified amount. "[T]he award of attorney fees and costs was not properly before the district court upon LVMPD's filing of its

original petition for judicial review because the Board had not yet actually determined the specific award." No. 65102, 2015 Nev. Unpub. LEXIS 1315, at *15-16 (Oct. 26, 2015) (unpublished disposition).

Issues contained in the instant case include the parties' divorce, the enforceability of the prenuptial agreement, child custody, child support, alimony, division of assets, and division of debts. Establishing the enforceability of the premarital agreement is merely a sub-issue or preliminary issue in the division of marital property and alimony. Like the award of undetermined fees in *Jenkins* and entry of the stipulation in *C.D.*, the lower court's order validating the parties' prenuptial agreement as to the assets listed therein does not resolve remaining property issues.

Appellant provides in his Response that "the orders governing the issue of the prenuptial agreement [are] final orders *as to that particular issue*" (emphasis added). The passage Appellant quotes from the September 4, 2018 order states that "[the lower] Court is divested of jurisdiction to entertain *the remaining financial issues* in this matter" (emphasis added). The stay of proceedings below militates against Appellant's request that the September 4, 2018 order be deemed "final"; by deferring jurisdiction on remaining issues, the District Court acknowledged that finding the agreement enforceable was one phase in the distribution of marital assets.

The proper mechanism for appealing an order that is not final is to petition this Court for a writ of mandamus/prohibition. An appellant who seeks the extraordinary interlocutory relief of having a preliminary District Court order reversed should file a writ asking this Court to instruct the lower court judge to strike the order or issue an order with different findings and conclusions.

III. CONCLUSION

Based on the procedural posture of the district court case, specifically that the order on appeal is merely a preliminary order, this Court lacks jurisdiction to consider this appeal. Therefore, the Court should issue an order dismissing the appeal. Once the property at issue has been divided and a final judgment is entered on all issues in the underlying divorce, any aggrieved party may appeal from that judgment.

DATED this 14th day of February, 2020.

MCFARLING LAW GROUP

/s/ Emily McFarling

Emily McFarling, Esq.
Nevada Bar Number 8567
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
Attorney for Respondent,
Patricia Egosi

DECLARATION OF EMILY MCFARLING, ESQ.

I, Emily McFarling, Esq., declare under penalty of perjury under the laws of the State of Nevada that the following is true and correct:

1. I represent the Respondent in the above-entitled case.

2. I have read this Reply to Response to Order Shortening Time and know the contents thereof; the same is true of my own knowledge, except for those matters stated upon information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 USC § 1746), that the foregoing is true and correct.

DATED this 14th day of February, 2020.

MCFARLING LAW GROUP

/s/ Emily McFarling

Emily McFarling, Esq.
Nevada Bar Number 8567
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
Attorney for Respondent
Patricia Egosi

CERTIFICATE OF SERVICE

I, an employee of McFarling Law Group, hereby certify that on the 14th day of February, 2020, I served a true and correct copy of Respondent's Reply to Response to Order to Show Cause via the Supreme Court's electronic filing and service system (eFlex):

Alex Guibaudo, Esq.

/s/Maria Rios Landin
Maria Rios Landin