

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 MIGUEL A. GONZALEZ

3 Appellant,

4 vs.

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

8 Respondent.
9

Supreme Court No. 82011

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Elizabeth A. Brown
Clerk of Supreme Court

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11 **OPPOSITION TO APPELLANT'S MOTION FOR STAY OF ORDER**
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POINTS AND AUTHORITIES

I. INTRODUCTION & STATEMENT OF FACTS

This case involves Liliana's effort to obtain clear title to her real property pursuant to a divorce decree, and Defendant Miguel A. Gonzalez's ("Miguel") failure to timely obtain a monetary judgment. On August 4, 2020, Liliana filed a motion asking the court to require Miguel to sign a quitclaim deed to the marital home pursuant to their 2007 divorce decree.¹ Miguel thereafter filed an opposition claiming, *inter alia*, that Liliana was time-barred from asserting her rights under the divorce decree.² Based on the papers, the Honorable Denise L. Gentile found in favor of Liliana because a recent Nevada Supreme Court decision³ held the six-year time-bar Miguel asserts in defense does not apply to *real property*.⁴ Judge Gentile simultaneously ordered, however, that the six-year time-bar did apply to Miguel's *monetary* judgment from the divorce decree.⁵ Consequently, Miguel was required

¹ Appellant's Appendix Volume 1, AA000028 (filed Dec. 8, 2020), on file with the Court.

² *Id.* at AA000037–38.

³ Kuptz-Blinkinsop v. Blinkinsop, 466 P.3d 1271, 1275 (2020).

⁴ Appellant's Appendix Volume 1, AA000054, ll. 7–20 (filed Dec. 8, 2020), on file with the Court.

⁵ *Id.* at AA000055, ll. 1–4.

1 to quitclaim the marital home, but he was barred from receiving any monetary
2 interest in the home.⁶

3 Miguel now has filed a motion to stay alleging a stay should be granted
4 because the District Court improperly applied two different standards to the same
5 piece of property, and he will suffer undue hardship if a stay is not granted.⁷
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7 However, as this opposition will show, a stay is not warranted because the District
8 Court correctly applied recent Nevada Supreme Court precedent, Miguel will not
9 be irreparably harmed, and Miguel has absolutely no chance to prevail on the merits
10 of his appeal. Based on the foregoing facts and argument set forth below, the Court
11 should deny Miguel's motion for stay without hearing.
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15 II. 16 ARGUMENT

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18 This Court should deny Miguel's motion for stay because there is no basis to
19 grant one in light of NRAP 8(c). Nevada has statutorily outlined four factors for
20 courts to consider when reviewing a motion for stay as follows:
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22 23 1. *Whether the Object of the Appeal Will Be Defeated*

24 This court must not grant a stay because the object of the appeal will not be
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26 ⁶ *Id.* at AA000054–55.

27 ⁷ Appellant's Motion for Stay of Order, pp. 5–7 (filed Dec. 8, 2020), on file with
28 the Court.

1 defeated if a stay is not granted. The first factor the Nevada Supreme Court
2 considers in deciding whether to grant a stay is whether the object of the appeal will
3 be defeated if a stay is issued. NRAP 8(c)(1). Miguel claims the object of the appeal
4 will be defeated because Liliana could potentially, hypothetically sell the home.
5 Motion for Stay, p. 5. However, in the same breath, Miguel acknowledges that
6 although real property is involved, the only object of his appeal is monetary. *Id.* (“If
7 the stay is not granted . . . Mr. Gonzalez would unnecessarily be deprived of a
8 substantial portion *of his half of the equity* in the marital home, which cannot be
9 undone if the residence is subsequently sold.”).

13 Thus, as the Separation agreement clearly states⁸, and as Judge Gentile
14 ordered,⁹ and as Miguel now admits, the only item appealable is the extent of
15 Miguel’s *monetary* compensation, not whether Miguel gets legal title to the home.
16 Because Miguel would be entitled solely to a money judgment on appeal, if at all,
17 the object of the appeal would not be defeated. Miguel could always seek that
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23 ⁸ The Separation Agreement states, in relevant part, that “Wife shall retain 50% of
24 the equity To the effect of refinancing under her sole name, husband shall
25 deliver executed quit claim deed to wife. . . . Husband shall receive the following:
26 50% of the remaining equity in the family residence.” Appellant’s Appendix
27 Volume 1, AA000028, (filed Dec. 8, 2020), on file with the Court.

