

IN THE SUPREME COURT OF THE STATE OF NEVADA

KUI MEI LIU AND JULIA LIU,
Appellants,
vs.
ANHTU NGUYEN,
Respondent.

No. 44253

FILED

DEC 27 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court divorce decree and an order denying a new trial. Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge.

This appeal arises from a consolidated district court action involving three parties: appellant Julia Liu, appellant Kui Mei Liu (Mickey), and respondent Anhtu Nguyen (Andy). Julia and Mickey are sisters. Andy and Mickey are husband and wife. All three are originally from China. Mickey does not speak any English. Julia speaks some English.

In October 2003, Andy filed a complaint for divorce. In the complaint, Andy alleged that he and Mickey have one minor child from the marriage, and that there were various community real property and businesses to be divided. Andy sought joint legal and primary physical custody of the parties' child.

Mickey filed an answer and denied that the parties had a child. She also pointed out that the parties had community debt for distribution.

In November 2003, Julia filed an application to intervene in the divorce proceedings, as she asserted that she is the child's biological

mother and that she is the owner of the assets that Andy alleged were community assets. Concurrent with the divorce appearance, Julia filed a separate action to determine maternity, custody, support and visitation. In December, the parties filed a stipulation to consolidate the actions.

All three adults agreed to submit to DNA testing. It was later determined that Julia is the child's biological mother. The parties stipulated to resolve the custody issues, and custody is not an issue on appeal. The remaining issues as to the property division were scheduled for an evidentiary hearing in the district court.

On April 28, 2004, two days before the evidentiary hearing/divorce trial, Mickey and Julia's attorney moved the district court for permission to withdraw. The motion was granted, and the trial was rescheduled for May 26, 2004.

During the May trial, Andy's attorney gave an opening statement and made several offers of proof. Julia, who does not speak fluent English, informed the court that the attorney with whom she had consulted about the trial could not appear, and she asked for a continuance. The court denied Julia's request for a continuance. Thereafter, Julia testified, without being sworn in, that (1) Andy was not her husband, (2) he did not have any right to her property, (3) Andy was not her business partner, and (4) Andy had wrongfully obtained \$100,000 from her. Mickey, also present at the proceedings but unrepresented by counsel, was never given the opportunity to speak except to state her name. An interpreter was present in the courtroom. No witnesses were sworn and no evidence was offered or admitted. The "trial" lasted sixteen minutes.

After the trial, on June 2, 2004, the district court entered an order dividing three massage parlor businesses and three homes between

Andy and Julia. The court had determined, based on documentary evidence, and without explanation, that Andy and Julia had a partnership. Thus, the court awarded Julia two massage parlors as her "sole and separate property." Andy was awarded a third massage parlor. The district court also determined that Andy was entitled to a one-half interest in Julia's bank account from the date of Andy and Julia's "physical separation." With regard to the houses, the court ordered them sold, with Andy and Julia equally dividing any proceeds.

On that same day, the district court entered a final divorce decree. Under the decree, Mickey was awarded an interest in a fourth home. She was not, however, awarded a community interest in any of the property that Andy was awarded with respect to his partnership with Julia.

Julia and Mickey separately moved the district court for a new trial, which the court the denied. Together, the sisters have appealed.

"This court reviews district court decisions concerning divorce proceedings for an abuse of discretion. Rulings supported by substantial evidence will not be disturbed on appeal."¹ Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment.²

On appeal, Mickey and Julia contend that the district court lacked subject matter jurisdiction, in the divorce proceeding, to divide any property between Julia and Andy, and especially according to community property principles. Mickey and Julia also contend that the district court

¹Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998) (citation omitted).

²See Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999).

should not have permitted Julia to intervene in the divorce proceedings and that Julia should have filed a separate action before a civil court with general jurisdiction. Andy contends, among other things, that the district court was unable to divide Andy's and Mickey's marital property without first determining the property rights between Andy and Julia and, thus, the court necessarily had to divide Julia's and Andy's property.

