

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE OSCAR SALAZAR
Appellant,

v.

AGUSTINA CERVANTES LANDA,
Respondent.

Electronically Filed
Oct 28 2021 05:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 83111

District Court No.: D-19-595434-D

**APPEAL FROM DECREE OF DIVORCE AND PLAINTIFF'S MOTION TO
RECONSIDER**

Eighth Judicial District Court of the State of Nevada
In and for the County of Clark
THE HONORABLE DAWN THORNE
DISTRICT COURT JUDGE

APPELLANT'S APPENDIX – VOL. 3

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1	05/11/2021	Defendant's Motion and Notice of Motion for an Order to Enforce and/or for an Order to Show Cause Regarding Contempt	AA000177 - 000184
1	03/09/2021	Defendant's Opposition to Plaintiff's Motion to Reconsider	AA000165 - 000173

1	10/26/2020	Defendant's Pre-Trial Memorandum	AA000106 - 000112
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CERTIFICATE OF SERVICE

I, an employee of McFarling Law Group, hereby certify that on the 28th day of October, 2021, I served a true and correct copy of this Appellant's Appendix as follows:

☒ by United States mail in Las Vegas, Nevada, with First-Class postage prepaid and addressed as follows:

Agustina Cervantes Landa
1600 Ardmore St.
Las Vegas, NV 89104

☒ via the Supreme Court's electronic filing and service system (eFlex):

Augustana Cervantes

/s/ Alex Aguilar
Alex Aguilar

1 substantive issues. This was a well written sub -- decree,
2 and I see no need for change.

3 THE COURT: All right. The Court finds that the
4 motion to reconsider is timely, but there is no merit to the
5 motion to reconsider the alimony. First of all, the Court who
6 heard the trial can only go on the information provided. It's
7 disappointing, and I would deny this motion outright anyway on
8 the alimony, because neither party's updated their financial
9 condition. The last one filed by the Plaintiff was January 20
10 of 2020, so well over a year ago, and the one for Defendant's
11 even worse. It was filed on October 9, 2019.

12 As far as -- I also cannot reassess the evidence
13 that was heard, including the credibility. But if you want to
14 talk about the Plaintiff's inability to pay, that -- he's
15 making a choice to support two adult children who should be
16 contributing or living on their own, rather than support his
17 wife. The alimony is very limited in nature, and based on the
18 facts of this case, there's no basis to reconsider that now.

19 And also, you make a point that he's paying both
20 mortgages. Well, that's clearly not what Judge Brown intended
21 on that issue. So the motion to reconsider on alimony is
22 denied.

23 The motion to reconsider on the assets and debts,
24 I'll deal with the easy issue first. The easy issue is the

1 Court did find a -- a type of financial malfeasance on the
2 part of the Plaintiff regarding the trailer, and regarding not
3 maintaining insurance on it, and -- and it burning up in his
4 possession. So no, he's not entitled to that offset.

5 But -- NRS 125-150 does require an equal division of
6 the community property and the community debts, absent
7 findings of the financial malfeasance. And the Plaintiff is
8 right that there's no other financial malfeasance, and the
9 Court made a mathematical error in dividing the assets and
10 equalizing. Plaintiff owes the Defendant \$38,999.50 to
11 equalize the equity in both houses. That's going to be an
12 equalizing note that's reduced to judgment and will bear
13 interest at the legal interest rate from the date the decree
14 was entered, 2/11/21, until paid. And so the motion is
15 granted to fix that mathematical error.

16 Moreover, there are things in the decree that are
17 left unstated that need to be clarified regarding the two
18 houses. And the Court finds that it does have continuing
19 jurisdiction over these two house issues, to get them fixed
20 and -- and to get the Defendant paid the difference. So first
21 of all, with regard to the 1600 Ardmore, Wife is solely
22 responsible for the mortgage payment.

23 Mr. Whipple, that house is not awarded to your
24 client without the mortgage being taken into consideration,

1 and the Plaintiff is right, the likelihood of her being able
2 to refinance that mortgage -- it's not assuming it, she can't
3 assume a mortgage that's not -- she's not even on, she has to
4 refinance that and get it out of -- out of his name. So Wife
5 shall have 120 days from today to refinance that debt into her
6 own name.

7 If she is unable to do that, or fails to do that by
8 August 2nd, the Plaintiff is going to list that home for sale,
9 and 100 percent of the net proceeds will belong to the Wife.
10 If she can refinance it, he will sign a quit claim deed
11 through the escrow for her refinance.

