IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL A. GONZALEZ
Appellant,

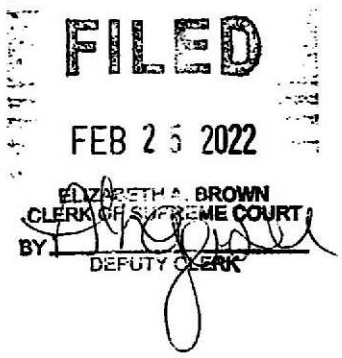
vs.

LILIANA C. GONZALEZ N/K/A

LILIANA C. GARCIA
Respondent.

Supreme Court No. 82011

District Court No. D-07-376585-Z



PETITION FOR REVIEW

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SUMMARY OF ARGUMENT

The Court of Appeals erred in affirming the district court's Order. The parties were divorced by stipulated Decree on July 30, 2007.[1] Plaintiff filed a Motion to Enforce Decree of Divorce approximately thirteen (13) years after the Decree of Divorce.[2] Mr. Gonzalez opposed the Motion.[3] 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.[4]

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

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[1] AA000001-25
[2] AA000026-35
[3] AA000026-35
[4] AA000051-56

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 this Court finds that there was no condition precedent, the statute of limitations for Miguel Gonzalez to assert his claim has not begun. Therefore, the Court of Appeals erred in affirming the District Court's Order.

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in finding that NRS 11.190 precludes Miguel from asserting his rights to equity in the home under the decree.
2. Whether the Court of Appeals erred in finding that under the plain language of the decree, there is no condition precedent that divest Liliana of complete ownership of the home.

REASONS WHY REVIEW IS WARRANTED

The Court of Appeals erred in issuing its Order of Affirmance. It overlooked and misapprehended significant issues in the record, and those errors are part of the justification for this Court to review that decision. Miguel Gonzalez requests review by the Supreme Court because this case involves fundamental issues of state wide importance and conflicts with Supreme Court precedent.[5]

1. NRS 11.190 does not preclude Miguel from asserting his rights to equity in the home under the decree.

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[5] Davidson v. Davidson, 132 Nev. 709, 382 P.3d 880 (2016).

This Court found in Davidson v. Davidson[6], 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. There has not been any action taken by either party to show evidence of indebtedness.

In July 2020, this Court clarified that its holding in Davidson[7] does not apply to claims for enforcement of real property distribution in divorce decrees[8]. The district court correctly applied Blinkinsop[9] 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 concluded that Miguel's interest in the marital residence is subject to the six (6) year statute of limitations. This analysis in inherently inconsistent.

The matter before this Court is distinguishable from Blinkinsop[10]. In Blinkinsop[11], the Decree of Divorce gave the real property to the husband as his

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[6] Id.
[7] Id.
[8] Kuptz-Blinkinsop v. Blinkinsop, 136 Nev. Adv. Rep 40, 466 P.3d 1271 (2020)
[9] Id.
[10] Id.
[11] Id.

sole and separate property without any conditions. In this matter, Liliana's acquisition of the marital residence as her sole and separate property is subject to a condition precedent.

The Court of Appeals concluded contrary to the holding in Davidson that the statute of limitations began to run at the filing of the Decree of Divorce.[12] The parties have never filed a Notice of Entry of the Decree of Divorce. There has not been any action taken on the property by either party. In Davidson, this Court found that:

> According to NRS 11.200, the statute of limitations began running when there was "evidence of indebtedness" for half of the equity in the marital property to Dawnette. NRS 11.200 comports with our holding in Borden v. Clow,[13] There, we explained that the running of the statute of limitations begins when a deed is delivered. This court was asked to determine when the statute of limitations began to run in a case where the defendant gave the plaintiff an absolute deed to real property in order to secure a debt. Id. at 276, 30 P. at 821. The parties neglected to set a date upon which the payment would be due and disputed whether the plaintiffs cause of action was barred by the statute of limitations for contracts. Id. at 276-77, 30 P. at 821. We concluded that the delivery of the deed triggered the statute of limitations:
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> > It is a rule in regard to the statute of limitations, *applicable in all cases*, that the statute begins to run when the debt is due, and an action can be instituted upon it. There was no agreement between the parties as to when this indebtedness should be paid; therefore the statute began to run immediately upon the delivery of the

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[12] Court of Appeal Order page 5 (although not clearly stated, the Order implies that the statute began to run upon filing of the Decree of Divorce.

