

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUGEN HUBACZ,
Appellant,
vs.
JANA HUBACZ,
Respondent.

No. 44321

FILED

OCT 18 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order that denied an NRCP 60(b) motion to set aside the divorce decree and awarded attorney fees. Ninth Judicial District Court, Douglas County; David R. Gamble, 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 his NRCP 60(b) relief because it concluded that he was judicially estopped from challenging the verified joint petition for divorce on the ground that the district court lacked jurisdiction over the matter. Moreover, appellant contends that the district court abused its discretion when it awarded respondent attorney fees as a sanction.

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

The district court may grant a divorce upon affidavit, without a hearing, when the parties have filed joint petition for summary divorce.² The court must determine that the residency requirement has been met, and that no fraud regarding residency is present.³ If a colorable case for jurisdiction is made, the decree is voidable and not void.⁴

Here, the record shows that the parties submitted to the district court, for approval, a summary petition for divorce with an accompanying resident affidavit. Appellant contends that he signed the summary divorce under duress because respondent allegedly threatened to refer appellant's new wife to the authorities for deportation. The district court concluded that it had jurisdiction over the parties, as the evidence legally tended to show a case of jurisdiction. And as the district court concluded that it had jurisdiction over the divorce, it determined that appellant was judicially estopped from arguing that respondent was not a Nevada resident in the petition for summary divorce.

Under the rule of judicial estoppel, "a party who has stated an oath in a prior proceeding . . . that a given fact is true, may not be allowed to deny the same fact in a subsequent action."⁵ The rule's purpose is to prevent parties from knowingly shifting their positions.⁶ The record

²See NRS 125.181; Vaile v. Dist. Ct., 118 Nev. 262, 269, 44 P.3d 506, 512 (2002).

³Id.

⁴Id. at 272, 44 P.3d at 513.

⁵Id. at 273, 44 P.3d at 514.

⁶Id.

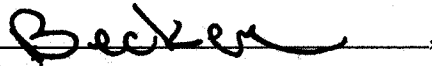
shows that appellant relied on the divorce decree to remarry and as evidence in a California proceeding to attempt to have California property declared as an omitted asset. Accordingly, the district court did not abuse its discretion when it concluded that appellant was judicially estopped from challenging jurisdiction and denied appellant's motion to set aside the divorce decree.

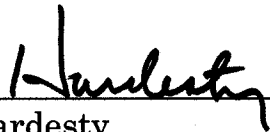
With regard to the award of attorney fees, appellant contends that his due process rights were violated because a page that contained respondent's arguments for fees was missing from the documents served on appellant. According to appellant, he therefore did not have a meaningful opportunity to oppose respondent's request for fees. The motion for fees was part of the district court record, however, and was available during the proceedings for appellant's review. Thus, if a page was missing, appellant had access to this page in the district court record. We conclude that the district court did not abuse its discretion when it awarded respondent attorney fees as a sanction.⁷

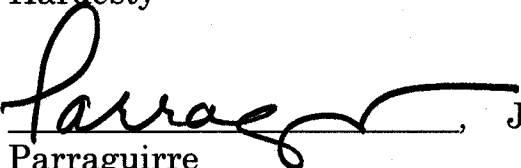
⁷See NRS 18.010(2)(b) (allowing attorney fees when a claim is brought without reasonable ground or to harass the prevailing party and directing the court to "liberally construe" the statute to award fees "in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public"); Edwards v. Emperor's Garden Rest., 122 Nev. ___, ___, 130 P.3d 1280, 1288 (2006) (noting that a district court's decision to award attorney fees as sanctions for filing a frivolous claim is reviewed for abuse of discretion and will not be reversed absent a manifest abuse of discretion).

Having reviewed the record and appellant's civil appeal statement, we conclude that the district court did not abuse its discretion when it denied appellant's NRCP 60(b) relief and when it awarded respondent attorney fees. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸

 J.
Becker

 J.
Hardesty

 J.
Parraguirre

cc: Hon. David R. Gamble, District Judge
Eugen Hubacz
Jeffrey K. Rahbeck
Douglas County Clerk

⁸In light of this order, we deny as moot appellant's March 8, 2006 motion for stay.