

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMTEW TEFERRA,  
Appellant,  
vs.  
BEZUALEM MESHESHA,  
Respondent.

No. 58423

**FILED**

DEC 14 2012

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Handwritten Signature*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a default divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

On June 16, 2010, respondent filed a complaint for divorce against appellant in the district court. Respondent filed an affidavit for service by publication, and the summons and complaint were mailed to appellant at his last known address in Maryland. At a hearing held on November 4, 2010, appellant appeared and stated that he had received the summons and complaint, and the district court instructed him to file an answer and a financial disclosure form. Appellant filed the financial disclosure form, but not an answer. At a case management conference held on January 5, 2011, appellant was initially present telephonically, but there were problems with the telephone connection and the hearing went forward without him. The district court indicated that appellant had not filed an answer and respondent was entitled to a default.

The default was entered on January 19, 2011, and respondent thereafter filed a request for summary disposition of the divorce decree. On February 22, 2011, the district court conducted a hearing on the default. Appellant was not present, and the record contains no evidence

that appellant was given notice of the hearing. The district court entered the divorce decree by default on February 25, 2011, awarding respondent \$500 in monthly spousal support for three years. This appeal followed.

When a party fails to timely respond to a complaint, the clerk shall enter the party's default. NRCP 55(a). After a default is entered, the district court may enter a default judgment upon application by a party entitled to such judgment. NRCP 55(b)(2). If the defaulting party has appeared in the action, that party must be given written notice of the application for a default judgment at least three days prior to a hearing on the default. NRCP 55(b)(2). When notice is required under NRCP 55(b)(2), a default judgment entered without such notice is void. See Christy v. Carlisle, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978).

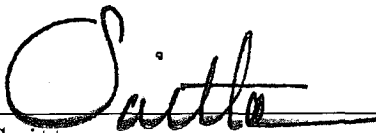
Here, appellant made an appearance in the action, and was entitled to the three-day notice required under NRCP 55(b)(2). The record contains no evidence that appellant was given notice at least three days before the February 22, 2011, hearing on the default. Therefore, the default divorce decree entered without the required notice is void.<sup>1</sup> Moreover, appellant evidenced an intent to defend the action by filing a financial disclosure form and appearing at the November 4, 2010, and January 5, 2011, hearings. Appellant's participation in the latter hearing was thwarted by technical difficulties, and it does not appear from the record that he was given any notice that a default would be entered.

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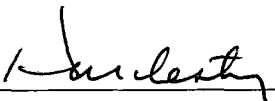
<sup>1</sup>Although appellant does not raise the three-day notice requirement in his civil proper person appeal statement, this court may raise plain error sua sponte. See Bradley v. Romeo, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986).

Accordingly, we reverse the default divorce decree and remand this matter to the district court for further proceedings. Because our reversal is based on a procedural error, we express no opinion as to the terms of the default divorce decree.

It is so ORDERED.

 \_\_\_\_\_, J.  
Saitta

 \_\_\_\_\_, J.  
Pickering

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

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division  
Damtew Teferra  
Bezualem Meshesha  
Eighth District Court Clerk