IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK CULLEN,
Appellant,
vs.
JACQUELINE CULLEN,
Respondent.

No. 82678-COA

FILED

OCT 20 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dr. Mark Cullen (Mark) appeals from a district court order denying a motion for declaratory relief as to statute of limitations. Second Judicial District Court, Family Court Division, Washoe County; Sandra A. Unsworth, Judge.

Mark and respondent Jacqueline Cullen (Jacqueline) were married in April 1993.[1] In July 2011, Jacqueline filed a complaint for divorce. After Mark filed his answer, the district court required the parties to appear for a settlement conference on March 30, 2012. At the conference, the parties settled and agreed to a number of provisions, including alimony beginning in April 2012, a 20 percent payment to Jacqueline of any profits from Mark's future business ventures, and a $500,000 lump-sum equalizing payment due in 2014. The court entered the decree of divorce (decree) on July 19, 2012, and the notice of entry of the decree was filed on July 23. The court, in the July decree, declared the divorce and settlement terms effective *nunc pro tunc*, as of March 30, 2012.

From April 2012 through September 2015, Mark's payments of support obligations were sporadic and insufficient. Because Mark had made no alimony payments since September 2015, no payment of 20 percent

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

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of the profits from his business ventures, and no $500,000 equalizing payment, Jacqueline filed an affidavit of renewal of the decree on July 9, 2018. In June 2020, Jacqueline sought to enforce the provisions of the decree with a motion for an order to show cause and request for monetary judgment. The district court granted her motion. Mark subsequently filed a motion for declaratory relief, asserting that because the statute of limitations had expired Jacqueline could no longer collect on the debts he owed. The district court determined that the date of the entry of the decree—July 19, 2012—was the effective date the statute of limitations to renew the decree began to run and denied Mark's motion. This appeal followed.

On appeal, Mark argues that the statute of limitations to renew the decree began to run from the *nunc pro tunc* date—March 30, 2012—and therefore, the affidavit of renewal was untimely. In addition, Mark argues the affidavit of renewal was not properly served. Jacqueline argues the six-year statute of limitations to renew the decree began to run from the date the decree was entered. She also claims she served Mark at his last known address on record with the court, satisfying the statutory requirements. We agree with Jacqueline.

A district court's decision to grant or deny declaratory relief is reviewed de novo when that decision depends on a pure question of law. *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 41, 293 P.3d 874, 878 (2013); *see also Las Vegas Taxpayer Accountability Comm. v. City Council of Las Vegas*, 125 Nev. 165, 172, 208 P.3d 429, 433 (2009) ("When legal, not factual, issues are at play, this court reviews de novo a district court order resolving a request for declaratory relief."). Additionally, "[b]ecause a district court's interpretation of a divorce decree

presents a question of law, this court reviews such an interpretation de novo." *Henson v. Henson*, 130 Nev. 814, 818, 334 P.3d 933, 936 (2014).

The first issue on appeal is whether the district court erred in determining when the statute of limitations to renew the decree began to run. Mark argues that *nunc pro tunc* orders can amend the date a decree is entered and are enforceable when the changes reflect the truth as to what the court actually did, determined, or intended to determine, pursuant to *Koester v. Estate of Koester*, 101 Nev. 68, 70, 693 P.2d 569, 571 (1985). In *Koester*, the Nevada Supreme Court considered the validity of a *nunc pro tunc* order pertaining to an original divorce decree. In that case, the district court granted the parties' divorce on July 17, 1979, and signed the findings of fact, conclusions of law and decree on July 30. Later in the afternoon on July 30, the wife was killed in an automobile accident—before the decree was entered on July 31. In March of the following year, the wife's estate intervened in the divorce proceeding and moved the district court to retroactively enter the original decree of divorce to a time that the wife was still living. Otherwise, because her personal representative or administrator had not been substituted in as a party in her place, the decree filed after her death was voidable. 101 Nev. at 72, 693 P.2d at 572. Under these circumstances, the supreme court approved the district court's use of a *nunc pro tunc* order to retroactively enter the original decree to July 17 "because it validates an otherwise voidable decree of divorce." *Id.* at 73, 693 P.2d at 573. Mark urges us to follow the analysis in *Koester* to support that his indebtedness to Jacqueline and the parties' divorce became effective on March 30, 2012, *nunc pro tunc,* and conclude that the statute of limitations

for Jacqueline to renew the decree commenced on March 30. We decline to extend *Koester* based on the circumstances presented here.[2]

