

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANNE SORGE KINGSBURY,
Appellant,
vs.
JON R. KINGSBURY,
Respondent.

No. 68094

FILED

MAR 02 2016

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

ORDER OF AFFIRMANCE

This is an appeal from a district court divorce decree. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Appellant filed a complaint for divorce, seeking permanent spousal support and a division of community property and debts. The district court adjudicated the divorce by summary judgment based on the parties' existing decree of separate maintenance filed in 2006. In the divorce decree, the district court concluded that there was no community property or debt and that neither party would pay the other spousal support. This appeal followed.

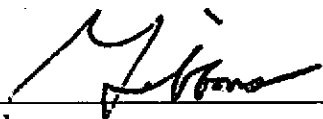
On appeal, appellant argues the district court's resolution of the divorce action was improper because the decree of separate maintenance did not preclude appellant from seeking spousal support in a divorce and did not adjudicate the disposition of the parties' property. As to spousal support, the decree of separate maintenance, which was prepared by appellant and entered by default, provided that neither party would receive spousal support. In light of this provision, we conclude that appellant expressly waived her right to spousal support. *See Mahban v. MGM Grand Hotels, Inc.*, 100 Nev. 593, 596, 691 P.2d 421, 423 (1984) ("A


waiver is the intentional relinquishment of a known right.”). Thus, the district court correctly concluded that there were no genuine issues of material fact on this issue and that spousal support should be denied as a matter of law. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that summary judgment is reviewed de novo and is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law); *see also Nev. Gold & Casinos, Inc. v. Am. Heritage, Inc.*, 121 Nev. 84, 89, 110 P.3d 481, 484 (2005) (explaining that, although waiver is generally a question of fact, it may be determined as a matter of law “when the determination rests on the legal implications of essentially uncontested facts”).

As to the division of community property and debt, appellant contends that the decree of separate maintenance only adjudicated possession of the parties’ property, without affecting the ultimate disposition of such property, leaving disposition an open issue for resolution in the divorce proceeding. But NRS 123.220(2) provides that property acquired after marriage “is community property unless otherwise provided by . . . [a] decree of separate maintenance issued by a court of competent jurisdiction.” Here, the parties have a decree of separate maintenance issued by a court of competent jurisdiction, which provides that there is no community property or debt. Thus, the district court correctly concluded that there were no genuine issues of material fact with regard to whether there was community property or debt to be divided through a divorce proceeding. *See NRS 123.220(2); Wood*, 121 Nev. at 729, 121 P.3d at 1029.

As appellant has not identified any valid basis for overturning the divorce decree, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Mathew Harter, District Judge
Janet Trost, Settlement Judge
Louis C. Schneider, LLC
The Jacks Law Group
McFarling Law Group
Eighth District Court Clerk