

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE MARRIAGE
OF HUFF

No. 36734

GAIL L. HUFF,
Appellant,
vs.
JEFFREY J. HUFF,
Respondent.

FILED

MAY 14 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a district court judgment modifying a property settlement agreement pursuant to an NRCP 60(b) motion.

The standard of review for a district court granting an NRCP 60(b) motion is whether the court abused its discretion.¹ Here, appellant Gail Huff argues that the district court abused its discretion in granting respondent Jeffrey Huff's NRCP 60(b) motion and modifying the former couple's property settlement agreement.

First, Gail argues that the district court abused its discretion by granting Jeffrey's NRCP 60(b) motion for extrinsic fraud because it was filed beyond the six-month limitation period. We disagree.

NRCP 60(b)(2) provides that a moving party may be relieved from a final order for fraud "or other misconduct." Generally, such motions must be made within six months. However, we recognize an exception to this six-month limitation in cases involving extrinsic fraud.²

¹Cook v. Cook, 112 Nev. 179, 181, 912 P.2d 264, 265 (1996).

²See Price v. Dunn, 106 Nev. 100, 104, 787 P.2d 785, 787 (1990).

Gail cites our holding in Manville v. Manville³ arguing that the district court does not have the authority to grant an NRCP 60(b) motion for extrinsic fraud beyond the six-month statute of limitations. In Manville,⁴ the ex-wife seeking the NRCP 60(b) motion was aware of the extrinsic fraud underlying her divorce decree for over six years and provided no reasonable explanation for her delay. However, we find the facts of Manville distinguishable from the case at hand.

Here, the district court found that Jeffrey was prevented from litigating the merits of the property settlement agreement due to threats that Gail would expose his extramarital affair, jeopardizing his military employment. The record also reveals that Gail received the assistance of counsel before entering into the property settlement agreement where Jeffrey received none. The facts of this case are more akin to those in Murphy v. Murphy⁵ and Muscelli v. Muscelli⁶ where threats by ex-husbands prevented ex-wives from properly litigating their rights and the ex-wives did not receive the assistance of counsel before signing their property settlement agreements.

Moreover, although Jeffrey brought his NRCP 60(b) motion well after the general six-month limitation, we construe NRCP 60(b) liberally to afford courts broad discretion to remedy injustice and wrongs.⁷

³79 Nev. 487, 489, 387 P.2d 661, 661-62 (1963).

⁴Id.

⁵103 Nev. 185, 186, 734 P.2d 738, 739 (1987).

⁶96 Nev. 41, 42-43, 604 P.2d 1237, 1237-38 (1980).

⁷See Petersen v. Petersen, 105 Nev. 133, 134, 771 P.2d 159, 160 (1989).

Therefore, we conclude that the district court did not abuse its discretion by granting Jeffrey's NRC 60(b) motion for extrinsic fraud.

Second, Gail argues that the district court abused its discretion by failing to conduct an evidentiary hearing to establish extrinsic fraud by clear and convincing evidence. We disagree.

We have held that extrinsic fraud must be established by clear and convincing evidence.⁸ However, we have also held that when a district court makes a determination based upon conflicting evidence and there is sufficient evidence to support that finding, the district court's decision will not be disturbed on appeal.⁹

Here, the district court did not conduct an evidentiary hearing before finding extrinsic fraud and granting the NRC 60(b) motion. Yet, Gail raises this issue for the first time on appeal. For this reason alone, her argument fails.¹⁰

Nonetheless, we note: Gail and Jeffrey submitted motions, affidavits, and the property settlement agreement before the district court; Gail attached a letter written by Jeffrey to her response; each party was represented by counsel during a hearing on the motion before the district court; each party had an opportunity to speak to the district court; and neither party requested an evidentiary hearing. Moreover, Gail does not proffer any evidence that would have altered the court's decision. Although there was some conflicting evidence, we conclude that there was

⁸Hindenes v. Whitney, 101 Nev. 175, 178, 697 P.2d 932, 933 (1985).

⁹See Britz v. Consolidated Casino Corp., 87 Nev. 441, 444-45, 488 P.2d 911, 914 (1971).

¹⁰See id. at 446-47, 488 P.2d at 915.

sufficient evidence in the record to support the district court's finding that extrinsic fraud was established by clear and convincing evidence. Therefore, we conclude that the district court's failure to conduct an evidentiary hearing did not constitute an abuse of discretion.

Third, Gail argues that the district court improperly modified the alimony provision of the property settlement agreement. We disagree.

We have held that "[a]limony is to be awarded according to principles of what is 'just and equitable.'"¹¹ "In determining whether to grant alimony . . . the district courts enjoy wide discretion."¹²

Here, paragraph eight of the property settlement agreement provided that Jeffrey was to pay Gail fifteen percent of his gross income as alimony for the rest of his life. It appears from the record that the district court struck the alimony provision in an attempt to remedy inequities resulting from the extrinsic fraud it found underlying the agreement. Specifically, the district court stated that

[a]fter reviewing all competent evidence . . . this Court finds that Defendant was threatened and coerced into entering the Marital Settlement Agreement with regard to his percentage of his future earnings that are to be paid to Plaintiff.

In support of the district court's conclusion, we note: Jeffrey did not receive the assistance of counsel before signing the property settlement agreement; the couple had no children; Gail earned her own income; and the couple was married for a relatively short amount of time.

¹¹Rodriguez v. Rodriguez, 116 Nev. 993, 997, 13 P.3d 415, 417 (2000) (quoting NRS 125.150(1)).

¹²Fick v. Fick, 109 Nev. 458, 464, 851 P.2d 445, 450 (1993).

Given these considerations, we conclude that the district court did not abuse its discretion by striking the alimony provision.

Finally, Gail argues that the district court abused its discretion by not granting her any interest in Jeffrey's military pension. We agree.

We have held that a spouse has a community property interest in a retirement pension, even when the pension has not yet vested.¹³ Here, the district court struck paragraph fifteen of the property settlement agreement, which expressly waived any interest by Gail in Jeffrey's military pension. The district court found no basis to conclude the alimony payments were in exchange for a waiver of interest in the military pension. The district court stated that "[d]ue [to] the relative age of the parties at the time, it is unlikely that Plaintiff would have been able to receive any significant benefit from that military retirement."

We conclude that the district court's finding is unsupported. The property settlement agreement expressly states that Gail's waiver of interest in Jeffrey's military pension was in exchange for her alimony payment. As the district court struck the alimony provision due to extrinsic fraud, we likewise conclude that Gail's waiver of any interest in Jeffrey's military pension was logically struck as well. However, the district court merely concluded that it was "unlikely" that Gail would receive a "significant" benefit from Jeffrey's military pension.

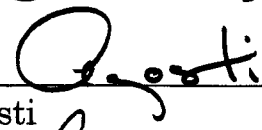
We conclude that the net effect of this decision deprived Gail of an opportunity to bargain for any interest she may have in the pension.


¹³See Gemma v. Gemma, 105 Nev. 458, 459, 778 P.2d 429, 430 (1989).

No matter how unlikely or insignificant, we conclude that Gail is entitled to her interest of that asset. Therefore, we reverse and remand this issue to the district court with instructions to determine any interest Gail may have in Jeffrey's military pension. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART AND REMANDED to the district court for proceedings consistent with this order.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Steven E. Jones, District Judge, Family Court Division
Dickerson, Dickerson, Consul & Pocker
Berkley, Gordon, Levine, Goldstein & Garfinkel
Clark County Clerk