

CASE NO. 78284

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRISHA KUPTZ-BLINKINSOP nka TRISHA MARGOLIS, an individual

Appellant

vs.

THOMAS R. BLINKINSOP, an individual

Respondent

Electronically Filed
October 28, 2019 12:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

REPLY BRIEF ON APPEAL

For Appellant TRISHA KUPTZ-BLINKINSOP

Appeal from the Eighth Judicial District Court, Clark County, Nevada
District Court Case # A-18-783766-C
The Honorable Senior Judge Charles Thompson

BENJAMIN B. CHILDS, ESQ.
Nevada Bar No. 3946
318 S. Maryland Parkway
Las Vegas, Nevada 89101
(702) 385-3865
Attorney for Appellant
TRISHA KUPTZ-BLINKINSOP

TABLE OF CONTENTS FOR
APPELLANT’S REPLY BRIEF

	Page #
TABLE OF CONTENTS	i
TABLE OF CASES AND AUTHORITIES	ii
SUMMARY OF ARGUMENTS	1
THOMAS’ BRIEF IGNORES THE WORDING OF THE DIVORCE DECREE	2
EQUITABLE ISSUES	2
PROVING TITLE TO HERSELF	4
NRS 125.184 IS COMPLETELY CONSISTENT WITH TRISHA’S PRAYER	5
CONCLUSION	6
ATTORNEY’S CERTIFICATION OF COMPLIANCE	7

TABLE OF CASES AND AUTHORITIES FOR
APPELLANT’S REPLY BRIEF

CASES

Page #

<u>Davidson vs. Davidson</u> , 132 Nev. 709, 382 P. 3d 887 (2016)	1,5
<u>Hillman v. I.R.S.</u> , 263 F.3d 338, 345 (4th Cir. 2001)	4
<u>Leven v. Frey</u> , 123 Nev. 399, 168 P.3d 712 (2007)	5
<u>SFR Investments Pool 1, LLC v. U.S. Bank, N.A.</u> , 135 Nev. Adv. Op. 45 (2019)	4

NEVADA REVISED STATUTES

NRS 11.190	6
NRS 17.214	5
NRS 125.184	5, 6

SUMMARY OF ARGUMENTS

Thomas' Answering Brief bolsters Trisha's case on many levels. First, it's admitted that Thomas never requested a deed to the Subject Property as provided in the Divorce Decree. Second, this appeal presents the opportunity to clarify either that the Davidson vs. Davidson, 132 Nev. 709, 382 P. 3d 887 (2016) decision is restricted to money judgments, or not. Trisha argues that the Davidson decision is not restricted to money judgments. This is how the family courts in Clark County have been applying it for years since it was issued, but certainly clarification is warranted if they are applying it incorrectly.

Finally, any equitable relief requires findings of fact, which require a trial. Trisha declaration clearly sets forth that she suffered serious financial repercussions from Thomas' actions as set forth below, so saying that Trisha has unclean hands is absurd. Thomas is the party who did not comply with the Divorce Decree. The trial court's decision made no findings of fact because Trisha was denied her due process rights to a trial before a final decision.

In short, this was a rush to judgment by a senior judge who did not consider all the facts of the case. He simply got the law wrong when he stated that Davidson doesn't apply. But he also issued equitable relief without having a trial to allow findings of fact to be made.

THOMAS' BRIEF IGNORES THE WORDING OF THE DIVORCE DECREE

The May 19, 2009 Divorce Decree adjudicated the parties' interests in multiple personal and real property, including the Subject Property at issue.

[JA 18 -23, specific quote at 21]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall receive as his sole and separate property the real property located at 2042 Deer Springs Drive, Henderson, Nevada. Defendant shall assume, and hold Plaintiff harmless from, any and all encumbrances on said real property. Plaintiff shall execute a quitclaim deed to remove Plaintiff's name from title within 10 days of entry of this decree.

It's undisputed that Thomas never asked Trisha "to execute a quitclaim deed to remove Plaintiff's name from title within 10 days of entry of this decree." Trisha never transferred ownership of the Subject Property. [JA 39] Over eight years passed before Thomas had to address the issue based on Trisha's filing the Complaint, and this was after Thomas received several windfalls due to his own bad acts, as set forth below.

EQUITABLE ISSUES

Trisha sets forth numerous equitable issues in her November 18, 2018 declaration. [JA 39] Thomas caused Trisha lots of financial problems, which

she listed and which Thomas does not dispute, as she sets forth below.

I have my own issues with Thomas's performance of conditions contained in Divorce Decree. He stopped making mortgage payment on the 2405 W. Serene Avenue # 814 Las Vegas, NV property, which mortgage was in both our names. Thomas literally made one payment on the Serene property after the May, 2009 Divorce Decree and made no payments after that time, while receiving rental income until it was foreclosed in October, 2015. Plus, I bought one of the cars that was in his name which took the loan out of his name. This was an expensive BMW car that I would not have bought if I'd know he was not going to be making the payments he was obligated to make.

