

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

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Elizabeth A. Brown
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APPELLANT'S REPLY BRIEF

Appeal from an Order Granting Respondent's Motion to Enforce Decree of
Divorce, Eighth Judicial District Court, Honorable Denise L. Gentile

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APPELLANT’S REPLY BRIEF

This Brief addresses some of the major points of Respondent’s Answering Brief. Although this Brief does not address all of the arguments in the Answering Brief, Appellant does not waive any argument previously raised.

RESPONDENT’S STATEMENT OF FACTS

Liliana’s rendition of the factual and procedural history contains information not supported by the record. NRAP 28 provides in pertinent part that “Every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found.¹” Liliana has numerous violation of NRAP 28 in her response.

Liliana opens alleging that “Miguel has littered it [his brief] with several blatant misrepresentations of the applicable law, of the district court’s findings, and of the Decree².” A review of Liliana’s answer clearly demonstrates that it is Liliana who has a difficult relationship with the truth in her intentional misrepresentations of applicable law and the record presented to the district court.

Liliana attempts to impugn Miguel’s veracity when she states “Miguel claims that the district court admitted that it had no way to determine the value of his interest in the residence at the time the Decree was filed.” This is not a claim by Miguel Gonzalez but a fact as outlined by the district court’s order. The order

¹ NRAP 28(e)(1)

² Answer page 9

in question states “[t]his Court has no information or record as it relates to the value of the home in 2007.³” Liliana’s attempts at distorting the facts in the district court matter adversely impacts the veracity of the factual allegations made in her Answer and her duty of candor to this Court.

The most blatant misrepresentation by Liliana is where she states that there was “nearly no equity in the Residence by the date of the parties divorce⁴.” Not only is the statement not relevant, but there is no evidence in the record to support Liliana’s statement. Further, the statement goes outside the confines of the Decree of Divorce and constitutes inadmissible parol evidence. Intentional misstatements and violations of the applicable rules and statutes will be a reoccurring theme of Respondent’s Answering Brief.

I. THE DISTRICT COURT IS LIMITED TO THE LANGUAGE CONTAINED IN THE DECREE OF DIVORCE

The matter before this Court involves the interpretation of a Decree of Divorce which is governed by contract principles. Where "a written contract is clear and unambiguous on its face, extraneous evidence cannot be introduced to explain its meaning⁵." When the Nevada Supreme Court defined the parol evidence rule as one of substantive law, it completely removed the discretion of the district

³ AA000054

⁴ Answer page 3

⁵ Geo. B. Smith Chemical v. Simon, 92 Nev. 580, 582, 555 P.2d 216, 216 (1976)

court to hear parol evidence. Respondent contends that the Decree states that she will receive the Residence “as her sole and separate property⁶.” This conclusory statement is not contained anywhere in the Decree. Additionally, under the plain language of the Decree, Miguel Gonzalez was only obligated to deliver the quitclaim deed to Liliana subsequent to the Residence being refinanced.

In her response, Liliana attempts to distract this Court by stating “[n]otably absent from the record is any contention that Miguel has contributed to the mortgage or any associated expenses for the Residence since the parties divorced.” Not only is this statement not supported by the record, it is also not relevant to the analysis of the terms contained in the Decree of Divorce. Events that preceded or happened subsequent to the Decree of Divorce were obviously included by Liliana to bolster her otherwise threadbare arguments and to distract this Court from the fact that the language contained in the Decree does not support her position. In fact, the inclusion of such arguments violates the parol evidence rule.

Another example of Liliana’s apparent inability to follow applicable rules and statutes is her attempt to introduce settlement negotiations. In her Answer, Liliana outlines a settlement offer that she made prior to filing her Motion in the

⁶ Answer page 3

district court⁷. Liliana included this issue in violation of Nevada law⁸ and the prior holdings of this Court⁹.

II. FAILURE TO HOLD A HEARING

Liliana attempts to make light of the violation of Miguel Gonzalez's right to due process. Miguel has never contended that under certain circumstances, the district court has the power to determine matters without holding a hearing. What he has asserted is that under the facts of the matter, the district court abused its discretion by not holding a hearing.

