

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL A. GONZALEZ
Appellant,

vs.

LILIANA C. GONZALEZ N/K/A

LILIANA C. GARCIA
Respondent.

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APPELLANT'S OPENING BRIEF

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

Aaron D. Grigsby, Esq.
GRIGSBY LAW GROUP
A Professional Corporation
Nevada Bar No. 9043
2880 West Sahara Ave.
Las Vegas, Nevada 89102
(702) 202-5235
aaron@grigsbylawgroup.com
Counsel for Appellant

Byron Mills, Esq.
MILLS & ANDERSON
Nevada Bar No. 6745
703 S. Eighth Street
Las Vegas, Nevada 89101
Phone: (702) 386-0030
attorneys@millsnv.com
Counsel for Respondent

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Aaron D. Grigsby, Esq.
GRIGSBY LAW GROUP
A Professional Corporation
Nevada Bar No. 9043
2880 West Sahara Ave.
Las Vegas, Nevada 89102
(702) 202-5235
aaron@grigsbylawgroup.com
Counsel for Appellant

Byron Mills, Esq.
MILLS & ANDERSON
Nevada Bar No. 6745
703 S. Eighth Street
Las Vegas, Nevada 89101
Phone: (702) 386-0030
attorneys@millsnv.com
Counsel for Respondent

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ROUTING STATEMENT

Family law cases are presumptively assigned to the Nevada Court of Appeals¹.

¹ NRAP 17(b)(5)

STATEMENT OF ISSUES

- I. WHETHER THE DISTRICT COURT VIOLATED MIGUEL GONZALEZ’S RIGTH TO DUE PROCESS BY FAILING TO HOLD A HEARING?
- II. WHETHER THE DISTRICT COURT MISINTERPERTED THE HOLDING OF DAVIDSON V. DAVIDSON?
- III. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN IGNORING THE EXISTENCE OF A CONDITION PRECEDENT IN THE DECREE OF DIVORCE THAT CONTROLLED THE TRANSFER OF MIGUEL GONZALEZ’S OWNERSHIP INTEREST IN THE MARTIAL RESIDENCE?

STATEMENT OF THE CASE

The facts which will be set forth herein will be set forth as they appear and were presented in case number D-07-376585-Z, in the Eighth Judicial District, before the District Court Judge Denise L. Gentile, granting Respondent, Liliana Garcia's Motion to Enforce Decree of Divorce entered October 22, 2020, as well as the Appellant's Appendix filed herewith. The terms of the Decree of Divorce granted Liliana Garcia the martial residence as her sole and separate property provided that she refinance the property in her name within three (3) months¹.

STATEMENT OF FACTS

The parties were divorced by stipulated Decree on July 30, 2007.² Plaintiff filed a Motion to Enforce Decree of Divorce approximately thirteen (13) years after the Decree of Divorce.³ Mr. Gonzalez opposed the Motion.⁴ The District Court issued a minute order granting the Plaintiff's motion. The minutes were reduced to an Order and entered on October 22, 2020.⁵

¹ AA00019

² AA000001-25

³ AA000026-35

⁴ AA000026-35

⁵ AA000051-56

JURISDICTIONAL STATEMENT

Miguel Gonzalez has standing to appeal. This is an appeal from a final judgment⁶. The Nevada Rules of Appellate Procedure Rule 3A provides in pertinent part:

- (a) Standing to Appeal. A party who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a new trial;
- (b) Appealable Determinations. An appeal may be taken from the following judgments and orders of a district court in a civil action:
 - (1) A final judgment entered in an action or proceeding commenced in the court which the judgment is rendered.

The district court did not hold a hearing on the matter and issued a final order which was entered on October 22, 2020. Appellant Miguel Gonzalez timely filed his Notice of Appeal on October 22, 2020⁷.

SUMMARY OF ARGUMENT

Equity may abhor a forfeiture, but the district court, here seemed eager to impose one. At each juncture, whether, how and how much of a forfeiture to impose, the district court chose punishment over restraint. This led to a clearly

⁶ NRAP 3A(b)(1)

⁷ NRAP 4(a)(1)

erroneous judgment. The clear language of the Decree of Divorce imposed a “condition precedent” concerning the transfer of the marital residence. Under the district court’s interpretation of the Decree of Divorce, Miguel Gonzalez retroactively relinquished his interest in the marital residence because he failed to take affirmative action to protect said interest. This interpretation runs afoul of the plain language of the Decree of Divorce and the law governing real property in the state of Nevada.

The language in the Decree of Divorce regarding the marital residence is merely a “condition precedent.” It imposed no duties on Miguel Gonzalez. Therefore, any failure to act on his part does not create a forfeiture of his interest in the residence. Rather, once the “condition precedent” expired, the party’s ownership interest defaulted to either joint-tenants or tenants-in-common under Nevada law. Even if the language of the Decree of Divorce were found to be ambiguous and could be read to be a forfeiture, the contract must be strictly construed against such an interpretation.

