

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL A. GONZALEZ,

Appellant,

vs.

LILIANA C. GONZALEZ, N/K/A
LILIANA C. GARCIA,

Respondent.

Supreme Court No. 82011

Electronically Filed
Dec 08 2020 11:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

MOTION FOR STAY OF ORDER

COMES NOW Appellant, Miguel A. Gonzalez, by and through his attorney, Aaron D. Grigsby, Esq. of The Grigsby Law Group, APC, and respectfully petitions this Honorable Court to stay the Order entered on October 22, 2020 in case D-07-376585-Z until such time as this Court issues a decision on the appeal.

RELIEF SOUGHT FROM THE NEVADA SUPREME COURT

An Order directing the District Court to stay the Order entered on October 22, 2020 until a decision is made on Appellant's appeal.

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

The parties were divorced by stipulated Decree on July 30, 2007.¹ Plaintiff filed a Motion to Enforce Decree of Divorce approximately thirteen (13) years after the Decree of Divorce.² Mr. Gonzalez opposed the Motion.³ The District Court issued a minute order granting the Plaintiff's motion. The minutes were reduced to an Order and entered on October 22, 2020.⁴ Thereafter, Mr. Gonzalez filed a Notice of Appeal of the order, which is currently pending.

ARGUMENT

A. Standard

Pursuant to NRAP 8(a), an application for a stay must ordinarily be made in the district court⁵. NRAP 8(c) provides the list of factors to be considered in determining whether a stay pending appeal should be issued in a civil case that does not involve child custody⁶. NRAP 8(c) contains the factors for consideration in deciding whether to issue a stay:

In deciding whether to issue a stay or injunction, the Supreme Court will generally consider the following factors:(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or

¹ AA000001-25

² AA000026-35

³ AA000026-35

⁴ AA000051-56

⁵ Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 657, 6 P.3d 982 (2000)

⁶ Fritz, at 657

serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition⁷.

These factors mandate a stay in the present case. Mr. Gonzalez filed a Motion for Stay in the District Court. The District Court denied his motion through a minute order without a hearing.

THE OBJECT OF THE APPEAL WILL BE DEFEATED IF A STAY IS DENIED

The first factor is whether the object of the appeal will be defeated if the stay is denied⁸. The object of the appeal concerns real property. If the stay is not granted to maintain the status quo, Mr. Gonzalez would unnecessarily be deprived of a substantial portion of his half of the equity in the marital home, which cannot be undone if the residence is subsequently sold. The stay will avoid serious harm that will result to Mr. Gonzalez and further avoid needless litigation. Accordingly, this factor weighs in favor of issuing the stay.

MR. GONZALEZ WILL SUFFER IRREPARABLE OR SERIOUS INJURY IF

THE STAY IS DENIED

⁷ NRAP 8(2)(c)

⁸ NRAP 8(c)(1)

The second factor under Rule 8 is whether appellant will suffer irreparable or serious harm if the stay is denied⁹. Without a stay in this case, Mr. Gonzalez will suffer irreparable injury. Mr. Gonzalez would be deprived of his interest in the property if he is forced to sign a Quit Claim Deed without receiving his interest in the property. Accordingly, this factor also weights in favor of issuing the stay.

LILIANA GONZALEZ WILL NOT SUFFER IRREPARABLE OR SERIOUS
INJURY IF THE STAY IS GRANTED

The third factor under Rule 8 is whether the other party will suffer irreparable or serious injury if the stay is granted¹⁰. No irreparable or even serious harm will be suffered by Plaintiff if the stay is granted. Plaintiff has waited thirteen years before bringing her motion, therefore, time is not of the essence for her. A little more time, while the appeal is pending will not cause undue delay. As such, she would not suffer any harm from awaiting judgment from the appellate court. This factor also weights in favor of issuing the stay.

MR. GONZALEZ IS LIKELY TO PREVAIL ON THE MERITS OF THE
APPEAL

The final factor under Rule 8 is whether the Mr. Gonzalez is likely to prevail on the merits of the appeal¹¹. In order to satisfy this factor, Mr. Gonzalez does not

⁹ NRAP 8(c)(2)

¹⁰ NRAP 8(c)(3)

¹¹ NRAP 8(c)(4)

have to show that it is certain he will prevail on appeal. Rather he must show a probability of success on the merits, or present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay¹². While the appellate process holds many uncertainties, there are a number of legal issues raised by the District Court's order, which must be resolved in favor of reversing the decision.

The district court incorrectly applied the law. Mr. Gonzalez is likely to prevail on the appeal because the district court is precluded from applying two different standards on the same property. In essence, the District Court erred in finding that Mr. Gonzalez was time-barred from asserting his claim to one-half of the equity. District Court erred in finding that the statute of limitation began upon filing of the Decree of Divorce.

The Nevada Supreme Court found in Davidson v. Davidson¹³, that the six-year statute of limitations in NRS 11.190 begins to accrue when there is evidence of indebtedness. In Davidson, the Court found that it began to run when the quitclaim deed was delivered. Here, Mr. Gonzalez never signed the quitclaim deed nor did Plaintiff refinance the house. The statute of limitations has not begun to run in this case.

¹² Fritz, at 659

¹³ Davidson v. Davidson, 132 Nev. 709, 382 P.3d 880 (2016).

Moreover, the Court erred in finding that Mr. Gonzalez was entitled to half the equity in the marital home at the time of the divorce. The Decree of Divorce provides in pertinent part “wife shall receive the following: [t]he family residence located at 2767 La Canada St., Las Vegas, Nevada. Wife shall refinance the property under her sole name within three months from the Decree of Divorce.”¹⁴ “Husband shall receive the following: 50% of the remaining equity in the family residence.”¹⁵ The language of the Decree of Divorce imposes a condition precedent on Liliana Gonzalez. The condition was never satisfied. Nowhere in the Decree, does it state that she receives half the equity at the time of the divorce. In fact, the plain language of the decree anticipates that he would receive his half of the equity at least three months after the Decree of Divorce.

CONCLUSION

Based on the foregoing, Mr. Gonzalez respectfully requests that this Honorable Court grant a stay of the Order entered on October 22, 2020.

DATED this 8th day of December, 2020.

RESPECTFULLY SUBMITTED

THE GRIGSBY LAW GROUP
A PROFESSIONAL CORPORATION

/s/ Aaron Grigsby
Aaron D. Grigsby, Esq.

¹⁴ AA00019

¹⁵ Id.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 8th day of December, 2020 a copy of the foregoing Motion for Stay was served as follows:

BY ELECTRONIC FILING TO

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/s/ Aaron Grigsby
An employee of the Grigsby Law Group