IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES DAVID LANDAN,
Appellant,
vs.
MARIA JARAMILLO LANDAN,
Respondent.

No. 77858-COA

ORDER OF AFFIRMANCE

Charles David Landan appeals from a post-judgment order in a family matter. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

This appeal arises from an attempt to renew a judgment for attorney fees awarded pursuant to a divorce decree more than six years after the district court entered the decree.[1] Charles and respondent Maria Jaramillo Landan married and later commenced divorce proceedings. Following a trial in April 2012, the district court awarded Maria $50,500 in attorney fees pursuant to a decision and order which was filed on April 10, 2012, and incorporated as exhibit "1" in the divorce decree entered by the district court on April 26, 2012.

Nearly six years later, on March 29, 2018, Maria filed an affidavit for renewal of the judgment for attorney fees pursuant to the 2012 divorce decree because the statute of limitations for renewing the decree would soon expire. Maria failed to properly renew the 2012 judgment by failing to properly serve Charles pursuant to NRS 17.214. Charles subsequently filed a motion to set aside the new 2018 judgment as being invalid and also argued that Maria's attempt to renew the judgment was

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

now time-barred because she failed to follow the procedural requirements set forth in NRS 17.214. In his motion to set aside, Charles also asserted that he and Maria had formed a new agreement in 2016, regarding the payment of attorney fees as ordered in the 2012 divorce decree.

Maria failed to timely file her opposition to Charles's motion, instead filing her opposition well after the district court issued its minute order denying Charles's motion (but before the court entered its written order). It does not appear that the district court considered Maria's untimely opposition in making its final decision on Charles's motion. The district court ultimately entered a written order granting Charles's request to set aside the 2018 judgment based on Maria's failure to properly renew the judgment for attorney fees incorporated in the 2012 decree, but it denied Charles's motion to deem the 2012 judgment for attorney fees expired.

In its written order, the district court denied Charles's request to set aside the 2012 judgment for attorney fees because the court concluded that Maria's ability to renew the 2012 decree was not time-barred. The court found that in 2016 the parties entered into a new agreement modifying the terms and conditions of the 2012 divorce decree as it related to Charles's payment of attorney fees, and as such, this constituted a "last transaction" to the 2012 decree. And, under NRS 11.190(1)(a), the statute of limitations to renew the judgment for fees based on the divorce decree commenced *after* the "last transaction" as defined in NRS 11.200. Accordingly, because Charles admitted that the parties formed a new agreement in 2016 related to the payment of attorney fees, this constituted a last transaction on the decree. Therefore, the six-year statute of limitations to enforce the decree began to run from the date the new agreement was reached in 2016.

On appeal, Charles argues that the 2016 agreement could not be a "last transaction" contemplated by NRS 11.200, and even if it was, the parties did not form a valid enforceable contract. Thus, according to Charles, the statute of limitations commenced in 2012 when Charles's debt to Maria for the attorney fees became immediately due, and thus this debt extinguished in 2018 because of Maria's failure to properly renew the 2012 decree.

We agree with Maria that (1) the agreement in 2016 to modify the 2012 decree is a "last transaction" pursuant to NRS 11.200 that extends the six year statute of limitations under NRS 11.190(1)(a), and (2) the district court had substantial evidence to find that in 2016 the parties formed a new contract or agreement related to Charles's payment of the outstanding attorney fees owed to Maria.

This court reviews issues of statutory interpretation de novo. *MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 226, 209 P.3d 766, 768 (2009). "When a statute's language is plain and unambiguous, we will give that language its ordinary meaning." *McGrath v. State, Dep't of Pub. Safety*, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007).

NRS 11.190(1)(a) provides that a party must commence a renewal of a judgment or court decree within six years. NRS 11.200 then instructs on how to compute the time before which the judgment or decree must be renewed:

> The time in NRS 11.190 shall be deemed to date from the last transaction or the last item charged or last credit given; and whenever any payment on principal or interest has been or shall be made upon an existing contract, whether it be a bill of exchange, promissory note or other evidence of indebtedness if such payment be made after the same shall have become due, the limitation shall

> commence from the time the last payment was made.

In general, a statute of limitations triggers when a debt first becomes due. *Borden v. Clow*, 21 Nev. 275, 278, 30 P. 821, 822 (1892), *cited with approval in Davidson v. Davidson*, 132 Nev. 709, 717 n.4, 382 P.3d 880, 885 n.4 (2016) ("Although the *Borden* case is over 100 years old, we have never overruled its holding, nor do we find cause to do so now."). However, pursuant to NRS 11.200, the statute of limitations begins after the last transaction or "evidence of indebtedness" regarding the debt. *See Davidson*, 132 Nev. at 717, 382 P. 3d at 885; *see also Borden*, 21 Nev. at 278, 30 P. at 822 (explaining that a party's voluntary payment on an ongoing or even expired debt is legally equivalent to a new promise to pay the debt, and the statute of limitations can typically restart from the time of that payment). Further, Black's Law Dictionary defines a transaction as: "The act or an instance of conducting business or other dealings; esp. the formation, performance, or discharge of a contract." *Transaction, Black's Law Dictionary* (11th ed. 2019).