ISSUES PRESENTED

1. Did the district court violate Miguel Gonzalez’s right to Due Process by failing to hold a hearing?
2. Whether the district court misinterpreted the holding of Davidson v. Davidson, 132 Nev. 709, 389 P.3d 880 (2006)?

3. Whether the district court abused its discretion in ignoring the existence of a condition precedent in the Decree that controlled the transfer of the ownership interest in the marital residence?

ARGUMENT

I. DID THE DISTRICT COURT VIOLATE MIGUEL GONZALEZ’S RIGHT TO DUE PROCESS BY FAILING TO HOLD A HERING

The constitutional guarantee of due process of law, found in the Fifth and Fourteenth Amendments to the U.S. Constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty, and property. Procedural due process limits the exercise of power by the state and federal governments, by requiring that they follow certain procedures in criminal and civil matters. “Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment⁸.” In analyzing due process requirements, the Nevada Supreme Court has long held that the most basic requirement of due process, is the opportunity to be heard at a meaningful time and in a meaningful manner⁹.

⁸ Mathews v. Eldridge, 424 US 319, 332; 96 S Ct 893 (1976)

⁹ Kirkpatrick v. Eighth Judicial District Court, 118 Nev. 223, 43 P.3d 998 (2002)

The district court's evidentiary rules are reviewed for abuse of discretion. If the correct ruling is clear, however, refusing to follow it is an abuse of discretion¹⁰. The district court denied Miguel Gonzalez a meaningful opportunity to be heard. Although, the district court has discretion to deny a request for oral arguments on an issue, denial of oral arguments when the district court acknowledges that it lacks the information required to adequately adjudicate a matter, the refusal to hold a hearing or allow oral argument on the matter is an abuse of discretion.

The firmly established policy of the State of Nevada is that "justice is best served when controversies are resolved on their merits whenever possible."¹¹ [T]he Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones¹².

The district court admitted that it had no way to determine the value of Miguel Gonzalez's interest in the marital residence at the time of the Decree of

¹⁰ Fabbi v. First Nat'l Bank of Nev., 62 Nev. 405, 414, 153 P.2d 122, 125 (1944)

¹¹ Gutenberger v. Continental Thrift and Loan Company, 94 Nev. 173, 175, 576 P.2d 745 (1978), Yochum v. Davis, 98 Nev. 484, 653 P.2d 1215 (1982), Lesley v. Lesley, 113 Nev. 727, 941 P.2d 451 (1997)

¹² Stanley, at 656 (footnote omitted)

Divorce¹³. Given the district court's admission that it lacked the information to accurately determine the value Mr. Gonzalez's interest in the marital residence, an evidentiary hearing should have been held. Miguel had no opportunity to gather and present evidence to determine the value of his interest in the marital residence. This is a constitutional violation and renders the judgment defective. This is exactly the situation that our procedural rules were designed to prevent. Instead of holding an evidentiary hearing, the district court incorrectly applied Davidson¹⁴ which resulted in a forfeiture of Miguel's interest in the marital residence.

II. THE DISTRICT COURT ERRED IN ITS APPLICATION OF DAVIDSON V. DAVIDSON.

The Nevada Supreme Court found in Davidson v. Davidson¹⁵, that the six-year statute of limitations in NRS 11.190 begins to accrue when there is evidence of indebtedness. In Davidson, the 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.

¹³ AA000054; 1-2

¹⁴ Davidson v. Davidson, 132 Nev. 709, 389 P.3d 880 (2016)

¹⁵ Id.

In July 2020, the Nevada Supreme Court clarified that its holding in Davidson¹⁶ does not apply to claims for enforcement of real property distribution in divorce decrees¹⁷. The district court correctly applied Blinkinsop¹⁸ in its analysis of Liliana's interest in the marital residence is not subject to the six (6) year statute of limitations. The district court then concludes that Miguel's interest in the marital residence is subject to the six (6) year statute of limitations. This analysis is inherently inconsistent.

The matter before this Court is distinguishable from Blinkinsop¹⁹. In Blinkinsop²⁰, the Decree of Divorce gave the real property to the husband as his sole and separate property. In this matter, Liliana's acquisition of the marital residence as her sole and separate property is subject to a condition precedent.

III. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN IGNORING THE EXISTENCE OF A CONDITION PRECEDENT IN THE DECREE OF DIVORCE THAT CONTROLLED THE TRANSFER OF THE OWNERSHIP INTEREST IN THE MARITAL RESIDENCE

¹⁶ Id.

