

IN THE SUPREME COURT OF THE STATE OF NEVADA

CYNTHIA STEWART,  
Appellant,  
vs.  
JAMES STEWART,  
Respondent.

No. 37220

**FILED**

JUL 10 2002

JANET M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER REVERSING IN PART,  
AFFIRMING IN PART AND REMANDING

This is an appeal from the district court's order denying appellant Cynthia Stewart's motion for declaratory relief regarding a divorce decree entered by the district court in 1996. The divorce decree directed Cynthia to pay respondent James Stewart \$26,013.00 from the sale of their marital home, which at that time was valued to have a net equity of \$52,026.00. The divorce decree allowed Cynthia to postpone selling the home for up to five years. When Cynthia sold the home in September 2000, the house had decreased in value such that if she were to pay James the specified amount, she would be left with approximately \$3,000.00. James demanded full payment of the \$26,013.00 without any deduction for closing costs.

Cynthia filed for declaratory relief, seeking to have the home proceeds divided fifty-fifty between herself and James, as she alleged the decree intended, and seeking to compel James to pay half the closing costs, pursuant to a separate agreement he and Cynthia entered into prior to selling their home. The district court, without holding a hearing, denied Cynthia's motion. We affirm that portion of the district court order denying Cynthia's request to divide the home proceeds equally, contrary to the plain language of the decree, but we reverse that portion of its order

denying Cynthia's request to split the closing costs and remand to the district court.

The divorce decree is plain and unambiguous.<sup>1</sup> It plainly provides for a lump sum payment to James of \$26,013.00 from the sale of the marital home. Although \$26,013.00 was half the total estimated value of the home when the decree was entered, the decree did not predict the future value of the home or guarantee that the value would not change before Cynthia sold the home. The fact that the home declined in value before Cynthia sold it did not result from a mutual mistake of fact, but rather, from a known uncertainty, the risk of which both James and Cynthia assumed.<sup>2</sup> Likewise, because the district court provided for equal division of the home proceeds based on the value of the home at the time the decree was entered, the district court was not required by NRS 125.150(1)(b) to set forth compelling reasons for the unequal distribution that ultimately resulted.<sup>3</sup> In addition, the record does not indicate, nor

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<sup>1</sup>Although the district court has the power to construe its judgments and decrees for the purpose of removing ambiguity, where a judgment or decree is not ambiguous, the district court has no power of review. See Kishner v. Kishner, 93 Nev. 220, 225, 562 P.2d 493, 496 (1977); Lindsay v. Lindsay, 52 Nev. 26, 28-29, 280 P. 95, 97 (1929).

<sup>2</sup>See Tarrant v. Monson, 96 Nev. 844, 845, 619 P.2d 1210, 1211 (1980); Wells Cargo v. Dodge Construction, 77 Nev. 425, 429, 366 P.2d 90, 91-92 (1961).

<sup>3</sup>NRS 125.150(1)(b) provides that the district court

[s]hall to the extent practicable, make an equal disposition of the community property of the parties, except that the court may make an unequal disposition of the community property . . . if the court finds a compelling reason to do so and

*continued on next page . . .*

does Cynthia allege, that James gave her any reason to believe he would demand anything less than full payment.<sup>4</sup> We, therefore, conclude that the district court properly denied Cynthia's motion for declaratory relief to compel equal division of the home proceeds.

The district court erred, however, by denying, and failing to expressly consider, Cynthia's request to split the closing costs associated with the home's sale. Prior to selling the home, James and Cynthia entered into an agreement, stating that "I hereby assign to the order of DICKSON REALTY and ERA-REALTY CENTRAL licensed real estate broker(s), the sum of 8,460.00 from funds to be received or held by you on my behalf. . . . [and] that I have agreed to pay said sum to said broker(s) as commission for said service." As a party to this agreement, James is obligated to its terms and, therefore, responsible for half the closing costs, unless he demonstrates that Cynthia engaged in fraud or some other wrongful act that would render the agreement void.<sup>5</sup> If the agreement is valid, the district court must enforce it. Because it does not appear from the record that the district court adequately considered Cynthia's request

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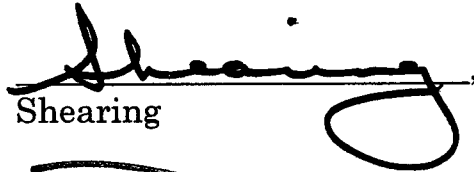
sets forth in writing the reasons for making the unequal distribution.

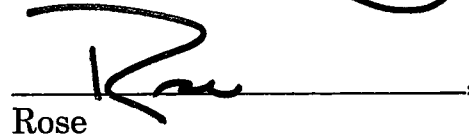
<sup>4</sup>James is, therefore, not, as Cynthia avers, equitably estopped from collecting the full \$26,013.00 the decree awarded him. In order to establish a claim of equitable estoppel, the party seeking estoppel must have reasonably relied on the assertions of another. See Great American Ins. v. General Builders, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997).


<sup>5</sup>See County of Clark v. Bonanza No. 1, 96 Nev. 643, 648-49, 615 P.2d 939, 943 (1980) ("As a general rule, none is liable upon a contract except those who are parties to it."); Campanelli v. Altamira, 86 Nev. 838, 841, 477 P.2d 870, 872 (1970).

to compel James to pay half the closing costs pursuant to this agreement, we reverse that portion of the district court's order denying her request and remand this issue to the district court for consideration.

It is so ORDERED.

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Charles M. McGee, District Judge, Family Court Division  
Karla K. Butko  
Robison Belaustegui Sharp & Low  
Washoe District Court Clerk