SUPREME COURT OF NEVADA

Doan v. Wilkerson

130 Nev., Adv. Op. 48 (2014) · Decided June 26, 2014

SUMMARY

The Nevada Supreme Court held that a motion to modify or obtain relief from a divorce decree under NRCP 60(b) is subject to the rule's six-month time limit. It further held that equitable relief through an independent action was unavailable because the FAA retirement benefit had been disclosed and considered during the divorce proceedings, even though it was not expressly included in the written decree.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Cherry, J.; Gibbons, C.J.; Pickering, J.; Hardesty, J.; Parraguirre, J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	June 26, 2014
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a district court order modifying a final divorce decree to partition a marital retirement asset that had been disclosed and discussed during the divorce proceedings but was not included in the written decree.
STANDARD OF REVIEW	Divorce-related decisions are reviewed for abuse of discretion; factual findings supported by substantial evidence are not disturbed absent an abuse of discretion, but the district court must apply the correct legal standard.
PRECEDENTIAL VALUE	Published Nevada Supreme Court en banc opinion; precedential
PARTIES	Craig A. Doan v. Richard Wilkerson, personal representative of Catherine Doan

TOPICS

family law procedure · divorce · community property · equitable distribution · equitable relief

PRACTICE AREAS

family law | civil procedure | equitable remedies

QUESTIONS PRESENTED

1. Whether NRCP 60(b)'s six-month time limitation applies to a motion seeking relief from or modification of a divorce decree's property distribution.
2. Whether an untimely motion may be treated as an independent equitable action for relief from the judgment.
3. Whether a marital asset disclosed and discussed during the divorce proceedings but omitted from the written decree was unadjudicated and therefore subject to postjudgment partition.
4. Whether the circumstances justified equitable relief from the final divorce decree.

HOLDINGS

1. NRCP 60(b)'s six-month time limitation applies to a motion for relief from or modification of a divorce decree.
2. After the six-month NRCP 60(b) period expires, relief may be pursued only through an independent action on equitable grounds, and a court may treat a motion as an independent action based on its substance rather than its label.
3. An independent action for equitable relief from a final or unreviewable judgment is available only in exceptional circumstances sufficient to prevent a grave miscarriage of justice.
4. An asset is not an omitted asset subject to postjudgment partition merely because it was not mentioned in the written divorce decree; the relevant inquiry is whether it was litigated and adjudicated during the divorce proceedings.

KEY QUOTATIONS

> *"Therefore, in accordance with NRS 125.090 and Kramer, we hold that NRCP 60(b)'s time limitation applies to a motion for relief from or modification of a divorce decree."* (at 5)

> *"Our caselaw, including Arnie, 106 Nev. at 542, 796 P.2d at 234, and Williams, 108 Nev. at 474, 836 P.2d at 619, demonstrates that the relevant inquiry is whether the asset was litigated and adjudicated, not merely whether it was written down in the decree."* (at 9)

FACTUAL BACKGROUND

Craig and Catherine Doan married in 1985 and sought dissolution with an equitable division of community property. During the divorce proceedings, Craig's FAA retirement benefits were disclosed through financial affidavits, FAA earnings and leave statements, W-2 forms, and Catherine's pretrial memorandum, and the parties had a fair opportunity to litigate their division. The 2003 divorce decree divided another retirement benefit but did not mention the FAA retirement benefit. Catherine waited more than six years before seeking postjudgment division of that benefit.

PROCEDURAL HISTORY

The parties divorced in 2003 after disclosing and discussing Craig Doan's FAA retirement benefits. In 2009, Catherine Doan moved to divide the FAA retirement benefit as an omitted asset. The district court initially denied the motion, then granted reconsideration and divided the benefit under a fractional formula. The Nevada Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Bonnell v. Lawrence, 128 Nev. 282 P.3d 712 (2012)
- Shydler v. Shydler, 114 Nev. 192, 954 P.2d 37 (1998)
- Devries v. Gallio, 128 Nev. 290 P.3d 260 (2012)
- Williams v. Waldman, 108 Nev. 466, 836 P.2d 614 (1992)
- Kramer v. Kramer, 96 Nev. 759, 616 P.2d 395 (1980)
- NC-DSH, Inc. v. Garner, 125 Nev. 647, 218 P.3d 853 (2009)
- United States v. Beggerly, 524 U.S. 38 (1998)
- Arnie v. Arnie, 106 Nev. 541, 796 P.2d 233 (1990)
- Tomlinson v. Tomlinson, 102 Nev. 652, 729 P.2d 1363 (1986)
- Taylor v. Taylor, 105 Nev. 384, 775 P.2d 703 (1989)
- Henn v. Henn, 605 P.2d 10 (Cal. 1980)
- In re Marriage of Brown, 544 P.2d 561 (Cal. 1976)
- In re Marriage of Thorne & Raccina, 136 Cal. Rptr. 3d 887 (Cal. Ct. App. 2012)
- McCarroll v. McCarroll, 96 Nev. 455, 611 P.2d 205 (1980)