¹⁷ Kuptz-Blinkinsop v. Blinkinsop, 136 Nev. Adv. Rep 40, 466 P.3d 1271 (2020)

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

Nevada law has long held that parties free to enter into contracts so long as their contracts are not unconscionable, illegal, or in violation of public policy²¹. Nevada favors the settlement of disputes by agreement of the parties and, ordinarily, will enforce the Agreement which the parties have made, absent any fraud, mistake, or overreaching. This is as true of agreements made in the process of the termination of the marriage by divorce as of any other kind of negotiated settlement. The divorce action was initiated by Joint Petition with a stipulated Decree of Divorce²². The Decree of Divorce is a contract between the parties and subject to contract interpretation. The district court's contract interpretation is reviewed de novo²³.

Where a document is clear on its face, it will be construed from the written language and enforced as written²⁴. The written language of Decree of Divorce clearly outlines all of the terms of the settlement agreement. Contracts will be construed from their written language and enforced as written²⁵. Where "a written contract is clear and unambiguous on its face, extraneous evidence cannot be introduced to explain its meaning²⁶." "[T]he existence of a separate oral agreement

²¹ D.R. Horton, Inc. V. Green, 120 Nev. 549, 558, 96 P.3d 1159, 1165 (2004)

²² AA000001-25

²³ Grisham v Grisham, 128 Nev. 679, 289 P.3d 230, at 236 (2012)

²⁴ Ellison v. California State Auto Ass'n, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990)

²⁵ Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 278, 21 P.3d 16, 20 (2001)

²⁶ Geo. B. Smith Chemical v. Simon, 92 Nev. 580, 582, 555 P.2d 216, 216 (1976)

as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proven by parol²⁷."

An analysis of the July 30, 2007, Decree of Divorce demonstrates clear and unambiguous terms resolving the outstanding issues contained in this matter. Specifically, the Decree of Divorce states in pertinent part that Miguel Gonzalez shall receive "50% of the remaining equity in the family residence located at 2767 La Canada St., Las Vegas Nevada subject to encumbrances thereon." There is no language limiting Mr. Gonzalez's interest to a specific period in time.

In fact, the only limiting language in the Decree is where Plaintiff is given "three months from the date of the Decree of Divorce" to refinance the property. Plaintiff failed to refinance the residence within the time period specified by the Decree of Divorce. As such, both parties still retain undivided interest in the property located at 2767 La Canada Street. Any arguments as to what was intended at the time of the Decree of Divorce is inadmissible parol evidence.

Here, Miguel and Liliana agreed that if Liliana refinanced the marital residence within three (3) months of the Decree of Divorce, she would obtain complete ownership of the marital residence. The requirement to refinance the marital residence is a condition precedent to Liliana obtaining Miguel Gonzalez's

²⁷ Crow-Spieker #23 v. Robinson, 97 Nev. 302, 305, 629 P.2d 1198, 1199 (1981) (quoting Alexander v. Simmons, 90 Nev. 23, 24, 518 P.2d 160, 161 (1974))

interest in the marital residence. If Liliana did not refinance the marital residence within three (3) months, she would not obtain Miguel's interest in the marital residence. This is consistent with the plain language of the Decree of Divorce.

The provision here does not require that Miguel Gonzalez do anything to maintain his interest in the marital residence. It is error to conclude, as the district court did, that Miguel Gonzalez had to take some affirmative action to maintain his interest in the marital residence. This is not the way a condition precedent operates. There is no reasonable dispute that the clause in question is a condition precedent, but the district court effectively applied it as though it were a forfeiture clause. As such, the district court erred as a matter of law in holding that Miguel Gonzalez lost his interest in the marital residence by failing to take some action.

A party never promises to perform a condition precedent; it is simply a condition that must be fulfilled before a right can vest, and the failure to fulfill the condition does not trigger liability or cause damages²⁸. A party who does not fulfill the condition simply loses the right that was subject to the condition²⁹.

Liliana never fulfilled the condition precedent. As such, her right to acquire the marital residence as her sole and separate property never vested. Miguel maintains

²⁸ First Fed. Sav. & Loan Ass'n of Miami v. Mortgage Corp. of S., 467 F. Supp. 943, 947 (N.D. Ala. 1979) aff'd, 650 F.2d 1376 (5th Cir. 1981), abrogated on other grounds by Diamond v. Lamotte, 709 F.2d 1419 (11th Cir. 1983)

²⁹ Di Gregorio v. Marcus, 86 Nev. 674, 677, 475 P.2d 97, 99 (1970)

that he has since the purchase of the property an undivided one-half interest in the marital residence.

The clear language of the Decree of Divorce imposed a “condition precedent” concerning the transfer of the marital residence. Under the district court’s interpretation of the Decree of Divorce, Miguel Gonzalez retroactively relinquished his interest in the marital residence because he failed to take affirmative action. This interpretation runs afoul of the plain language of the Decree of Divorce and the law governing real property in the state of Nevada.

