

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC THOMAS MESI,
Appellant,
vs.
VANESSA MARIE MESI, A/K/A
VANESSA MARIE REYNOLDS,
Respondent.

No. 79137

FILED

AUG 14 2019

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

*ORDER REGARDING PRO BONO COUNSEL AND
PRO SE DOCUMENTS*

This is an appeal from a district court order dismissing a complaint for divorce. Appellant and respondent are proceeding without legal representation in this appeal. Appellant has filed a motion for the appointment of pro bono counsel.¹ Having considered the documents before this court, this court has determined that the appointment of pro bono counsel to represent appellant and respondent would assist this court in reviewing this appeal. By this order, the court expresses no opinion as to the merits of this appeal.

Pro bono counsel is an attorney who provides legal services without charge for the benefit of the public good. The appointment of pro bono counsel provides attorneys with an opportunity to volunteer legal services in furtherance of their professional responsibility and, at the same time, allows financially eligible litigants access to quality legal representation without cost. Counsel will be appointed for purposes of this appeal only and will participate in oral argument. Currently, the Pro Bono

¹The motion is not accompanied by proof of service on respondent. See NRAP 25(b). This court has nevertheless elected to consider the motion. NRAP 2.

Committee of the Appellate Litigation Section of the State Bar of Nevada (Pro Bono Committee), in conjunction with the Legal Aid Center of Southern Nevada, has developed a pro bono appellate program to assist the public and this court. This case is hereby referred to the program established by the Pro Bono Committee to evaluate whether appellant and/or respondent can benefit from the program.

Accordingly, the clerk of this court is directed to transmit a copy of this order and the attached case summary and district court order to the Legal Aid Center of Southern Nevada for financial eligibility screening. If appellant and/or respondent qualify and do not object to pro bono counsel, the Legal Aid Center in cooperation with the Pro Bono Committee shall locate volunteer attorneys from the program to represent appellant and respondent. Once attorneys are located, the attorneys shall file notices of appearance in this court within 60 days from the date of this order. Briefing and oral argument will be scheduled thereafter.

Alternatively, if appellant and/or respondent are not financially eligible or object to pro bono representation, or if volunteer attorneys cannot be located, the Legal Aid Center of Southern Nevada shall notify this court in writing within 60 days from the date of this order. In such case, oral argument will not be held. The briefing schedule in this appeal shall be suspended pending further order of this court.

Appellant has filed a pro se "Notice of Judicial Conduct Complaint with Chronological History and New Lower Court Filing." Appellant asks that this court take judicial notice of documents outside of the record that was before the district court. No cause appearing, the motion is denied. *See Carson Ready Mix v. First Nat'l. Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (this court "cannot consider matters

not properly appearing in the record on appeal"). The clerk shall detach the exhibits from the notice filed on July 24, 2019, and return them unfiled.²

This court takes no action at this time on appellant's pro se "Notice of Transcripts Request a Second Time" and "Notice of Fraudulent Assets, Debts Transfers During Divorce and Bankruptcy."

It is so ORDERED.

Pickering, A.C.J.

cc: Eric Thomas Mesi
Vanessa Marie Mesi
Legal Aid Center of Southern Nevada, Barbara E. Buckley,
Executive Director
Anne R. Traum, Coordinator, Appellate Litigation Section,
Pro Bono Committee, State Bar of Nevada
Kelly Dove

²To the extent appellant wishes this court to consider the district court minutes and the July 15, 2019, order, those items are part of the record on appeal. *See* NRAP 10(a), (b). They may be included by appointed counsel in the appendix or, if no counsel is located, will be transmitted to this court by the district court clerk.

Docket No. 79137

Mesi v. Mesi

Respondent filed for divorce in California in January 2019. Appellant filed a complaint for divorce in Nevada in March 2019. After conducting a UCCJEA conference with the California court, the district court dismissed appellant's Nevada complaint under the first to file rule. Appellant asserts that respondent's complaint was improperly filed in California because she was not a resident of the state.



