

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
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Elizabeth A. Brown
Clerk of Supreme Court

RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW Appellant, Miguel A. Gonzalez, by and through his attorney, Aaron D. Grigsby, Esq. of The Grigsby Law Group, APC, and hereby submits this response to Order to Show Cause filed February 12, 2021.

MEMORANDUM OF POINTS AND AUTHORITIES

This Court has defined a final order as “one that disposes of the issues presented in the case and leaves nothing for the future consideration of the court¹.” Determining the finality of a district court order depends on what the order substantively accomplishes². Here, the October 22, 2020, order, interpreted the only modifiable provision of Decree of Divorce effectively adjudicating the rights of the parties, leaving nothing for future consideration by the district court.

¹ Lee v. GNLV Corp, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000)

² Id.

The Nevada Rules of Appellate Procedure provides a list of the type of order and/or judgments that can be appealed³. Miguel Gonzalez concedes that the Order to Show Cause is correct when it states “the final judgment in this matter was the decree of divorce⁴.” But the Order to Show Cause is incorrect when it states that the challenged order is not appealable as a special order after final judgment under NRAP 3A(b)(8).

The applicable rule states in pertinent part that an appeal may be taken following... a special order entered after a final judgment⁵. This Court has held that “to be appealable under NRAP 3A(b)[8], a special order made after final judgment must be an order affecting the rights of some party to the action, growing out of the judgment previously entered. It must be an order affecting rights incorporated in the judgment⁶.” The October 22, 2020, Order is appealable as a special order under NRAP 3A(b)(8) as it falls within the definition of a special order.

Respectfully, the Order to Show Cause makes the same error as the district court with its analysis on this issue of whether the October 22, 2020, Order is a special order for purposes of appeal. The Decree of Divorce requirement for Miguel Gonzalez to sign a quitclaim deed was subject to a condition precedent.

³ NRAP 3A(b)

⁴ February 12, 2021, Order to Show Cause

⁵ NRAP 3A(b)(8)

⁶ Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002)

A condition precedent is defined as an event that must occur before the promisor becomes obligated to perform⁷. Pursuant to the plain language of the Decree of Divorce, Miguel Gonzalez was only obligated to sign a quitclaim deed if Liliana Gonzalez refinanced the property under her sole name within three months of the date of the Decree of Divorce. It is undisputed that Liliana Gonzalez never refinanced the property as required by the Decree of Divorce. As such, this is not a case of the October 22, 2020, Order directing Mr. Gonzalez to do something that was already required by the Decree of Divorce.

The October 22, 2020, Order directly affected Miguel Gonzalez's rights under the original Decree of Divorce by eviscerating his interest in the former marital residence by modifying the terms of the decree. As such, the October 22, 2020, falls squarely within the special order definition as defined in Gumm v. Mainor⁸ because it affects the rights of some party to the action growing out of the judgment previously entered. Additionally, the issue of determining the amount of Miguel Gonzalez's interest in the property at issue was wrongly resolved by the District Court.

The District Court in this case found that Miguel Gonzalez was time barred from asserting his right to fifty percent of the equity in the marital home. The Decree provided that Miguel Gonzalez shall receive "50 % of the remaining

⁷ Cain v. Price, 134 Nev. Adv. Rep. 26, 415 P.3d 25 (2018)

⁸ Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002)

equity in the family residence”. The District Court found that “Miguel failed to assert his right for this money payment within six years of the Decree of Divorce, and therefore, is time barred from the ability to assert the right to said monies.” District Court erred in finding that the statute of limitation began upon filing of the Decree of Divorce. This Court found in Davidson v. Davidson⁹, that the six-year statute of limitations in NRS 11.190 begins to accrue when there is evidence of indebtedness. In Davidson, this 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.

The District Court erred in finding that Mr. Gonzalez was not entitled to half the equity in the marital home as he was time barred. There was no evidence presented that there was evidence of indebtedness. The District Court did not even give the parties a hearing to hear arguments on the respective motions and modified the Decree of Divorce that provided Miguel Gonzalez half the equity in the home.

CONCLUSION

This Court has jurisdiction to determine whether or not the district court erred when it ignored the condition precedent in the Decree of Divorce and

⁹ Davidson v. Davidson, 132 Nev. 709, 382 P.3d 880 (2016).

modified the Decree of Divorce divesting Miguel Gonzalez of his interest in the property. Miguel Gonzalez's respectfully requests that this address the merits of his appeal or alternatively allow him to amend his Docketing Statement to list that this matter is substantively appealable pursuant to NRAP 3A(b)(8).

DATED this 28th day of March, 2021.

RESPECTFULLY SUBMITTED

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 28th day of March, 2021 a copy of the foregoing Response to Order to Show Cause was served as follows:

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