IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL A. GONZALEZ Appellant, v. LILIANA C. GONZALEZ N/K/A LILIANA C. GARCIA Respondent.	Supreme Court Case No. 82011 District Court No. D-07-376585-Z

RESPONSE TO PETITION FOR REVIEW

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The Appellant MIGUEL GONZALEZ, (Miguel), filed a Petition for Review on February 25, 2022, seeking this Court's review of the Court of Appeals' decision issued on January 24, 2022, affirming the district court's decision. The Court of Appeals' decision relied on the recent Supreme Court Precedent of *Kutpz-Blinkinsop*, and the facts of that case mirror the facts of this case almost perfectly. The *Kutpz-Blinkinsop* case clearly applies and dictates the correct result: the six-year statute of limitations does not apply to real property in divorce decrees. Furthermore, NRS 11.190 applies to money judgments even if they are contained within a divorce decree, and even if the source of the money judgment is from an interest in real property.

The material facts to this case are relatively simple and undisputed, as are terms of the Decree of Divorce. The premise of Miguel's appeal and petition to this Court is that the Court of Appeals misapplied *Kuptz-Blinkinsop*, misinterpreted the language of the Decree and failed to apply a "condition precedent" to Liliana's right to acquire ownership of the home. Because Liliana did not fulfill this supposed condition, Miguel argues she never received ownership of the home. Miguel further contends that NRS 11.190's statue of limitations does not apply to bar his claim to payment in the amount of half the value of the equity of the home awarded to him at the time of the Decree. Miguel reaches these conclusions only through a tortured reading and interpretation of the Decree and a complete

misinterpretation and misapplication of *Kutpz-Blinkinsop*, *Davidson* and NRS 11.190. The Court of Appeals correctly disagreed with Miguel's arguments and correctly applied Nevada precedent to the facts of this case.

The operative language in the Decree is as follows:

> **WIFE SHALL RECEIVE THE FOLLOWING:**
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> The Family residence located at 2767 La Canada St., Las Vegas Nevada. Wife shall refinance the property under her sole name within three months from the date of decree of divorce. Wife shall retain 50% of the equity, subject to any encumbrances thereon. To the effect of refinancing under her sole name, Husband shall deliver executed quit-claim deed to Wife.[1]
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> **HUSBAND SHALL RECEIVE THE FOLLOWING:**
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> 50% of the remaining equity in the family residence located at 2767 La Canada St., Las Vegas, NV, subject to encumbrances thereon.[2]

It is undisputed that following the entry of the Decree, Miguel never signed a quitclaim deed so that Liliana could refinance the marital residence. As such, Liliana was unable to refinance the property to remove Miguel from the loan on the property or pay him his 50% equity interest. The Court of Appeals relied on

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[1] AA 19.
[2] *Id.*

the clear language of the Decree and the plain undisputed facts, then applied the *Kuptz-Blinkinsop* decision to these facts to reach the correct conclusion. The Court of Appeals decision in no way conflicts with the *Kuptz-Blinksinsop* decision, it mirrors it almost exactly. The Court of Appeals decision entirely consistent with *Kuptz-Blinkinsop, Davidson* and NRS 11.190. As such, review by this Court is both unwarranted and unnecessary.

1. **There is no condition precedent in the Decree of Divorce.**

The language in the Decree of Divorce could not be clearer: "WIFE SHALL RECEIVE THE FOLLOWING: The Family residence located at 2767 La Canada St., Las Vegas Nevada." This order stands on its own and clearly awards Liliana the marital residence. The decree goes on to 1) order Liliana to refinance the marital residence within 3 months of the decree and retain 50% of the equity, and 2) order Miguel to sign a quitclaim deed on the residence in Liliana's favor to effectuate the refinance.

The next provision regarding what Miguel was awarded is equally clear: "HUSBAND SHALL RECEIVE THE FOLLOWING: 50% of the remaining equity in the family residence located at 2767 La Canada St., Las Vegas, NV, subject to encumbrances thereon." This order clearly awards 50% of the net equity not retained by Liliana to Miguel. Miguel's award is in the nature of a money judgment and therefore subject to NRS 11.190.

Miguel's Petition appears to conflate the two issues, claiming that since the alleged condition precedent (Liliana's refinance of the residence) has not been fulfilled, she did not acquire ownership of the home and the statute of limitations on Miguel's interest never began to run. Both contentions are false. First, as the plain language of the Decree states Liliana was awarded "[t]he Family residence located at 2767 La Canada St., Las Vegas Nevada." This award is not conditioned on any action and stands on it is own. While the decree goes on to give Liliana other directives to facilitate refinance of the home and payment to Miguel, neither of those directives is a condition precedent to her ownership. The Court of Appeals correctly reached this conclusion.

2. *Kutpz-Blinkinsop* was correctly applied to this case.