1 ORDR

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 ****

5 Eric Thomas Mesi, Plaintiff
6 vs.
7 Vanessa Marie Mesi, Defendant

Case No.: D-19-585846-D
Department G

8 **ORDER AFTER HEARING**

9
10 THIS MATTER was heard before the Court on June 19, 2019 at 8:30 A.M. on
11 a Telephonic Conference with the Santa Clara County Family Court. Plaintiff Eric Mesi
12 (hereinafter "Plaintiff"), not present and in proper person, and Defendant Vanessa Mesi,
13 (hereinafter, "Defendant"), not present and in proper person. This Court, having spoken to
14 the Honorable Jose S. Franco, Superior Court of California, County of Santa Clara, and
15 having read the related papers and pleadings on file herein, and with good cause
16 appearing,
17

18 THE COURT NOTES that minutes orders on May 1, 2019, May 6, 2019, and
19 June 3, 2019 were issued in this matter striking three (3) of Plaintiff's filed Decree of
20 Divorces because none of them were signed by the Court.
21

22 THE COURT FURTHER NOTES that the Court sent Plaintiff three (3)
23 memorandums returning his submitted Decrees of Divorce unsigned for various reasons.

24 In a memorandum dated May 9, 2019, the Court returned Plaintiff's proposed
25 Decree of Divorce and told Plaintiff that he had not obtained a proper Default, had not
26 filed a Request for Summary Disposition, had not filed an Affidavit in Support of Request
27

1 of Summary Disposition, and that the provisions contained in the filed Complaint and
2 proposed Decree did not match.

3 In a memorandum dated May 21, 2019, the Court told Plaintiff again that a
4 proper Default had still not been filed in this matter.

5 In a June 12, 2019 memorandum, after receiving at minimum three (3)
6 additional submitted Decrees of Divorce, the Court stated that none of the Decrees of
7 Divorce would be signed at that time and that the Court has been made aware of a possible
8 California case due to Defendant filing a Declaration to Inform the Court of the same. The
9 Court further stated in that memorandum that a UCCJEA Conference would be held with
10 the California Court to properly address the matter.

11
12 THE COURT FURTHER NOTES that during the June 19, 2019 hearing, the
13 Court reviewed the history of the case and the pleadings on file. Judge Franco and this
14 Court engaged in a discussion regarding the First to File Rule. The Courts NOTED that
15 Plaintiff filed his Complaint for Divorce in Nevada on March 13, 2019; however,
16 Defendant filed her Complaint for Divorce in Case # 19 FL 0002677 with the California
17 Court on January 23, 2019. The Courts NOTED that neither party had effectuated service
18 as of June 19, 2019. The Courts further NOTED Defendant filed for a Restraining Order
19 in California ten (10) days after filing for Divorce.

20
21 Judge Franco indicated that due to Defendant's inability to serve Plaintiff the
22 Santa Clara Court allowed Defendant to serve Plaintiff by mail. Judge Franco further
23 indicated that upon service by mail Plaintiff filed an Objection with the California Courts
24 regarding jurisdiction.

1 This Court advised Judge Franco that Nevada is inclined to dismiss Plaintiff's
2 action and defer jurisdiction to California under the First to File Rule. This Court NOTED
3 Plaintiff served Defendant through her Bankruptcy Attorney in Washoe County, but
4 Defendant's bankruptcy attorney does not represent Defendant in her divorce case; thus,
5 service upon Defendant's bankruptcy attorney is not proper.
6

7 **NOW, THEREFORE,**

8 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that D-19-
9 585846-D shall be DISMISSED pursuant to the First to File Rule, as Plaintiff filed the
10 instant action on March 13, 2019 and Defendant filed her action in Santa Clara County,
11 Case # 19 FL 0002677, on January 23, 2019. Jurisdiction is DEFERRED to California and
12 the parties' case will proceed in the Superior Court of California, County of Santa Clara.
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14 DATED this 12th day of July, 2019.

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16 DISTRICT JUDGE
17 DEPARTMENT G
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