

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRACY L. WISNIEWSKI,  
Appellant,  
vs.  
NANCY WISNIEWSKI,  
Respondent.

No. 66248

**FILED**

OCT 22 2015

*ORDER OF AFFIRMANCE*

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

This is an appeal from a district court order in a post-judgment proceeding in a divorce case. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

This case presents us with the issue of whether respondent Nancy Wisniewski commenced her action to enforce the parties' divorce decree before the expiration of the statute of limitations. Although appellant Tracy Wisniewski presents the novel issue of whether the judgment renewal statute, NRS 17.214, applies to a divorce decree, the facts of this case do not require us to reach this issue because Nancy commenced her action within the limitations period.

Tracy and Nancy were divorced on December 7, 2007. The parties stipulated and agreed to the terms of their divorce. Under the terms and conditions of the decree, Tracy was to pay Nancy \$580.00 per month in child support, \$106,000.00 for Nancy's community property interest in the marital residence, \$7,500.00 for property equalization, and her community property interest in Tracy's 401(k) account. The decree

required Tracy to pay child support until June 2009,<sup>1</sup> to tender the \$106,000.00 and \$7,500.00 payments to Nancy by December 24, 2007,<sup>2</sup> and to pay Nancy her community property interest in the 401(k) account in accordance with a later entered Qualified Domestic Relations Order (QDRO).<sup>3</sup>

On July 31, 2008, Nancy filed a motion for contempt to enforce the terms and conditions of the decree. Nancy alleged that Tracy had not paid her the full amount of her community property interest in the marital residence, any of the property equalization payment, or the full amount of her community property interest in the 401(k) account. Tracy opposed the motion and filed a countermotion to reduce the amount of child support based on his unemployment. The parties reached an oral agreement, and

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<sup>1</sup>Under the terms of the decree, Tracy's obligation of child support continued until their daughter turned eighteen or graduated high school, whichever was later. Tracy and Nancy's daughter turned eighteen in November 2008, but she did not graduate high school until June 2009. Thus, Tracy's obligation of child support continued until June 2009.

<sup>2</sup>Under the terms of the decree, Tracy was to pay Nancy her community property interest in the marital residence and property equalization payments "within twenty days of the signing of the Divorce Decree." The parties signed the decree on December 4, 2007, and thus these payments were due to Nancy by December 24, 2007.

<sup>3</sup>The decree ordered the parties to prepare a QDRO to determine the final calculation and distribution of Nancy's community property interest in the 401(k) account. The parties prepared a QDRO, but the court did not accept it because Tracy had not signed it. At the time of the evidentiary hearing, Tracy still had not signed the QDRO and thus, the parties never entered a QDRO with the court.

filed a stipulation dismissing each of their respective claims without prejudice on September 18, 2008.

Pursuant to the parties' agreement, Nancy lived in the marital residence and deducted rent payments from the amount Tracy owed for Nancy's community property interest in the marital residence. Nancy lived in the residence from December 2008, to February 2011, for a total of 27 months. Neither party took any further action in the case until October 10, 2013, when Nancy filed a motion to compel Tracy to comply with the terms and conditions of the decree. Nancy asserted that Tracy had not made a child support payment since August 2008; that Tracy had not paid her the full amount for her community property interest in the marital residence, any of the property equalization payment, or the full amount of Nancy's community property interest in the 401(k) account.

Tracy opposed the motion, asserting various defenses, and filed a countermotion to modify the decree and requesting declaratory relief that all payments owed to Nancy had been satisfied or paid in full. The court scheduled an evidentiary hearing for April 29, 2014.

At the outset of the evidentiary hearing, Tracy argued Nancy failed to renew the decree in accordance with NRS 17.214. The court found, however, that the monetary provisions in the decree were not judgments subject to the renewal requirements under NRS 17.214 because "the Decree did not contain language within it which reduced any of the terms to judgment [and therefore] it did not put either party on notice of the ability to collect by any and all lawful means." Moreover, the court found Nancy's motion to compel was timely because she filed it within six years from the date of notice of entry of the decree.

The court then heard testimony from Tracy and Nancy regarding the amount of money paid, received, and due under the decree. The court entered its order on July 3, 2014, and concluded Tracy owed Nancy \$6,178.52 in child support arrears, \$25,764.00 for her community property interest in the marital residence, and \$7,500.00 for property equalization. With respect to the 401(k) account, the court concluded Nancy had a right to her community property interest and ordered an actuary to prepare a QDRO for Tracy's signature. The court also awarded Nancy \$500.00 in attorney fees and costs due to the child support arrears. The court reduced to judgment the amount of arrears for Nancy's community property interest and property equalization, as well as the award for attorney fees. This appeal followed.