12 In the meantime, because Plaintiff is the only one
13 on that mortgage and it's his credit, Plaintiff shall continue
14 to pay the monthly mortgage on Ardmore, and he will get
15 credits as follows. His statement in his motion is that the
16 mortgage payment on that one is \$837, so based on that
17 information, he's going to get credit for \$456 per month,
18 which is his alimony obligation to his ex-wife, and then \$381
19 towards the equalizing note.

20 Then, with regard to the home at 3127 Panocha
21 Street, Plaintiff shall have 120 days from today to come up
22 with the rest of the money he owes his ex-wife to -- to
23 equalize, or he's going to have to sell that house so that
24 she's paid. And if she's not paid the balance owed to her by

1 August 2nd, that home will also be sold to pay her the
2 remainder of what she's owed, and then anything after that
3 will be the Plaintiff's sole and separate property.

4 In order to preserve what this Court's ordered,
5 Mr. Whipple, your client should file and record a lis pendens
6 so he can't sell either property out from under her. We're
7 going to set a status check for August 16th at 9:30 a.m. to
8 find out where we stand with both of them. And are there any
9 questions regarding these orders regarding these houses?
10 We've got to like -- these parties are divorced now, and we
11 need to get them financially separated, too.

12 MR. GONZALEZ: No, Judge, not on my part.
13 Everything makes perfect sense. Thank you.

14 THE COURT: And I don't know if your client -- if
15 your client's income is down like he says, which I don't know,
16 trucking -- the trucking business was not particularly hard
17 hit. They're still needing to move whatever he was moving,
18 goods and stuff, so if it's really down, he may not be able to
19 refinance to pull out the equity. But if he can't come up
20 with the money somehow, can't refinance and pull the equity
21 out of his home, then he's going to have sell that home, and
22 that sucks probably for the children, but she's entitled to be
23 paid her share and her equalizing note in a reasonable time.

24 MR. GONZALEZ: I'll let him know, Judge. Agreed.

1 Thank you.

2 THE COURT: Mr. Whipple?

3 MR. WHIPPLE: (Indiscernible) I just have a language
4 issue. If I can confer with my client really quick, Your
5 Honor?

6 THE COURT: Sure.

7 (COUNSEL AND CLIENT CONFER BRIEFLY)

8 MR. WHIPPLE: Your Honor?

9 THE COURT: Yes? Uh-huh?

10 MR. WHIPPLE: I just want to confirm that if my
11 client chooses to sell the Ardmore house, she can sell that at
12 any time, prior to the six months?

13 THE COURT: Right. Prior to the four months. I'm
14 giving her 120 days from today --

15 MR. WHIPPLE: Oh, I'm sorry --

16 THE COURT: -- to -- to refinance that, or yes, she
17 can sell it. If she chooses to sell it, then the Plaintiff
18 has to cooperate with that, because the house is in his name,
19 and the mortgage is in his name. But I'm finding that since
20 January 1st, when his alimony started, he's been paying that
21 mortgage on her behalf, according to what he said. As long as
22 he's been actually paying it, then he gets a credit, so he
23 doesn't owe her alimony arrears.

24 MR. WHIPPLE: Okay.

1 THE COURT: So he --

2 MR. WHIPPLE: All right.

3 THE COURT: -- he is satisfying it.

4 MR. WHIPPLE: I -- I appreciate the clarification.

5 My client just wanted to make sure that she could sell it at
6 any time, and that may be an avenue we pursue, rather than
7 refinance. But we at least have the 120 days, Your Honor.
8 Thank you.

9 THE COURT: You're -- and I need someone to prepare
10 the order from today. Anyone like to volunteer?

11 MR. WHIPPLE: I'll let the moving party prepare the
12 order, Your Honor. I -- I am not asking for attorney fees,
13 and I -- my client's very limited in -- in monies.

14 THE COURT: All --

15 MR. GONZALEZ: Mr. Whipple, if he remembers, he
16 prepared the decree. I'll prepare it, Judge. I'll prepare.

17 THE COURT: I need -- I need --

18 MR. GONZALEZ: Thank you.

19 THE COURT: Somebody prepare it, please, and get it
20 turned in so that we can then enforce it, and get these --

21 MR. WHIPPLE: Yeah.

22 THE COURT: -- parties financially separated,
23 please.

24 MR. GONZALEZ: I'll prepare it.

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MR. WHIPPLE: Thank you.

THE COURT: All right. Thank you very much.

MR. GONZALEZ: Thank you.

(PROCEEDINGS CONCLUDED AT 9:22:34)

* * * * *

ATTEST: I do hereby certify that I have truly and
correctly transcribed the digital proceedings in the
above-entitled case to the best of my ability.

/s/ Nita Painter
Nita Painter