28 ⁹ Judge Gentile found that “Miguel alleges . . . he is still entitled to assert his rights
to the *payment* of the equity value of the home” and therefore he cannot get past
the six-year time bar for this “money payment.” *Id.* at AA000054–55.

1 monetary payment from Liliana if he won on appeal. Accordingly, this factor cuts
2 against granting a stay.

3
4 *2. Whether Appellant Will Suffer Irreparable Injury*

5 This Court must not grant a stay because appellant will not be irreparably
6 harmed absent a stay. The second factor courts consider is whether the appellant
7 will suffer irreparable or serious injury absent a stay. NRAP 8(c)(2). Once again,
8 Miguel claims he will suffer irreparable injury if he quitclaims the property. Motion
9 for Stay, p. 5. However, irreparable harm exists only where compensation is
10 inadequate or the harm is to unique interests, such as real property. *Hamm v.*
11 *Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 297, 183 P.3d 895, 901 (2008). But
12 “[m]ere injuries, however substantial, in terms of money, time and energy
13 necessarily expended in the absence of a stay are not enough’ to show irreparable
14 harm.” *Hansen v. Eighth Jud. Dist. Ct. ex rel. Cnty. Clark*, 116 Nev. 650, 658, 6
15 P.3d 982, 987 (2000) (quoting *Virginia Petroleum Job. Ass'n v. Federal Power*
16 *Com'n*, 259 F.2d 921, 925 (D.C.Cir.1958)).

17
18 Here, this factor cuts heavily against Miguel because, as Miguel
19 acknowledges, his only interest is that he would be deprived of a money judgment
20 if Liliana sold the home before the appeal is resolved. Motion for Stay, p. 5
21 (“Without a stay . . . Mr. Gonzalez would be deprived of his interest in the property
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1 if he is forced to sign a Quit Claim Deed without *receiving his interest* in the
2 property.” (emphasis added)). Because Miguel’s interest is purely in monetary
3 value, even if no stay were entered, and even if Liliana sold the home, and even if
4 the district court erred (which they did not), Miguel could still recover in full his
5 respective interest. Thus, because Miguel has failed to allege any unique interest,
6 or any irreparable harm, the stay must be denied.
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10 3. *Whether respondent will suffer irreparable harm from the stay*

11 The third factor courts consider is whether granting a stay will irreparably
12 harm or seriously injure Plaintiff. NRAP 8(c)(3). Here, Liliana will be irreparably
13 harmed because Miguel seeks to prevent Liliana from acquiring full title to her real
14 property as he is appealing an order to quitclaim the title to her. Order, p. 3. As the
15 Nevada Supreme Court has said, disputes over title in real property are
16 quintessentially irreparable harm. *Hamm*, 124 Nev. at 297. 183 P.3d at 901. Thus,
17 while Miguel is solely seeking monetary compensation, Liliana is seeking full title
18 to real property that has been denied to her under the divorce decree.¹⁰ As such,
19 Liliana’s harm is irreparable, and this Court must deny the stay so as to preserve to
20 Liliana her full title and rights under the Order.
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25 4. *Likely to Prevail on the Merits*
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28 ¹⁰ *Id.* at AA000028.

1 Finally, the last factor courts are required to consider is the likelihood the
2 appellant will prevail on the merits. NRAP 8(c)(4). This Court must deny Miguel's
3 claim because it is manifestly clear he cannot prevail on his claim because of recent
4 Nevada Supreme Court precedent. Miguel claims he is likely to prevail on the
5 merits because "the district court incorrectly applied the law" because they cannot
6 apply "two different standards on the same property." Motion for Stay, pp. 6–7. But
7 nowhere does Miguel provide any legal authority for that proposition, nor is that
8 even a factually or legally correct statement. Miguel also argues the District Court
9 erred by finding he was time-barred from asserting his claim, but not likewise
10 finding Liliana time-barred. *Id.*

11 These allegations miss the mark because the District Court applied the correct
12 law to each litigant's specific issue. In Nevada, divorced parties generally have six
13 years in which to enforce rights under a separation agreement. *Davidson v.*
14 *Davidson*, 132 Nev. 709, 711–12, 382 P.3d 880, 881–82 (2016). In that case, the
15 husband was to give the wife 50% equity in the home when she quitclaimed title to
16 the property. *Id.* However, the wife waited over six years before seeking her 50%
17 equity in the home. *Id.* The *Davidson* court ruled that the wife was time-barred from
18 asserting her right to the 50% equity in the home. *Id.* at 718, 832 P.3d at 886.

