

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MINCHANG PAN,
Appellant,
vs.
ERIC YIP,
Respondent.

No. 77234-COA

FILED

JAN 22 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Minchang Pan appeals from a district court order denying her motion to set aside the decree of divorce. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

In 2011, Pan and Eric Yip were married in Hong Kong.¹ The couple eventually moved to Las Vegas and had a child together. In 2017, Pan and Yip filed a joint petition for a summary decree of divorce, which the district court granted, ratifying the terms outlined in the petition.

In 2018, Pan filed a motion to set aside the decree of divorce. Pan argued the decree should be set aside under NRCP 60(b) for surprise, inadvertence, and mistake because she speaks limited English and could not comprehend the terms of the petition. Pan also argued that the decree was unconscionable because it assigned all of the couple's debts to her and gave Yip sole legal and primary physical custody of their child.

Following an evidentiary hearing, the district court denied Pan's motion to set aside. The district court found that Pan understood the terms of the petition and had agreed to them. The district court also found that there was insufficient evidence to support setting aside the decree as unconscionable.

¹We do not recount the facts except as necessary to our disposition.

On appeal, Pan argues that the district court abused its discretion by denying her motion to set aside because the decree of divorce was unconscionable.² We disagree.

First, we consider Pan's arguments regarding the district court's denial of her motion to set aside. Pan argues the divorce decree should be set aside because she was unable to fully comprehend the joint petition. Yip counters that the district court did not abuse its discretion because sufficient evidence was presented showing that Pan understood the terms of the joint petition and the subsequent decree.

We review a district court's factual findings for an abuse of discretion and conclusions of law de novo. *Kilgore v. Kilgore*, 135 Nev., Adv. Op. 47, 449 P.3d 843, 846 (2019). "The district court has wide discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b)." *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996). We generally defer to the district court's factual findings and will uphold them if they are not clearly erroneous and are supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

Here, the district court did not abuse its discretion by denying Pan's motion to set aside because there is sufficient evidence to support its findings that Pan could understand the terms of the decree. While Pan's capacity to speak English is limited and her first language is Cantonese, abundant evidence was presented that she speaks and understands Mandarin. A legal assistant at the firm that prepared Pan and Yip's joint

²Pan also argues that the decree of divorce should be set aside for a conflict of interest because the Law Office of Eric K. Chen prepared the joint petition for a decree of divorce and then represented Yip in subsequent adversarial proceedings. However, Pan failed to raise this argument below and it is thus waived. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

petition testified that a member of the firm orally read the petition and decree to Pan in Mandarin before she signed the decree. Further, the legal assistant testified that a Cantonese interpreter was available, but Pan failed to request such services. When Pan testified, she admitted that she understood the terms of the joint petition when they were read to her in Mandarin. Thus, there was sufficient evidence to support the district court's order denying Pan's motion.

Next, we consider Pan's argument that the divorce decree was procedurally unconscionable because English was not her first language and she could therefore not understand the terms of the joint petition. Additionally, Pan argues the divorce decree was substantively unconscionable because Yip received full legal and physical custody over their child and the division of assets was one sided.

A district court will generally enforce a contract unless the contract is both procedurally and substantively unconscionable. *See D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553-54, 96 P.3d 1159, 1162 (2004), *overruled on other grounds by U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 192, 415 P.3d 32, 42 (2018). "A clause is procedurally unconscionable when a party lacks a meaningful opportunity to agree to the clause terms either because of unequal bargaining power . . . or because the clause and its effects are not readily ascertainable upon [] review of the contract." *Id.* at 554, 96 P.3d at 1162. A clause is substantively unconscionable when the terms are severely one sided. *Id.* at 554, 96 P.3d at 1162-63.


Here, the district court did not abuse its discretion by finding insufficient evidence to prove the decree was unconscionable. Much of Pan's argument turns on her alleged lack of language comprehension. While Pan's first language may be Cantonese, evidence was presented at the evidentiary hearing that Pan also speaks Mandarin and the terms of the decree had been


communicated to her in Mandarin. Pan further admitted that she understood the decree's terms and that she had agreed to them. Therefore, the district court did not abuse its discretion in concluding that there was insufficient evidence showing that the decree of divorce was procedurally unconscionable.


Further, the decree was not substantively unconscionable because its terms were not severely one sided. While Yip was granted sole legal and primary physical custody of the couple's child, Pan retained some parenting time. Pan and Yip agreed to divide their assets and debts³ by taking whatever was in their names. Although Pan argues she ended up with a greater financial burden by taking on the debts in her name, Yip agreed to provide for all of their child's current and future medical costs. Thus, the district court did not abuse its discretion by finding there was insufficient evidence to find the decree unconscionable.⁴

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

³At the time of their divorce, Pan had \$13,045.45 in credit card debt and payments on the car that she continued to use. Yip had \$12.85 in debt on the credit card in his name.

⁴Pan also argues this case should be assigned to a new court based on alleged judicial bias. However, Pan fails to show bias that would create a reasonable doubt regarding the district court's impartiality. *See In re Varain*, 114 Nev. 1271, 1278, 969 P.2d 305, 310 (1998) (establishing a reasonable doubt standard for finding judicial bias).

cc: Hon. Mathew Harter, District Judge
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