

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL BLUESTEIN,  
Appellant,  
vs.  
ELLEN BLUESTEIN, N/K/A ELLEN  
GREEN,  
Respondent.

No. 46195

FILED

MAY 18 2007

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

ORDER OF AFFIRMANCE

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

Appellant Michael Bluestein and respondent Ellen Bluestein were married in 1991. They have one minor child from the marriage.

In 2004, Ellen filed a complaint for divorce. During the divorce proceedings, the parties negotiated a settlement agreement. At the time, Ellen was represented by counsel, but Michael was not. According to Ellen, her attorney advised Michael to retain independent counsel, but for unknown reasons, Michael chose to represent himself.

The parties stipulated to a divorce decree under which Ellen was awarded the marital residence and the business she operated during the marriage, and Michael did not have to pay child support. Specifically, the agreement provides that “[i]n exchange for Quit Claiming the above-referenced property to [Ellen], [Michael] pays no child support and forfeits his portion of the settlement and his portion of the community assets except as set forth.” On March 24, 2004, in accordance with the parties’ agreement, the district court granted them a divorce and incorporated the agreement into the decree. Neither party appealed from the final divorce decree.

On March 31, 2004, after the divorce decree was entered, Michael signed the quitclaim deed transferring his interest in the marital residence to Ellen. Three weeks later, on April 21, 2004, as part of Ellen's refinancing of the residence, and to remove himself from any responsibility for the mortgage, Michael executed a declaration concerning the deed, which provided that "in the execution and delivery of said deed I was not acting under any misapprehension as to the effect thereof, and acted freely and voluntarily and was not acting under coercion or duress." Next to Michael's signature, on the declaration, is a notation that Michael contends is an acronym, "ud" for "under duress." Michael did not pay child support after the decree was entered.

Approximately five months after the divorce decree was entered, Michael, through counsel, moved the district court to set the decree aside under NRCP 60(b) on the basis that he was allegedly compelled to agree to the terms of the divorce decree by fraud and duress. More specifically, Michael contended that (1) he was mistaken as to what his legal rights and obligations were when he signed the decree; (2) he had no idea what criminal charges Ellen could bring against him for the total of \$63,000 he concedes to have taken from a marital safety deposit box, Ellen's Fidelity account, and Ellen's mother's account;<sup>1</sup> (3) the value of his interest in the marital residence and the business exceeded the benefit he gained under the decree, and there was unfair bargaining status because

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<sup>1</sup>At some point, Ellen filed a criminal complaint against Michael regarding money he took during the marriage. Also, Ellen's attorney wrote a letter to the district attorney's office regarding Michael's conduct. Michael insists that he had no knowledge, at the time that he signed the divorce decree, that a criminal complaint had been filed or that a letter had been sent to the D.A.'s office.

he was without counsel during the settlement negotiations; (4) the amount of waste did not eradicate his community property interest in all of the community property the parties acquired during the marriage; and finally, (5) Ellen insinuated reconciliation. Ellen opposed Michael's motion and filed a countermotion for attorney fees and costs as a sanction.

In its order denying Michael relief, the district court found that Michael had failed to meet his burden to show that he was defrauded or coerced into signing the divorce decree and that he did not offer any grounds to justify setting the divorce decree aside. The district court found that both parties agreed to and executed the settlement agreement that was incorporated into the decree. The court noted that the decree's terms granted Ellen specific assets in exchange for waiving claims for payments from Michael, and Michael subsequently effectuated the terms of the decree. The court opined that Michael had been given an opportunity to value all property before executing the divorce decree. Also, the court was not persuaded by Michael's "ud" notation on the declaration, as it found that the declaration was not the result of any fraud.

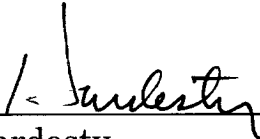
As for the alleged threat of criminal prosecution, the district court determined that Ellen could not prohibit her mother from asserting any claims and, thus, the court interpreted the provisions in the decree as Ellen holding Michael harmless and agreeing to indemnify him for such a claim. Finally, with regard to any alleged reconciliation, the court observed that "any perception by [Michael] that he and [Ellen] were going to reconcile was his only, and that [Ellen] did nothing to indicate that there would be reconciliation." Michael has appealed from the district court's order.

Under NRCP 60(b), the district court has wide discretion in deciding whether to grant or deny a motion to set aside a judgment, and the district court's determination will not be disturbed on appeal absent an abuse of discretion.<sup>2</sup>

We have considered the appellate record, the parties' briefs, and the parties' argument, and we conclude that the district court did not abuse its discretion when it denied Michael's NRCP 60(b) motion. That Michael decided to forego hiring counsel until after the decree was entered does not demonstrate fraud or duress. The record indicates that the district court did not abuse its discretion when it determined that Michael did not meet his burden to establish fraud or duress to warrant setting aside the divorce decree or that there was any factual or legal basis to grant the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

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<sup>2</sup>Cook v. Cook, 112 Nev. 179, 912 P.2d 264 (1996); see also Smith v. Smith, 102 Nev. 110, 716 P.2d 229 (1986) (recognizing that this court will uphold the decision of the district court granting or denying an NRCP 60(b) motion if there is substantial evidence in the record to support that decision).

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division  
Lester H. Berkson, Settlement Judge  
Gayle F. Nathan  
Radford J. Smith  
Eighth District Court Clerk