In this case, the district court recognized in its order that the use of *nunc pro tunc* orders is limited. A court may amend a judgment *nunc pro tunc* to "speak the truth" about what the court did or intended to do, and to correct clerical errors and omissions. *McClintock v. McClintock*, 122 Nev. 842, 845, 138 P.3d 513, 515 (2006) (quoting *Finley v. Finley*, 65 Nev. 113, 119, 189 P.2d 334, 337 (1948), *overruled on other grounds by Day v. Day*, 80 Nev. 386, 389, 395 P.2d 321, 322 (1964)). However, a *nunc pro tunc* order may not be used to change a judgment that the court neither rendered nor intended to render. *Id.* The Supreme Court of the United States has explained that *nunc pro tunc* orders are limited to binding a defendant to an obligation, while the ability to enforce that judgment does not begin until entry of the judgment. *Borer v. Chapman*, 119 U.S. 587, 602 (1887); *see also Borden v. Clow*, 21 Nev. 275, 278, 30 P. 821, 822 (1892) ("[A] rule in regard to the statute of limitations, applicable in all cases, [is] that the statute begins to run when the debt is due, and an action can be instituted upon it.").

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[2]We note that in *Koester* the need for the *nunc pro tunc* order only arose after the divorce decree had been entered several months earlier. In that case, the district court intended to enter the *nunc pro tunc* order to change the date the original decree was entered to preserve the rights of the parties adjudicated when they both were alive. In this case, the *nunc pro tunc* order was actually entered at the time the divorce decree was entered on July 19, 2012. Thus, although the effective date of the parties' divorce and corresponding obligations became effective on March 30 per the *nunc pro tunc* order, that order was actually enforceable when the decree was entered on July 19.

In Nevada, NRS 11.190 sets forth the statute of limitations to renew a judgment. NRS 11.190(1)(a) provides that "an action upon a judgment or decree . . . or renewal thereof" has a six-year statute of limitations, which includes divorce decrees. *Davidson v. Davidson*, 132 Nev. 709, 711, 382 P.3d 880, 881 (2016). NRCP 58(c) governs when a judgment or decree becomes effective and provides that "[t]he filing with the clerk of a judgment signed by the court . . . constitutes the entry of the judgment, and no judgment is effective for any purpose until it is entered."

While the *nunc pro tunc* order bound the parties to their obligations under the decree, it did not change the date the decree became enforceable. *See Borer*, 119 U.S. at 602. The divorce decree provides that the provisions of the decree shall be retroactively effective, *nunc pro tunc*, to March 30, 2012. However, the plain language of NRCP 58(c) dictates the decree only becomes enforceable when it is entered. Thus, because the decree was entered on July 19, 2012, the district court did not err in concluding that the July date, and not the *nunc pro tunc* date, governed the statute of limitations for renewing the decree. Because Jacqueline filed her affidavit for renewal on July 9, 2018, the renewal was timely pursuant to NRS 17.214(1)(a) (an affidavit of renewal must be filed within 90 days prior to the judgment's expiration by limitation).

The next issue on appeal is whether Jacqueline's affidavit of renewal was properly served. NRS 17.214 sets the requirements for filing and serving an affidavit of renewal. NRS 17.214(3) requires a judgment creditor to notify a judgment debtor of the renewal of judgment by sending a copy of the affidavit of renewal to the judgment debtor at his or her last known address. Mark argues no substantial evidence supports the district court's finding that he was properly served at his last known address. Mark

also claims Jacqueline had reason to know of his new address in Florida because she maintained contact with Mark for the purpose of raising their children. Jacqueline claims she did not have an address for Mark other than his address on record with the court.

Here, the district court found that Jacqueline served Mark pursuant to NRS 17.214(3), at his last known address. Notably, Jacqueline served Mark at the address he provided to the district court in his most recent filing, and the court found that Jacqueline did not have a more current address. The record before us does not support that Jacqueline had Mark's address in Florida, or that Mark updated his address with the court before Jacqueline filed her affidavit of renewal. Because this court does not reweigh witness credibility or the weight of the evidence on appeal, we discern no basis for relief. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal).

Therefore, we

ORDER the judgment of the district court AFFIRMED.[3]

____________________, C.J.
Gibbons

____________________, J.
Tao

____________________, J.
Bulla

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[3]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Sandra A. Unsworth, District Judge, Family Court Division
Margaret M. Crowley, Settlement Judge
Woodburn & Wedge
Anderson Keuscher, PLLC
Gloria M. Petroni Ltd.
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