

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE OSCAR SALAZAR,

Appellant,

v.

AGUSTINA CERVANTES LANDA,

Respondent.

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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 REPLY BRIEF

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II. TABLE OF LEGAL AUTHORITIES

As the Answering Brief relied on facts and no legal analysis was provided, no additionally legal authorities were required in this reply.

III. STATEMENT OF THE FACTS

A. ARDMORE PROPERTY

Through Augustina's own admission and stated in her answering brief, the Ardmore property was purchased by Jose in 1999 prior to their marriage in 2001. This undisputed fact alone confirms that the property was Jose's separate property. However, Augustina claims in her answering brief that she "gave \$10,000 dollars to cover the down payment of the purchased of said home." This amount is a direct contradiction to Augustina's testimony at trial where she allegedly contributed \$2,000 of the down payment. 2AA000330.

Because it was Jose's separate property purchased prior to marriage, the District Court erred in awarding the Ardmore property to Augustina as her sole and separate property. The order awarding this property to Augustina should be reversed and the property confirmed to Jose as his sole and separate property. While Augustina may have had a community interest in the property due to payments made on it during the marriage, she should not have been awarded the property as it was Jose's separate property. In addition, the entire property division should be reversed and remanded to District Court for an equal division of community property, including a determination of what, if any, community interest Augustina had in Jose's separate property house.

B. ALIMONY

When awarding and calculating alimony, a district court must consider eleven factors. In response to Augustina's claims, the relevant factors are as follows:

(a) The financial condition of each spouse

Augustina's financial condition is unknown and unconfirmed. She asserted that she can only work six hours as a result of alleged back injury but did not provide any other information. She did not provide any work records, bank statements, or pay stubs to confirm that she is only work six hours or how much she received as payment for her work.

(d) The duration of the marriage;

Augustina still maintains that she and Jose held themselves out to be married for the entire duration of their 19-year marriage. During the 11 years Augustina lived in Mexico she stated that Jose traveled to Mexico "several times" to see her. Augustina makes no records of what several times equates to, but Jose stated at trial that he would visit for one week a year. 2AA000330. One week a year for eleven years equals 11 visits, which could amount to Jose visiting Augustina "several times."

During the other 51 weeks out of the year when Jose was in America, Augustina alleges that Jose sent her money on a weekly basis. This payment schedule or the amount sent assumes facts not in evidence as there was no mention

of frequent money transfers at trial between Jose and Augustina outside of money used to provide for the needs of his children.

Augustina also supports her claim that she and Jose held themselves out to be married by referencing that Jose is listed as the father on the birth certificates of the three children born during the nearly 11 years she spent in Mexico. Augustina misrepresents these facts by leaving out key factors including that while Jose is listed as the father on the birth certificates issued in America, that is not true for the birth certificates used and issued in Mexico when the children were born. The birth certificate from Mexico for Maybel listed Pedro Castelan as the father. 2AA000354. Pedro was also listed as the father for all three children's baptism records. 2AA000353.

(e) The income, earning capacity, age and health of each spouse;

Augustina alleges that her earning capacity is hindered due to her slip and fall accident from 2015 leading her to be permanently disabled. Again, no evidence was given to support her allegations of a permanent back injury including medical records or a letter from a physician. Augustina also alleges that she can only work three days a week for no more than six hours because of her health issues. We are to simply believe Augustina's claims of an injury when she has provided no proof of injury and has in fact proven to be untruthful and unreliable in other aspects of her testimony.

Therefore, the District Court erred in awarding Augustina alimony because (1) Augustina's financial condition is unknown, (2) the parties did not hold themselves out to be married during the duration of the marriage, and (3) Augustina's earning potential is much higher than alleged due to the lack of medical records confirming her permanent back injury.

While the Parties' technically remained married for 19 years, they did not live together as husband and wife for the majority of that time and Augustina lived as married with another man who she listed as the father of Jose's children when they were born in Mexico. This major fact makes any award of alimony error. The award of alimony to Augustina should be reversed with no need for remand or further proceedings.

C. CHILD SUPPORT

Augustina's child support obligation should be set according to law and the child support obligation of low-income payers schedule. An accurate calculation of Augustina's financial situation and the alimony payments received by Augustina from Jose should be used to calculate her child support. The child support order should be reversed and remanded to District Court for an order that includes any alimony income received by Augustina.

D. OTHER CONCERNS

Augustina refers to several other items not addressed in the record and therefore irrelevant to this proceeding. These references include the alleged sewer and utilities bill that Jose owes totaling over \$2,000 and requests for attorney's fees. Augustina requests that her child support should be reduced according to her monthly income. Her answering brief reads as if she thinks she is filing an opposition in District Court. She did not cross-appeal, so she cannot make requests in her answering brief. The scope of this appeal is limited to the issues raised during trial and no new issues can be raised. Thus, Augustina's requests that Jose pay this alleged sewer and utilities bill as well as reimburse her for her attorney's fees are improper.

IV. ARGUMENT

As the Answering Brief only stated facts (with no reference to the record) and no legal authority or analysis was provided, no legal argument is included in this reply.

V. CONCLUSION

Based on Augustina's own admission the Ardmore Property was purchased before their marriage thus the District Court erred in awarding Ardmore to Augustina as her sole and separate property instead of her simply having a dollar amount determined for her community interest, if any.

The District Court also erred in calculating Augustina's alimony award as supported by a proper analysis of the alimony factors. First, Augustina's past and present financial situation is unknown. She did not provide insight into her current job including hours worked or salary structure. Second, Jose and Augustina also did not hold themselves out to be a married couple during the course of their marriage. Augustina lived with another man in another country, and she listed this man as the father of her children on multiple documents. Third, Augustina's earning potential is not hindered by her inability to work. Augustina failed to provide relevant information about her medical status hindering her ability to work.

For these reasons, the District Court's Decree of Divorce filed February 11, 2021 and Plaintiff's Motion to Reconsider and Defendant Opposition filed March 26, 2021 orders for alimony, child support, award of Jose's separate property house to Augustina, and community property division should be reversed and remanded for further orders dividing community property and setting child support.

DATED this 6th day of January, 2022.

MCFARLING LAW GROUP

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VI. 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 Microsoft Word–Office 365 Business in font type Times New Roman size 14.

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 either:

☒ Proportionately spaced, has a typeface of 14 points or more and contains 1821 words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

☒ Does not exceed 15 pages.

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 6th day of January, 2022.

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VII. CERTIFICATE OF SERVICE

I, an employee of McFarling Law Group, hereby certify that on the 6th day of January, 2022, I served a true and correct copy of this Appellant's Reply Brief as follows:

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

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/s/ Alex Aguilar
Alex Aguilar