

IN THE SUPREME COURT OF THE STATE OF NEVADA

TAMMY STEVENS,
Appellant,
vs.
MAURY STEVENS,
Respondent.

No. 43169

FILED

MAR 27 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. F. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying an NRCP 60(b) motion to set aside portions of a divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

The district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion.¹ Appellant contends that the district court abused its discretion when it denied her NRCP 60(b) relief because, among other things, mutual mistake occurred when the parties agreed to the division of marital assets, as they thought it was equal. To support her contention, appellant relies on this court's 1992 decision in Carlson v. Carlson.²

¹Cook v. Cook, 112 Nev. 179, 912 P.2d 264 (1996).

²108 Nev. 358, 832 P.2d 380 (1992).

In Carlson, the parties, both represented by counsel, negotiated a property settlement involving the husband's pension plan. During the negotiations, the wife requested from the insurance company the value of the pension, but did not receive the information before the divorce was finalized. In the interim, the husband and his attorney informed the wife's attorney that the proposed division of assets was "essentially equal," and, based on this representation, the wife agreed to the settlement.³ The district court adopted the agreement and incorporated it into the divorce decree. Later, the wife learned that she had only received approximately 29% of the parties' assets. The wife moved the district court for NRCP 60(b) relief, which was ultimately denied. The wife appealed.

On appeal, this court stated that the record clearly demonstrated that the representations concerning the pension's value were either the result of mutual mistake or fraud.⁴ Specifically, the court noted that if both the husband and wife "were mistaken about the pension's value, the parties entered the property settlement based upon a mutual mistake, namely, that they had essentially split their property equally."⁵ If, however, the husband or his counsel knew the value of the pension, the court stated that they "fraudulently misrepresented" its value.⁶ The court concluded that either ground was a basis for relief from

³Id. at 360-61, 832 P.2d 381-82.

⁴Id. at 361-62, 832 P.2d 382-83.


⁵Id. at 362, 832 P.2d at 382.

⁶Id. at 362, 832 P.2d at 382-83.

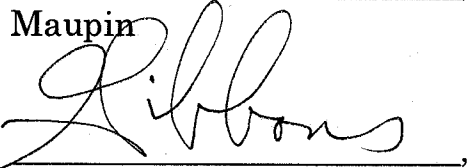
the judgment under NRCP 60(b), and, thus, the district court abused its discretion.

We conclude that Carlson is distinguishable from the present case because, here, there was no mutual mistake or fraud. In particular, the record shows that while negotiating the uncontested divorce decree, respondent might have thought that the division of property was equal, but appellant knew that it was not. The evidence shows that respondent never omitted or hid assets. Further, the evidence reveals that appellant controlled the family's finances and was aware of the parties' assets and debts when she made her request for property division in the letter to Attorney Mushkin. Although appellant contends that the parties mistakenly believed that Attorney Mushkin represented both of them in the divorce proceeding, she admitted that she did not hire an attorney because she wanted to save time and money. Moreover, she signed an acknowledgment of self-representation. Thus, we conclude that the district court did not abuse its discretion when it concluded that there was no factual or legal basis to grant the motion to set aside the divorce decree. Accordingly, we

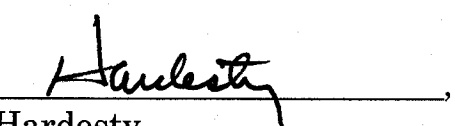
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Jennifer Elliott, District Judge, Family Court Division
Kunin & Jones
Kelleher & Kelleher, LLC
Clark County Clerk