The Court of Appeals correctly applied *Kuptz-Blinkinsop*, 136 Nev. Adv. Rep, 466 P.3d 1271 (2020) to this case. In *Kuptz-Blinkisop*, the parties owned real property as joint tenants, which was awarded solely to the husband ("Husband") in their divorce. *Id.* at 1273. The wife ("Wife") was ordered to execute a quitclaim deed within ten days of the entry of divorce. *Id.* Wife never executed the quitclaim deed, Husband never requested that Wife do so and he never took action to enforce the decree. *Id.* Nine years after the divorce, Wife sought to partition the property because the decree had expired under NRS 11.190 and *Davidson v. Davidson*, 132 Nev. 709, 392 P.3d 880 (2016). *Id.*

Husband counterclaimed for quiet title and declaratory relief seeking a judicial declaration that he was the sole owner of the property and that Wife was judicially estopped from claiming any interest in the property. *Id.* Despite Wife's arguments that *Davidson* precluded Husband's claims, the Court held that Husband's action to enforce the real property distribution from the decree was not subject to the six-year statute of limitations in NRS 11.190(1)(a). *Id.* As such, Husband was able to enforce his rights to obtain clear title from Wife. *Id.*

The facts of *Kuptz-Blinkinsop* are virtually identical to this case. Here, Liliana is enforcing the real property distribution in the Decree. The Decree clearly awarded Liliana the residence as her sole and separate property. The Decree states, that Liliana shall receive the family residence, period. The Decree also states that Miguel shall deliver an executed quitclaim deed so that Liliana can refinance under her sole name.

Like Wife in *Kuptz-Blinkinsop*, Miguel never executed the quitclaim deed and like Husband, Liliana did not take action to enforce the decree. Nevertheless, like Husband, Liliana obtained an award of real property ownership and her right to enforce her right to obtain clear title from Miguel it is not subject to the six-year statute of limitations. Despite Miguel's refusal to execute a quitclaim deed, Liliana owns the residence as her sole and separate property, and she is able to enforce her

right to obtain clear title from Miguel. The Court of Appeals decision in this case does not conflict with *Kuptz-Blinkinsop,* it mirrors it.

3. The Court of Appeals correctly applied NRS 11.190 to Miguel's interest.

NRS 11.190 states in pertinent part that actions other than those for the recovery of real property may only be commenced, as to enforcement of a written judgment, within six years. The Court of Appeals correctly concluded that, pursuant to NRS 11.190, Miguel's interest in the residence is subject to the six-year statute of limitations because it is a money judgment.

Again, Miguel appears to be conflating Liliana receiving ownership in the home with his right to a payment from equity in the home. He argues that the statute of limitations never began to run because he was never actually divested of his community ownership of the home due to Liliana failing to meet a condition precedent. As explained above, Liliana was awarded ownership of the home and there was no condition precedent to this award. As far as Miguel's ability to initiate a claim of joint ownership of the home, that claim is clearly barred under *Kuptz-Blinkinsop* based on the doctrine of claim preclusion. As explained in that case, any claim that Miguel might try to assert related to his interest in the property is limited by and confined to what was awarded to him in the Decree of Divorce. In this case, Miguel was awarded 50% of the equity in the home. Again, this is an award clearly in the nature of a money judgment.

As such, the only question that the Court of Appeals needed to answer with respect to Miguel's claim is whether he was barred from pursuing that money judgment under NRS 11.190 based on when the six-year statute of limitations began to run. Though not explicitly stated, the Court of Appeals appears to have determined that it began to run upon entry of the decree of divorce. This is consistent with *Davidson v. Davidson*, 132 Nev. 709, 382 P.3d 880 (2016).

In *Davidson*, the Court, quoting its previous holding in *Borden v. Clow*, stated the following:

> 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*, 21 Nev. 275, 278, 30 P. 821, 822 (1892).4 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 plaintiff's 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 deed to the defendant. Id. at 278, 30 P. at 822 (emphasis added).

Davidson at 885.

The operative language in the *Davidson* and *Borden* decisions is the following: "the statute begins to run when the debt is due and an action can be instituted upon it." *Id.* In this case, although the Court of Appeals did not specifically determine when the statute began to run, it is clear that the very latest the six-year period could have begun was three months after entry of the Decree. As stated above, Liliana was directed to refinance the residence within 90 days of entry of the Decree, at which time Miguel would have been entitled to receive payment. As such, the "debt is due" on that date. The decree of divorce was entered on July 30, 2007, meaning that Liliana's obligation to pay Miguel on the refinance would have accrued on October 28, 2007. Six years from that date would have been October 2013, after which Miguel's claim for payment under the Decree expired.

That Miguel never signed and delivered a quitclaim deed is immaterial. Miguel cannot prevent the statute of limitations from running on his right to enforce his money judgment when he deliberately refuses to comply with a condition (execution of the quitclaim deed) necessary for him to receive payment. While the Court of Appeals did not specifically address this issue, it seems rather obvious that Miguel would be estopped from asserting a toll on the commencement of the statute of limitations due to his own failure to execute a quitclaim deed, an act solely within his control:

> "'[A]n individual who voluntarily prevents the occurrence of a condition established for his or her benefit is estopped from seeking relief from a contract on the grounds that the condition precedent to his obligation failed to occur.' *Broussard v. Hill*, 100 Nev. 325, 330, 682 P.2d 1376, 1379 (1984)..."

Nga v. Rains, 946 P.2d 163, 113 Nev. 1151 (Nev. 1992). In this case, Miguel is seeking to escape the consequences of NRS 11.190 rather than the terms of a contract, but the principle is the same. Miguel cannot prevent the refinance by failing to execute a quitclaim deed, then assert that his right to enforce payment from the refinance continues indefinitely when he prevented the refinance by his own failure to fulfill a condition solely under his control.

The Court of Appeals' decision was correct and consistent with Nevada case law in all respects. Liliana's claim was clearly controlled by *Kuptz-Blinkinsop* and Miguel's claim was clearly barred by NRS 11.190. As such, this Court's review of the Court of Appeals' decision is both unwarranted and unnecessary. This Court should therefore deny Miguel's Petition for Review.

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