

IN THE SUPREME COURT OF THE STATE OF NEVADA

GABRIELA GONZALES-ALPIZAR,
Appellant,
vs.
EDWIN GRIFFITH,
Respondent.

No. 52446

FILED

DEC 04 2009

ORDER OF REVERSAL AND REMAND

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Lindeman*
DEPUTY CLERK

This is an appeal from a district court order denying an NRCP 60(b) motion to set aside a divorce decree. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

On appeal, appellant contends that the district court abused its discretion in denying her motion to set aside a divorce decree because the district court lacked jurisdiction (1) to determine child custody, as the child has lived in Costa Rica for several years before respondent moved the district court for an order awarding him custody; (2) to order appellant and the child to appear in Nevada; and (3) to eliminate Costa Rica's award of spousal support, under NRS Chapter 130.

Having considered the parties' appellate arguments and the appellate record, we conclude that the district court abused its discretion in denying appellant's motion to set aside the divorce decree. Cook v. Cook, 112 Nev. 179, 912 P.2d 264 (1996) (providing that the district court's order denying an NRCP 60(b) motion to set aside a decree will not be disturbed absent an abuse of discretion). Here, the district court abused its discretion in determining that appellant's NRCP 60(b) motion

was not timely filed, as it was filed within six months of appellant being served with written notice of entry of the divorce decree.¹ The district court's order does not explain why filing the motion within the time permitted was unreasonable when the district court determined that other factors did not favor denying appellant's motion. Cf. Union Petrochemical Corp. v. Scott, 96 Nev. 337, 338-39, 609 P.2d 323, 324 (1980); see also Dagher v. Dagher, 103 Nev. 26, 28, 731 P.2d 1329, 1330 (1987) (stating that Nevada's policy favoring decisions on the merits is heightened in domestic relations matters).

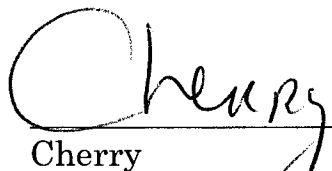
We include the following discussion in light of the remainder of the district court's order, which appears to have construed appellant's motion as including an alternative request to modify the decree, particularly with respect to custody, and instructed the parties to set a hearing on custody. But as recognized by the district court, factual disputes remain regarding whether Nevada or Costa Rica constitutes the child's home state. See Ogawa v. Ogawa, 125 Nev. ___, ___ P.3d ___ (Adv. Op. No. 51, November 12, 2009) (defining home state and discussing the application of the Hague Convention on the Civil Aspects of International Child Abduction). Also, it is unclear whether the district court has jurisdiction to order appellant and the child to appear in Nevada because the record fails to indicate whether Costa Rica is a signatory to the Hague Convention or whether the district court had jurisdiction to order the child's return under the UCCJEA pursuant to


¹We note that while the default divorce decree was filed in July 2007, respondent did not serve a copy of the default divorce decree upon appellant until November 2007.


NRS 125A.305. See also Ogawa, 125 Nev. at ___, ___ P.3d at ___. Further, the record does not contain evidence to support the district court's factual finding that respondent provided appellant with a copy of the premarital agreement three weeks before the ceremony. Thus, it appears that factual questions remain concerning the validity of the premarital agreement. And it is unclear whether the district court had personal jurisdiction over appellant in the first instance. See Baker v. Dist. Ct., 116 Nev. 527, 531-34, 999 P.2d 1020, 1023-24 (2000) (discussing when a court may exercise jurisdiction over a nonresident); Mizner v. Mizner, 84 Nev. 268, 270-71, 439 P.2d 679, 680-81 (1968) (discussing the same issue in the context of divorce proceedings). Therefore, in any proceedings on remand, these jurisdiction issues, subject matter and personal, must be resolved as a threshold matter.

Because we determine that the district court abused its discretion in denying appellant's NRCP 60(b) motion to set aside the divorce decree and conclude that factual issues remain concerning the court's subject matter and personal jurisdiction, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

 _____, J.
Cherry

 _____, J.
Saitta

 _____, J.
Gibbons

cc: Hon. David A. Hardy, District Judge
Shawn B. Meador, Settlement Judge
Richard F. Cornell
Jonathan H. King
Washoe District Court Clerk