

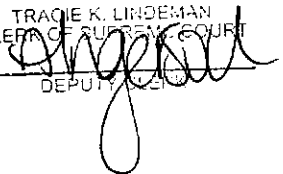
IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTINIANO QUE,
Appellant,
vs.
ELIZABETH QUE,
Respondent.

No. 63377

FILED

JAN 21 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court divorce decree and an order regarding financial matters. Eighth Judicial District Court, Family Court Division, Clark County; Bryce C. Duckworth, Judge.

Respondent has filed a motion to dismiss this appeal under the fugitive disentitlement doctrine, pointing out that there is an outstanding bench warrant for appellant's arrest for failure to comply with a contempt order issued in this case. In *Guerin v. Guerin*, this court recognized that, under the fugitive disentitlement doctrine, "[a]n appellate court has the discretion to dismiss an appeal of a party who is evading arrest pursuant to a contempt order and bench warrant." 116 Nev. 210, 213, 993 P.2d 1256, 1258 (2000). The rationale behind such dismissals is to prevent the inequity of allowing one who refuses to subject himself to the court's authority to then use the resources of the court only if the outcome of a particular decision is favorable, to avoid prejudice to the nonfugitive party, and to discourage flights from justice. *U.S. v. Barnette*, 129 F.3d 1179, 1183 (11th Cir. 1997) (cited with approval in *Guerin*). This inherent power of the courts should be used with care, however, *Degen v. U.S.*, 517 U.S. 820, 823-24 (1996), and therefore, an appellate court typically will invoke the doctrine to dismiss an appeal only where (1) the

appellant is a fugitive, and (2) there is a connection between the fugitive status and the appellate process he seeks to use. *Id.* Those requirements have been met here.

The complaint for divorce was filed in June 2006. According to respondent and the district court's order regarding financial matters, the first three days of trial were held on September 19, 20, and 21, 2011, during which the court obtained information leading it to conclude that appellant was "hiding or secreting assets." Appellant began to testify late on September 21. He was directed to release his cell phone to respondent's expert for the purpose of verifying alleged fraudulent conduct. Trial was scheduled to resume with appellant's testimony on September 23, 2011, but on that day, the court was informed that appellant had experienced medical issues requiring hospitalization. The matter was continued until September 27, 2011, at which time the court was informed that appellant had left for the Philippines to receive medical care and, absent the need for surgery, would return by October 15, 2011. When appellant did not return, in November 2011, appellant's counsel informed the court that appellant could appear for trial beginning on January 16, 2012.

The court's order resolving the financial matters, dated January 29, 2013, states that appellant apparently never returned to Nevada and that no competent medical or other evidence was received to verify appellant's claims of ongoing medical issues and lack of funds. As a result, and based on the evidence obtained through several additional days of trial, the district court found that appellant had engaged in a pattern of delay and obfuscation, including filing for bankruptcy just before the divorce decree was entered in July 2012 and initiating related proceedings before several other tribunals, using nominees or straw-men to hide


community assets, refusing to participate in the divorce proceedings, failing to fully and fairly participate in discovery and to provide information to the receiver, and attempting to sell assets that should have been under the receiver's control. The court also noted that both parties' experts and the receiver questioned appellant's credibility, and the court itself found that appellant lacked credibility. Ultimately, the court found that appellant had dissipated community assets and hidden community assets in the Philippines and awarded all of the assets under the receiver's control to respondent. Meanwhile, the court ordered appellant to turn over to the receiver \$700,000 that had been transferred to another entity. When appellant failed to do so, he was held in contempt for failing to comply with the receivership order and a bench warrant was issued for his arrest.

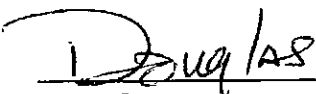
In his opposition to the motion to dismiss this appeal, appellant asserts that the appeal should not be dismissed because, in it, he is challenging the above findings and orders that resulted in the contempt order and bench warrant. He maintains that he left the jurisdiction because of medical issues and that, due to the order awarding the marital assets to respondent and the district court's refusal to grant him a travel allowance, he lacks funds to return. The only support for his contentions, however, is an attached copy of a letter he wrote to the district judge.

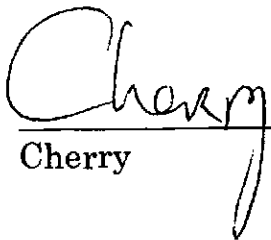
In light of the above, we conclude both that appellant is a fugitive and that his fugitive statute is sufficiently connected to this case for purposes of applying the fugitive disentitlement doctrine. *See In re Assets of Martin*, 1 F.3d 1351, 1356-57 (3d Cir.1993) ("The intent to flee from prosecution or arrest may be inferred from a person's failure to

surrender to authorities once he learns that charges against him are pending. This is true whether the defendant leaves the jurisdiction intending to avoid prosecution, or, having learned of charges while legally outside the jurisdiction "constructively flees" by deciding not to return." (quoting *United States v. Catino*, 735 F.2d 718, 722 (2d Cir. 1984)); *Scelba v. Scelba*, 535 S.E.2d 668, 672 (S.C. Ct. App. 2000) (concluding that a sufficient connection to dismiss an appeal under the fugitive disentitlement doctrine existed when, in a divorce action, a wife fled the jurisdiction in order to avoid a bench warrant issued based on her failure to comply with court orders concerning the division of assets and the award of attorney fees that she sought to challenge in her appeal). Accordingly, we

ORDER this appeal DISMISSED.¹


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division
M. Nelson Segel, Settlement Judge
Hitzke & Associates
Abrams Law Firm, LLC
Eighth District Court Clerk

¹In light of this order, we do not reach the jurisdictional issues raised in respondent's motion to dismiss.