

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ELMORE LEWIS, JR.,
Appellant,
vs.
MARIA ANASTACIA CABRERA-LAZO,
Respondent.

No. 45961

FILED

FEB 02 2007

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a divorce decree, which incorporated the terms of a qualified domestic relations order. Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, Judge.

Appellant Charles Elmore Lewis, Jr. seeks to set aside (1) the decree of divorce dissolving his marriage to respondent Maria Anastacia Cabrera-Lazo, and (2) the qualified domestic relations order granting Cabrera-Lazo a fifty percent share in his Electrical Workers Defined Contribution Plan, as well as any additional share required to satisfy his unpaid interim support obligation.

Decree of divorce

Although Lewis filed the complaint for divorce, he now challenges the district court's divorce decree, arguing that an order of annulment should be issued instead. In the district court, Lewis filed a motion to require Cabrera-Lazo to prove her citizenship, maintaining that Cabrera-Lazo entered the United States illegally and married Lewis without informing him of her true identity and citizenship. The district court determined that Lewis's request for documentation of citizenship was vague and unsupported, and that his allegations concerning Cabrera-Lazo's citizenship were unsupported by any evidence. On appeal, Lewis

maintains that Cabrera-Lazo's alleged lack of disclosure constituted fraud, which entitles him to an annulment. Also, Lewis argues that the district court erred by failing to order the Nevada Department of Corrections to produce him so that he could attend the divorce hearing in person or telephonically.

"It is well established that arguments raised for the first time on appeal need not be considered by this court."¹ According to the record, Lewis did not request an annulment until he filed his appeal with this court. Consequently, he did not properly preserve the issue for appeal and we need not consider his request for an annulment. Moreover, under NRS 125.120, "[i]n any action for divorce when it appears to the court that grounds for divorce exist, the court in its discretion may grant a divorce to either party." Thus, this court reviews district court divorce decrees, including any community property distributions therein, for abuse of discretion.²

Additionally, Lewis's motion for documentation amounted to a request for discovery. The district court's resolution of discovery disputes is reviewed for an abuse of discretion.³ Based on our review of the record, we conclude that the district court did not abuse its discretion when it denied Lewis's motion for documentation as vague and unsupported. Despite Lewis's assertions that Cabrera-Lazo used a false identity to

¹Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997).

²See Wolff v. Wolff, 112 Nev. 1355, 929 P.2d 916 (1996).

³Means v. State, 120 Nev. 1001, 1007, 103 P.3d 25, 29 (2004).

illegally enter the United States, Lewis failed to offer any evidence to support his assertions. Under such conditions, Lewis's assertions constituted speculation alone. In addition, the documentation that Lewis sought was irrelevant to the district court's determination of Lewis's complaint for divorce.

Moreover, Nevada law does not require the district court to order the Department of Corrections to produce an inmate who is a party to a civil action for a hearing on that action. Consequently, the district court was not obligated to issue an order to produce him. The district court, however, did instruct Lewis to provide the court with the telephone number at the corrections facility where he was incarcerated, so that he could participate telephonically. The record indicates that Lewis failed to do so. Under these circumstances, it appears that the district court provided Lewis an opportunity to participate in the hearing and that Lewis forfeited that opportunity. Accordingly, we conclude that the district court did not err by failing to order the Department of Corrections to produce Lewis.

After reviewing the record, we conclude that the district court did not abuse its discretion in granting the decree of divorce based on incompatibility. Lewis's complaint for divorce offered ample grounds for the district court to grant the decree.

Qualified domestic relations order⁴

In appealing the divorce decree, Lewis also challenges an interlocutory qualified domestic relations order (QDRO), whose terms

⁴29 U.S.C. § 1056(d)(3)(B)(i)(I).

were incorporated into the divorce decree.⁵ The QDRO granted Cabrera-Lazo a fifty percent share in Lewis' Electrical Workers Defined Contribution Plan, as well as any share required for Lewis to satisfy unpaid interim support.

NRS 125.150(1) states,

In granting a divorce, the court:

....

(b) Shall, to the extent practicable, make an equal disposition of the community property of the parties, except that the court may make an unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition.

Additionally, as noted above, “[b]efore the appellate court will interfere with the trial judge’s disposition of the community property of the parties . . . it must appear on the entire record in the case that the discretion of the trial judge has been abused.”⁶

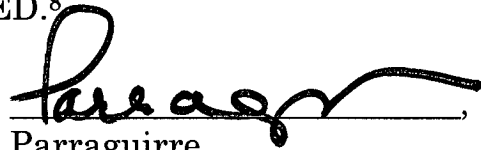
Based on our review of the record, the district court did not abuse its discretion in establishing the QDRO. Lewis’s benefits under the Electrical Workers Defined Contribution Plan qualify as community property under the definition enunciated in NRS 123.220. As such, the district court was authorized to distribute a fifty percent share in the plan

⁵See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (noting that interlocutory orders can be challenged in an appeal from the final judgment).

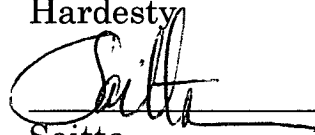
⁶Wolff v. Wolff, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996) (quoting Shane v. Shane, 84 Nev. 20, 22, 435 P.2d 753, 755 (1968)).

to Cabrera-Lazo under NRS 125.150(1)(b). Moreover, the district court explained that it awarded Cabrera-Lazo any additional share that Lewis would be entitled to receive in order to satisfy the unpaid interim support. Consequently, the district court complied with the provisions of NRS 125.150(1)(b), and it did not abuse its discretion in issuing the QDRO.⁷ Thus, we affirm the divorce decree as to the incorporated terms of the QDRO. Accordingly, for the reasons stated above, we affirm the district court's divorce decree.

It is so ORDERED.⁸


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

⁷See also Carlson v. Carlson, 108 Nev. 358, 362, 832 P.2d 380, 383 (1992) (concluding that a divorce decree should be amended to constitute a QDRO so that former wife would not lose benefits under former husband's election of surviving spouse annuity).

⁸Lewis requests that we appoint counsel to represent him on appeal. However, Nevada law does not require this court to appoint counsel for an appellant under these circumstances. See, e.g., Casper v. Huber, 85 Nev. 474, 476, 456 P.2d 436, 438 (1969) (explaining that there is a statutory right to appointment of counsel only in criminal cases and limited types of civil cases). Accordingly, we deny his request.

Additionally, in light of this order, we deny as moot Lewis' motion for a stay of execution, which was filed on November 7, 2005.

cc: Hon. Deborah Schumacher, District Judge, Family Court Division
Charles Elmore Lewis Jr.
Stephen C. Amesbury
Washoe District Court Clerk