Here, NRS 11.190(1)(a) and NRS 11.200 read together support that a party must seek renewal of a judgment or court decree within six years following the date of the "last transaction" arising from or relating to the decree. Even though Charles's debt to Maria immediately became due in 2012,[2] NRS 11.200 specifies that the statute of limitations to renew an

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[2]The divorce decree did not provide for periodic payments, and thus, the debt became immediately due. *Cf. Taylor Bean & Whitaker Mort. Co. v. Vargas*, Docket No. 70363 (Order of Reversal and Remand, Dec. 22, 2017) (finding that the statute of limitations began when a party breached by missing a payment date); *see also Clayton v. Gardner*, 107 Nev. 468, 470, 813 P.2d 997, 999 (1991) ("[W]here contract obligations are payable by

existing judgment or decree actually starts from the "last transaction," occurring within the original six-year statute of limitations governing the decree, even if that last transaction occurs later than the date on which the decree was entered.

Under Nevada law, a subsequent contract between the parties creating a new arrangement for satisfying the debt constitutes a "transaction" under NRS 11.200 that restarts the statute of limitations. *See Davidson*, 132 Nev. at 717, 382 P.3d at 885; *Borden*, 21 Nev. at 278, 30 P. at 822; *see also* NRS 11.200. Thus, the parties' agreement in 2016 to change how Charles would pay Maria's attorney fees constitutes a last transaction related to the 2012 decree because it is the equivalent of a new promise to pay an existing debt. Thus, the statute of limitations to enforce the 2012 divorce decree and the payment of Maria's attorney fees would commence in 2016.

In this case, the district court found that the parties formed a subsequent contract or new promise to pay an existing debt in 2016. Whether a contract exists is a question of fact, and this court defers to district court factual findings unless they are clearly erroneous or not supported by substantial evidence. *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Dev., LLC*, 130 Nev. 834, 838, 335 P.3d 211, 214 (2014). Here, Charles expressly conceded in his briefing that a new agreement for payment of Maria's attorney fees was reached in 2016, and that it specifically changed how the debt was to be satisfied. Although

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installments, the limitations statute begins to run only with respect to each installment when due . . . .").

it appears the district court did not consider Maria's untimely opposition, we note that in her opposition, and on appeal, she acknowledged that the parties entered into a contract in 2016 regarding the sale of a mobile home and other terms to satisfy the existing debt, although the precise terms of their new contract is at issue. For purposes of assessing whether there existed a "last transaction" in 2016 that triggered the statute of limitations, it is the existence or occurrence of a transaction (here, the agreement to modify an existing debt), not its precise terms, that matter. And, both parties concede that in 2016 they entered into a new agreement regarding the payment of the outstanding attorney fees.

Additionally, the doctrine of judicial estoppel bars a party from taking inconsistent positions in judicial proceedings to obtain an unfair advantage. *See Kaur v. Singh*, 136 Nev., Adv. Op. 77, ___ P.3d. ___ (2020); *Nolm, LLC v. Cty. of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004). Whether judicial estoppel applies is a question of law that we review de novo. *Nolm*, 120 Nev. at 743, 100 P.3d at 663. A court may invoke judicial estoppel at its own discretion to protect the judiciary's integrity. *Id.* The doctrine applies when: (1) the same party takes two positions; (2) the positions were in judicial proceedings; (3) the party successfully asserted the first position (*i.e.*, the tribunal accepted the position as true); (4) the positions are inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake. *Id.*

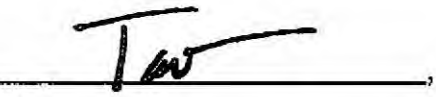
Here, Charles contended in his briefing below that he and Maria formed a "contract" in 2016 that changed the payment terms of the attorney fees as set forth in the 2012 divorce decree, to which Maria agreed. Whether or not the district court also considered Maria's opposition, it certainly accepted Charles's position as true and relied on it in determining

when the statute of limitations for the renewal of the decree and corresponding judgment for attorney fees began to run. Thus, Charles is judicially estopped in this appeal from now denying that the parties entered into a new agreement in 2016. Therefore, the district court did not err in concluding that a "last transaction" on the decree occurred in 2016, triggering a new six-year statute of limitations commencing in 2016 in which to enforce the decree and payment of attorney fees owed to Maria.

Therefore, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Mathew Harter, District Judge
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