The language in the Decree of Divorce regarding the marital residence is merely a “condition precedent.” It imposed no duties on Miguel Gonzalez. Therefore, any failure to act on his part does not create a forfeiture of his interest in the residence. Rather, once the “condition precedent” expired, the party’s ownership interest defaulted to either joint-tenants or tenants-in-common under Nevada law. Even if the language of the Decree of Divorce were found to be ambiguous and could be read to be a forfeiture, the contract must be strictly construed against such an interpretation.

A contract may be read to permit a forfeiture only if plain, clear and unequivocal language requires it³⁰. Ambiguous language alone can not support a

³⁰ Am. Fire & Safety, Inv. V. City of N. Las Vegas, 109 Nev. 357, 360, 849 P.2d 352, 355 (1993)

forfeiture because “the law abhors a forfeiture.”³¹ The general rule of avoiding forfeitures applies with special force to marital contracts. The drafter owes his spouse a fiduciary duty³². So when courts find ambiguous language that could be read to forfeit spousal benefits, they construe the language strictly to avoid the forfeiture³³. Courts will not fill in gaps or even apply a common law presumption to permit a forfeiture³⁴. If the district court somehow found an ambiguity in the use of the condition precedent, the analysis should stop there. Because the plain language of the Decree of Divorce does not plainly, clearly and unequivocally impose a penalty of forfeiture of a parties’ interest in the marital residence, it can not be construed to impose one at all.

The district court erred in imposing forfeiture of his interest in the marital residence as a penalty for any failure to take action by Miguel Gonzalez. The clause in the Decree concerning the marital residence created a condition precedent that allowed Liliana Garcia to obtain ownership of the marital residence upon refinancing the residence within a specified amount of time. A condition precedent

³¹ Humphrey v. Sagouspe, 50 Nev. 157, 254 P. 1074, 1079 (1927)

³² Sogg v. Nev. State Bank, 108 Nev. 308, 312, 832 P.2d 781, 784 (1992)

³³ Vakil v. Vakil, 879 N.E. 2d 79, 80, 87-85 (Mass. 2008)

³⁴ Cortez v. Cortez, 203 P. 3d 857, 860, 863 (N.M. 2009) (court would not construe ambiguity in marital settlement agreement to result in a forfeiture)

is an event that must be fulfilled before a right is created³⁵. If the event does not happen, then the right is lost, but there is no other penalty³⁶.

CONCLUSION

The Nevada Supreme Court has directed that cases should be heard on the merits. Given the weight of the law favoring a determination of cases on the merits and the due process requirements at issue, the district court erred by not holding a hearing on the merits. Additionally, the district court clearly misinterpreted the holding of Davidson v. Davidson³⁷ and ignored the existence of a condition precedent in the Decree of Divorce. Based on the foregoing, Miguel Gonzalez, respectfully requests that this Court overturn District Court's Order.

DATED this 4th day of August, 2021

RESPECTFULLY SUBMITTED
THE GRIGSBY LAW GROUP
A PROFESSIONAL CORPORATION

/s/Aaron Grigsby
Aaron Grigsby, Esq.
Nevada Bar No. 9043
2880 West Sahara Ave.
Las Vegas, NV 89102

³⁵ Stonington Water St. Assoc., LLC v. Hodess Bldg. Co., Inc., 729 F. Supp. 2nd 253, 262 (D. Conn. 2011)

³⁶ In re Columbia Gas Sys. Inc., 50 F. 3d 233, 241 (3d Cir. 1995); Merritt Hill Vineyards Inc. v. Windy Heights Vineyard, Inc., 460 N.E.2d 1077, 1081-82 (N.Y. 1984)

³⁷ Davidson v. Davidson, 132 Nev. 709, 382 P.3d 880 (2016)

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(0)(5) and the type style requirements of NRAP 32(0)(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(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 containing 3217 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 4th day of August, 2021

RESPECTFULLY SUBMITTED
THE GRIGSBY LAW GROUP
A PROFESSIONAL CORPORATION

/s/Aaron Grigsby
Aaron Grigsby, Esq.
Nevada Bar No. 9043
2880 West Sahara Ave.
Las Vegas, NV 89102

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 4th day of August, 2021, I submitted the forgoing Appellant's Opening Brief for filing via the Court's electronic filing system. A copy was served as follows:

BY ELECTRONIC FILING TO

Byron Mills
Mills & Anderson
703 S. Eighth Street
Las Vegas, Nevada 89101
attorneys@millsnv.com
Attorney for Respondent

/s/ Aaron Grigsby
An employee of the Grigsby Law Group