Tracy contends the district court's rulings are void because Nancy failed to renew the decree under NRS 17.214 and thus, the decree expired by limitation before the evidentiary hearing. We conclude Nancy's motion to compel commenced an action upon the decree within the limitations period. Thus, renewal was not necessary for Nancy to maintain her action on the decree.

This court reviews issues of statutory construction *de novo*. *Leven v. Frey*, 123 Nev. 399, 402, 168 P.3d 712, 714 (2007). Under NRS 11.190, an action upon a decree must be commenced within six years. See *Bongiovi v. Bongiovi*, 94 Nev. 321, 321, 579 P.2d 1246, 1247 (1978) (applying NRS 11.190 to a divorce decree). The six-year limitations period commences on the date of "the last transaction or the last item charged or last credit given." NRS 11.200. There is no limitation, however, on the time in which a party may commence an action to collect arrears for child support. NRS 125B.050(3).

As an initial matter, we conclude Nancy timely commenced her action to collect arrears in child support because a court's order of child support in the decree does not expire. See NRS 125.050(3). With respect to each of Tracy's community property obligations, the six-year limitations period commenced on the date of the last transaction or last credit given. See NRS 11.200. Accordingly, the six-year limitations period for Nancy's community property interest in the marital residence commenced in February 2011, the month in which Nancy had last given Tracy a credit toward the amount owed;<sup>4</sup> and the limitations period for Nancy's community property interest in the 401(k) account commenced on July 16, 2014, the date Tracy had last tendered a check to Nancy toward satisfaction of this obligation. With respect to the property equalization payment, we conclude the limitations period began to run on December 24, 2007, the due date for the payment under the decree. See *Unexcelled Chemical Corp v. U.S.*, 345 U.S. 59, 65 (1953) ("A cause of action is created when there is a breach of duty owed to the plaintiff.").

Therefore, the limitations period for enforcement of these obligations expired as follows: (1) in February 2017, for Nancy's community property interest in the marital residence; (2) on July 15, 2014, for Nancy's community property interest in the 401(k) account; and (3) on December 23, 2013, for Nancy's property equalization payment.

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<sup>4</sup>Although our review of the record does not reveal the exact date on which Nancy gave Tracy a credit, the exact date is not necessary to our resolution of the issue since we conclude Nancy commenced her action well before February 2017.

Nancy filed a motion to compel on October 10, 2013, more than two months before the expiration of the first limitations period. The filing of her motion to compel commenced an action upon the decree for purposes of NRS 11.190. See NRS 125A.065 (defining “commencement” in the context of child custody proceeding as “the filing of the first pleading in a proceeding”); see also NRCP 3 (“A civil action is commenced by filing a complaint with the court.”); *Black’s Law Dictionary* 324 (10th ed. 2014) (defining “commencement of an action” as “[t]he time at which judicial or administrative proceedings begin, typically with the filing of a formal complaint.”). Accordingly, we conclude Nancy commenced her action within the six-year limitations period set forth in NRS 11.190 for each of Tracy’s outstanding obligations under the decree.<sup>5</sup> Therefore, renewal was not required to maintain an action upon the decree.

Although the district court erred in using the date of the notice of entry of order for the decree as the commencement of the limitations period for each of Tracy’s monetary obligations, the district court correctly concluded Nancy filed her motion to compel before the expiration of the limitations period. Thus, we will not disturb the judgment of the district court. See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (affirming the decision


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<sup>5</sup>To the extent Tracy argues the statute of limitations had run prior to the evidentiary hearing on April 29, 2014, we agree with the district court that commencement of the action tolled the statute of limitations until the court made a ruling. See *Johnston v. Ethyl Corporation*, 683 F. Supp. 1059, 1061 (M.D. La. 1988) (“The filing of a complaint alone suffices to toll the running of the statute of limitations.”). To hold otherwise would deprive the court of its authority to manage and control its calendar or unfairly penalize plaintiffs.

of the district court because the district court reached the correct result, albeit for the wrong reason). Accordingly, we conclude the district court did not err in finding the decree was subject to the six-year statute of limitations period in NRS 11.190, that Nancy commenced her action to enforce the decree before the expiration of the limitations period, and that the decree did not need to be renewed.

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division  
Bourke Law Ltd.  
Audrey J. Beeson  
Eighth District Court Clerk