19 However, the Nevada Supreme Court recently clarified that the *Davidson*
20 rule does not apply when the contested property under a separation agreement is
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1 title to real property. *Kuptz-Blinkinsop v. Blinkinsop*, 466 P.3d 1271, 1273 (2020).
2 In *Blinkinsop*, as in *Davidson*, the husband was awarded the marital home and the
3 wife was required to quitclaim title to the home. *Id.* But the wife never quitclaimed
4 title to the husband. *Id.* Consequently, unlike *Davidson* where the wife sought 50%
5 equity, this time the *husband* sought an order requiring quitclaimed title. *Id.* The
6 *Blinkinsop* Court then ruled that because the husband sought title to real property,
7 the six-year time-bar in *Davidson* did not apply. *Id.* at 1274–75.
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10 Here, there can be no question that the District Court applied the correct law
11 to each situation. Liliana, like the husband in *Blinkinsop*, is seeking title to real
12 property awarded in a separation agreement.¹¹ Because she is seeking title to real
13 property, the *Blinkinsop* rule applies, which means the six-year bar does not apply
14 to Liliana’s request.
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17 On the other hand, Miguel’s claim brought after 6 years following entry of
18 the decree, just like the spouse in *Blinkinsop*, is time barred from pursuing a money
19 judgment in exchange for 50% equity in the marital home. *See* Motion for Stay, p.
20 5 (“Mr. Gonzalez would be deprived of his interest in the property if he is forced to
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27 ¹¹ The Separation Agreement states: “To the effect of refinancing under her sole
28 name, husband shall deliver executed quit claim deed to wife.” *Id.*

1 sign a Quit Claim Deed without receiving his interest in the property.”).¹² Because
2 Miguel is seeking a money judgment equal to 50% equity in the marital home.¹³

3
4 In short, the *Blinkinsop* case compels the same result here. One party is
5 seeking title to real property, which is clearly not barred by the applicable statute,
6 and the other is seeking a money judgment, which clearly is barred by the statute’s
7 plain language and this Court’s *Davidson* and *Blinkinsop* holdings. The District
8 Court clearly did not err when the Court applied both rules because both rules were
9 required. The District Court did not err in characterizing Liliana’s claim as seeking
10 title to real property, nor in characterizing Miguel’s claim as seeking a money
11 judgment based on the value of his former interest in the home.
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15 Consequently, this stay must be denied because Nevada Supreme Court
16 clearly governs the factual and legal scenarios confronted, and the District Court
17 did not clearly err in applying that precedent. Because Miguel is not likely to prevail
18 on his claim, this factor weighs heavily against him and a stay must be denied.
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21 III. 22 CONCLUSION

23 Miguel’s motion for stay must be denied because he is unlikely to prevail on
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25 ¹² The Separation Agreement states: “Husband shall receive the following: 50% of
26 the remaining equity in the family residence.” *Id.*

27 ¹³ The fact that Miguel never signed a quitclaim deed is of no consequence. Neither
28 did the spouse in the *Blinkinsop* case.

1 his claim, the object of his appeal will not be defeated in absence of the stay, and
2 he will not be irreparably harmed without it.

3
4 DATED this 15 day of December 2020

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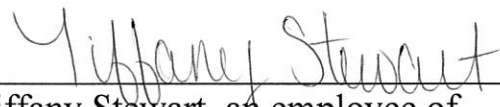
14 Attorney for Respondent

15
16 **CERTIFICATE OF SERVICE**

17 I HEREBY CERTIFY that on the 15th day of December 2020, I caused to
18 be served the instant **OPPOSITION TO APPELLANT'S MOTION FOR**
19 **STAY ORDER** to all interested parties as follows:

20 **XX BY ELECTRONIC MAIL:** Pursuant to EDCR 7.26 and NEFCR Rule 9, I
21 caused a true copy thereof to be served via electronic mail, via Odyssey, to the
22 following e-mail address:

23 Aaron D. Grigsby, Esq.

24
25 
26 Tiffany Stewart, an employee of
27 MILLS & ANDERSON
28