Further, Liliana's reliance on Rooney v. Rooney¹⁰ is misplaced. In Rooney, the Nevada Supreme Court adopted an "adequate cause" standard in determining when a district court could decide a matter without holding a hearing in child custody matters¹¹. Even if Rooney did apply to the facts of this matter, adequate cause existed for the district court to hold a hearing.

III. CONDITION PRECEDENT

In her Answer, Liliana attempts to rely on sophistry to support her contention that a condition precedent did not exist in the Decree of Divorce. By contrast, Miguel Gonzalez counters with a reliance on the plain language contained

⁷ Answer page 4

⁸ NRS 48.015

⁹ Morrison v. Beach City LLC, 116 Nev. 34, 991 P.2d 982 (2000)

¹⁰ Rooney v. Rooney, 109 Nev. 540, 853 P.2d 123 (1993)

¹¹ Id.

in the Decree of Divorce and the rules of grammar. Looking at the plain language of the Decree, nowhere in the Decree of Divorce does it say that Liliana will receive the marital residence as her sole and separate property. Additionally, it uses mandatory language that requires her to “refinance the property under her sole name within three months of the date of the decree of divorce.” In fact, whether the language of the Decree is determined to be conjunctive or disjunctive, a condition precedent still exists regarding the transfer of the marital residence.

IV. KUPTZ-BLINKINSOP

In her Answer, Liliana makes a clumsy attempt to shoehorn the facts of this matter to fit Kuptz-Blinkinsop v. Blinkinsop¹². The applicable language makes it clear that Liliana did not receive the marital residence as her sole and separate property in the Decree of Divorce. Respondent ignores the fact that the plain language of the Decree of Divorce conditions her acquisition of the marital residence as her sole and separate property on a condition precedent.

Once again Liliana demonstrates an apparently irresistible urge to prevaricate when she states that the Decree required Miguel to deliver an executed quitclaim deed so that Liliana can refinance under her sole name. This language does not appear in the Decree. This was an argument concocted by Liliana subsequent to the filing of the appeal in a transparent attempt justify the district

¹² Kuptz-Blinkinsop v. Blinkinsop, 136 Nev. Adv. Rep 40, 466 P.3d 1271 (2020)

court's abuse of discretion. Kuptz-Blinkinsop¹³ is also distinguishable in the fact that the Husband in Kuptz-Blinkinsop was not required to divide the equity in the residence with the Wife. Further, the Wife in Kuptz-Plinkinsop¹⁴ was given ten (10) days to execute a quitclaim deed without the expectation of receiving anything because the Husband was granted the residence as his sole and separate property.

Here, Miguel was only required to execute a quitclaim deed if Liliana fulfilled the condition precedent of refinancing the marital residence. The purpose of refinancing the marital residence was so that Liliana would be able to purchase Miguel's interest in the residence. Additionally, the plain language of the Decree required Liliana to refinance the residence within three (3) months. In the fact of this matter Miguel retained his undivided one half (½) interest in the marital residence until such time as Liliana fulfilled her condition precedent. Further, no transaction under Nevada law has taken place to start the statute of limitations¹⁵.

CONCLUSION

Liliana's interpretation of the Decree of Divorce neither respects the text nor fulfills its purpose. Instead she has used it to obtain an erroneous judgement and deprive Miguel Gonzalez of his interest in the former marital residence. This

¹³ Id at 1273

¹⁴ Id.

¹⁵ NRS 11.190

Court should reverse the judgment and remand the matter for an evidentiary hearing on the merits.

DATED this 1st day of November, 2021.

RESPECTFULLY SUBMITTED

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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 this brief has been prepared in a proportionally spaced typeface using 14 point font of the Times New Roman style.
2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) and 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points containing 1,800 words.
3. Finally, 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 1st day of November, 2021.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 1st day of November, 2021, I submitted the forgoing Appellant's Reply Brief for filing via the Court's electronic filing system. A copy was served as follows:

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