During our marriage Thomas and I invested approximately \$50,000 in renovations and improvements into the Subject Property, paying cash using the proceeds from a Home Equity Line of Credit [HELOC] on another parcel of real property located at 10169 Quilt Tree Street Las Vegas, NV. This HELOC was subsequently discharged as to my obligation in a bankruptcy I had to file in 2011.

As clarified in Trisha's January 7, 2019 declaration, Thomas benefitted from her bankruptcy because the Subject Property had a HELOC attached to it and when Trisha "was forced to claim Bankruptcy the HELOC was forgiven on Deer Springs and removed and he had a gain in equity the property." Trisha had to file bankruptcy "when Thom decided to stop paying the mortgage on 2405 Serene. . . Thom has the windfall of this situation to my detriment and is the one with unclean hands." [JA 162]

All of these facts are undisputed.

Thus, Thomas stating that Trisha has unclean hands is absurd. She suffered greatly due to his actions, including having to file a bankruptcy which benefitted Thomas by discharging a HELOC loan in his name. Trisha did nothing wrong. Trisha's allegations are **not** contested in any manner by Thomas in his December 6, 2018 declaration. [JA 96]

Thomas is the party who waived his right to get the deed by not requesting it. Thomas never asserts that he requested the deed from Trisha. This Court recently noted that "common sense dictates" that if an issue is waived at one level, it cannot then be presented at the lower level where it should have been presented in the first place. SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 135 Nev. Adv. Op. 45 (2019) (citing Hillman v. I.R.S., 263 F.3d 338, 345 (4th Cir. 2001))

PROVING TITLE TO HERSELF

Trisha easily proves title to herself. Her name was on title when she filed her motion. [JA 41 - 46]

NRS 125.184 IS COMPLETELY CONSISTENT WITH TRISHA’S PRAYER

As set forth above, the Divorce Decree adjudicated multiple rights between the parties. Thomas did not perform under the terms of the Decree. He did not seek to enforce the Decree. He did not ask Trisha to provide the “quitclaim deed to remove Plaintiff’s [Trisha] name from title within 10 days of entry of this decree.”

Thomas had the right to demand the quitclaim deed, but did not. He expressly states why in his December 6, 2018 declaration. “At that time, due to the downturn in the real estate market, coupled with the balance on the HELOC, the Deer Springs Property was underwater approximately \$180,000.00 in negative equity.” [JA 95]

So, as set forth above, once the HELOC was extinguished due to Trisha’s bankruptcy, and the real estate market recovered, there is equity and he wants to enforce the Divorce Decree.

This is exactly what Davidson and Leven v. Frey 123 Nev. 399, 168 P.3d 712 (2007) address, and the exact purpose of NRS 17.214. Note that NRS 17.214 uses the optional word “may renew a judgment”. Thomas didn’t have to renew the judgment, and didn’t. As set forth on page 12 in the Opening Brief, Leven clearly states that when a judgment is not renewed, it is void.

Davidson applied that to divorce decrees.

NRS 125.184 authorizes the family court to adjudicate all rights and obligations of the parties. Whether they enforce those rights of obligations is completely voluntary. In this case, Thomas does not deny that he did not exercise his right to the quitclaim deed, and explains why. Thomas's argument in the Answering Brief is specious and ignores the requirements of timeliness and the equitable arguments of clean hands, waiver and estoppel what bar him from benefitting from his wrongful actions and failure to act.

CONCLUSION

The trial court's decision should be reversed with instructions to reinstate Trisha's partition action, setting aside the Order filed February 27, 2019 [JA 163-166] and also setting aside the Declaratory Judgment filed March 9, 2019. [JA 167-176]

If this Court wants to clarify that even when a divorce decree is not renewed it is enforceable, this is its opportunity. As argued before Judge Thompson, his decision is effectively enforcing a provision in a divorce decree that would be barred by the issuing court "because it wasn't renewed and it

wasn't within six years under 11.190.” [JA 188:3-4]

/s/ Benjamin B. Childs

BENJAMIN B. CHILDS, ESQ.
Nevada Bar No. 3946
Attorney for Appellant

CERTIFICATE OF COMPLIANCE [NRAP Form 9]

1. I hereby certify that this Reply 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:

This brief has been prepared in a proportionally spaced typeface using Wordperfect 12 in proportionally spaced typeface using Times New Roman, 14 point type.

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

Proportionately spaced, has a typeface of 14 points or more and contains 1,559 words.

3. Finally, I hereby certify that I have read this Reply 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 October 23, 2019

/s/ Benjamin B. Childs
BENJAMIN B. CHILDS, ESQ.
Nevada Bar No. 3946
Attorney for Appellant