Family courts have jurisdiction to resolve issues that fall within their constitutional jurisdiction.³ When the resolution of claims are necessary to the resolution of claims over which the family court is properly exercising jurisdiction, then the district court has subject matter jurisdiction to resolve all claims.⁴ In the present matter, Andy's complaint for divorce clearly stated that Andy and Mickey had businesses and real property that required division and child custody issues that required resolution. Subsequently, Julia moved the district court to intervene in the divorce proceeding, claiming that the property Andy identified in his divorce complaint was her sole property, with the exception of one of the massage parlors.⁵

³See Nev. Const. art. 6, § 6(2)(b) (providing that the Legislature has the authority to establish a family court division of any district court and may prescribe its jurisdiction); see also NRS 3.223(1)(a) (setting forth the family court's original, exclusive, jurisdiction over various proceedings brought under certain chapters of the Nevada Revised Statute).

⁴Barelli v. Barelli, 113 Nev. 873, 877-78, 944 P.2d 246, 248-49 (1997).

⁵See NRS 12.130 (recognizing that a person may move the district court intervene in an action); NRCP 24(a)(2) (providing that

“[u]pon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the

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Thus, the district court properly granted Julia's motion to intervene, as it appeared that she had an interest in the proceedings and her interest may have been impaired or impeded unless adequately represented. And since Andy contended, in the divorce complaint, that marital property and child custody issues existed for the court's consideration, and Julia alleged that she had an interest in the property, the court necessarily had to address Julia's contentions in the divorce proceedings in order to determine her ownership interest in the property for the purpose of distributing the property in the divorce proceedings. Accordingly, the district court had subject matter jurisdiction to determine the parties' property rights.

Julia and Mickey also contend, on appeal, that their due process rights were violated when the district court conducted a sixteen-minute trial, without swearing in any witnesses, admitting any evidence, or allowing Mickey to speak during the proceedings before granting the divorce and distributing the property. They further contend that the district court abused its discretion when it applied community property principles to the property division between Julia and Andy, and that the court erred when it failed to award Mickey a community interest in the property that the court awarded to Andy. We agree.

This court has recognized that the most fundamental requirement of due process is the opportunity to be heard at a meaningful

... continued

property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties").

time and in a meaningful manner.⁶ Here, the district court was aware that Julia and Mickey were not represented by counsel and that they were not fluent in English; still, the court proceeded to dispose of their property interests and to dissolve Mickey and Andy's marriage without the benefit of a meaningful proceeding. Since the district court did not allow Julia or Mickey an opportunity to offer evidence to establish any property interests they may possess in the subject property, we conclude that a new trial is warranted.

As for the court's property division, it is well settled in Nevada that all property acquired during marriage is presumed to be community property.⁷ And thus, when a marriage is dissolved, community property principles apply to the disposition of marital assets and debts.⁸ Andy insists that Julia held herself out as his wife and suggests that under the "unique circumstances" of this case, the district court did not abuse its discretion when it divided the parties' property. The district court appeared to apply community property principles to divide the property allegedly owned by Andy and Julia, and the court, without explanation, found that a partnership existed between them. There is no question that Andy and Julia were never married. Additionally, the court did not award Mickey a community interest in the property it awarded to Andy.


⁶See e.g., Matter of Parental Rights as to N.D.O., 121 Nev. 379, 115 P.3d 223 (2005); Kirkpatrick v. Dist. Ct., 119 Nev. 66, 64 P.3d 1056 (2003).


⁷NRS 123.220.

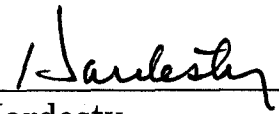
⁸NRS 125.150(1)(b) (providing that the district court, in granting a divorce, must "to the extent practicable, make an equal disposition of the community property").

A review of the appellate record and the parties' briefs, fails to show the basis upon which the district court made its property distribution. Accordingly, substantial evidence does not support the district court's distribution of property under the June 2, 2005 order or the divorce decree. Thus, we vacate the district court's June 2, 2005 order and reverse the divorce decree, and we remand this matter to the district court for a new, and meaningful trial.

It is so ORDERED.


_____, C.J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Bruce I. Shapiro, Ltd.
Pecos Legal Services
Webster & Associates
Clark County Clerk