[13] Borden v. Clow 21 Nev. 275, 278, 30 P. 821, 822 (1892)

deed to the defendant.[14]

In this case, the statute of limitation has not begun to run as there has not been any evidence of indebtedness. Neither party has taken any action on the property since the filing of the Decree of Divorce. Both parties have remained on the deed for the home. Therefore, the Court of Appeals misapplied Davidson in finding that Miguel is precluded from asserting his interest in the equity of the home.

2. There was a condition precedent in the Decree of Divorce that controlled the transfer of the ownership interest in the martial residence.

In its Order of Affirmance, the Court of Appeals found that the Decree of Divorce does not contain a condition precedent. Where a document is clear on its face, it will be construed from the written language and enforced as written[15]. The written language of Decree of Divorce clearly outlines all of the terms of the settlement agreement. 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

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[14] Davidson v. Davidson, 132 Nev. 709, 717

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

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.

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 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 damages[16]. A party who does not fulfill the condition simply loses the right that was subject to the condition[17]. 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 that he has since the purchase of the property an undivided one-half interest in the martial residence.

The Court of Appeals erred in finding that there was not condition precedent. 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.

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[16] 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)

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

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 it[18]. Ambiguous language alone can not support a forfeiture because "the law abhors a forfeiture.[19]" The general rule of avoiding forfeitures applies with special force to martial contracts. The drafter owes his spouse a fiduciary duty[20]. So when courts find ambitious language that could be read to forfeit spousal benefits, they construe the language strictly to avoid the forfeiture[21]. Courts will not fill in gaps or even apply a common law presumption to permit a forfeiture[22]. If the district court somehow found an ambiguity in the

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[18] Am. Fire & Safety, Inv. V. City of N. Las Vegas, 109 Nev. 357, 360, 849 P.2d 352, 355 (1993)
[19] Humphrey v. Sagouspe, 50 Nev. 157, 254 P. 1074, 1079 (1927)
[20] Sogg v. Nev. State Bank, 108 Nev. 308, 312, 832 P.2d 781, 784 (1992)
[21] Vakil v. Vakil, 879 N.E. 2d 79, 80, 87-85 (Mass. 2008)
[22] Cortez v. Cortez, 203 P. 3d 857, 860, 863 (N.M. 2009) (court would not construe ambiguity in martial settlement agreement to result in a forfeiture)

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 cannot 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 is an event that must be fulfilled before a right is created[23]. If the event does not happen, then the right is lost, but there is no other penalty[24].

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

[24] 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)

CONCLUSION

The Court of Appeals misapprehended several important facts in reaching an erroneous conclusion in its Order of Affirmance. For the reasons contained above, this Court should grant review and overturn the District Court's order.

DATED this 25th day of February, 2022.

RESPECTFULLY SUBMITTED
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Petition for Review 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:
2. This Petition for Review has been prepared in a proportionally spaced typeface using Microsoft Word 2010, in Times New Roman 14;
3. I further certify that this Petition for Review complies with the page or type-volume limitations of NRAP 32(a)(5) 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 2,618 words;
4. Finally, certify that I have read this Petition for Review and to the best of my knowledge the information and belief it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all the applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the petition regarding matters in the record to be supported by a reference to the appendix where the matter is to be found. I understand that I may be subject to sanctions in the event the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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DATED this 25th day of February, 2022

RESPECTFULLY SUBMITTED
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 25th day of February, 2022 a copy of the foregoing Petition for Review was served as follows:

BY ELECTRONIC FILING TO

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An employee of the Grigsby Law Group