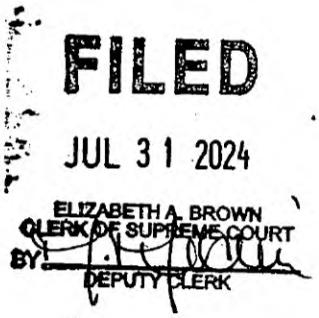
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 87702-COA



ORDER OF AFFIRMANCE

Charles David Landan appeals from a district court order regarding enforcement of a decree of divorce. Eighth Judicial District Court, Family Division, Clark County; Paul M. Gaudet, Judge.

Charles and respondent Maria Jaramillo Landan married in 1993 and later commenced divorce proceedings in 2009. Following a trial in 2012, the district court awarded Maria the marital home. The court noted the parties stipulated that Charles was solely liable for a loan in the approximate amount of $16,000 on the marital home. The provision was included in a decision and order filed on April 10, 2012, and incorporated as exhibit "1" in the decree of divorce entered by the district court on April 26, 2012. The court also awarded Maria $50,500 in attorney fees and costs, which was reduced to judgment against Charles.

In 2021, Charles sought relief concerning claims that Maria owed him money for an alleged contract and that he had purportedly satisfied the attorney fees judgment awarded to Maria in the parties' decree of divorce. The parties ultimately reached a stipulation and order resolving the issues. The stipulation stated that the parties agreed that "this agreement satisfies and waive [sic] any and all further claims against the

other as it relates to the issues in this case whether [sic]. Upon entry of this order, this case shall be CLOSED." Maria also executed a satisfaction of judgment, which stated that she "hereby acknowledged that the Judgment entered on April 10, 2012, along with all costs in the above-entitled action, against Defendant has been satisfied in full."

Subsequently, in October 2023, Maria filed a motion for an order to enforce and/or for an order to show cause regarding contempt, ex parte application for an order to show cause, and an ex parte motion for an order shortening time, arguing that Charles had allowed the $16,000 loan on the marital home to fall into arrears, and as a result, she now faced foreclosure. In support of her motion for an order to enforce, Maria attached as exhibits the foreclosure notice documents she received informing her that the loan against the home was in arrears, a copy of the decree of divorce, a notice regarding foreclosure mediation, and a letter from Charles demanding that Maria drop her claim. The foreclosure documents contained in the record were issued in August 2023.

In response, Charles filed a pleading entitled "motion to dismiss for lack of subject matter jurisdiction." First, Charles argued that the stipulation and order and satisfaction of judgment executed on April 22, 2021, prevented Maria from asserting her claim as the parties had agreed to waive all claims against each other. Second, Charles argued that the statute of limitations had expired on Maria's claim because the decree of divorce had been executed in 2012, and any claim to enforce the property and debt division in the decree expired in 2018. Thus, Charles asserted that the district court lacked subject matter jurisdiction to proceed with deciding the matter. In opposition, Maria argued that the satisfaction of judgment did not apply to the loan associated with the marital home.

After a hearing, the district court issued a written order granting Maria's motion to enforce and denying Charles's motion to dismiss for lack of subject matter jurisdiction. Specifically, the district court found that the decree of divorce specifically stated that Charles was to hold Maria harmless from the $16,000 loan on the marital home. The court also found that while the parties executed a stipulation and order and satisfaction of judgment in April of 2021, Maria was not aware that Charles had discontinued making payments on the loan in 2021. The court noted that there was nothing in the record to suggest that Charles had disclosed to Maria that the loan payments were behind as of 2021. The court further found that the statute of limitations did not expire as Charles's failure to make payments on the loan had occurred within the last six years. Thus, the court ordered that Charles was required to indemnify and hold Maria harmless from any liability associated with the $16,000 loan on the marital home. This appeal followed.

On appeal, Charles argues that the district court abused its discretion as the 2021 stipulation and order was a final settlement in the case which barred any further claims in the case. Charles further argues that Maria had six years from the entry of the decree of divorce to enforce the $16,000 loan on the home, but she failed to do so. He further argues that since the last payment on the loan was made in 2012, the statute of limitations expired at the latest in 2018. In response, Maria argues that she assumed Charles had paid the loan on the house as ordered and found out in August 2023 that the house was in foreclosure. She also argues that she did not waive the provision that Charles was responsible for the loan on the marital home when executing the 2021 stipulation and order.

"This court reviews district court decisions concerning divorce proceedings for an abuse of discretion." *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (quoting *Shydler v. Shydler*, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998) (internal quotation marks omitted)). We review the district court's factual findings for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa,* 125 Nev. 660, 668, 221 P.3d 699, 704 (2009); *see also Davis v. Ewalefo,* 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) ("[D]eference is not owed to legal error."). "An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law." *MB Am., Inc. v. Alaska Pac. Leasing Co.,* 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016).

The parties' 2021 stipulation and order is an agreement that is "governed by principles of contract law," *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009), and contract interpretation is reviewed de novo, *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). A release, like the provision in the parties' 2021 stipulation and order, is the "[l]iberation from an obligation, duty, or demand; the act of giving up a right or claim to the person against whom it could have been enforced." *Release*, *Black's Law Dictionary* (12th ed. 2024). When a release is unambiguous, this court must construe it from the language contained within it. *Chwialkowski v. Sachs*, 108 Nev. 404, 406, 834 P.2d 405, 406 (1992). When the contracting parties' intent is not clearly expressed in the contractual language, this court may also consider the circumstances surrounding the agreement. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487-88, 117 P.3d 219, 223-24 (2005). Typically, "[c]ontractual release terms . . . do not apply to future causes of action unless expressly contracted for by

the parties." *Clark v. Columbia/HCA Info. Servs., Inc.*, 117 Nev. 468, 480, 25 P.3d 215, 223-24 (2001).

Here, the parties' 2021 stipulation and order stated that the parties agreed that "this agreement satisfies and waive [sic] any and all further claims against the other as it relates to the issues in this case whether [sic]. Upon entry of this order, this case shall be CLOSED." Although Charles argues that this agreement waived any future claims, the release did not specifically address the loan associated with the marital home, nor does the record reflect that the $16,000 loan was at issue at the time the parties reached their stipulation and order. Moreover, release is an affirmative defense. *See* NRCP 8(c)(1)(O). Thus, Charles bore the burden of proof to establish that the stipulation and order would have barred Maria's claim, but he failed to produce any evidence that Maria was aware of the fact that the $16,000 loan was in arrears at the time the parties executed the 2021 stipulation and order. *See Gault v. Grose*, 39 Nev. 274, 282, 155 P. 1098, 1100 (1916) ("To maintain an affirmative defense it must be established by a preponderance of the evidence.").

Furthermore, Maria specifically asserted before the district court that she was not aware that Charles had not been making payments on the loan until she received the August 2023 foreclosure notices, and the district court, upon review of the record, found that Maria was not aware that Charles had discontinued payment on the loan in 2021. Likewise, the record before us does not contain any evidence that Maria was aware that the $16,000 loan was outstanding until the foreclosure notices were issued in 2023. *Yount v. Criswell Radovan, LLC*, 136 Nev. 409, 414-15, 469 P.3d 167, 171-72 (2020) (refusing to disturb lower court factual rulings absent clear error or insubstantial evidence). Thus, the district court did not err in

determining that the stipulation and order did not preclude enforcement of the decree of divorce.

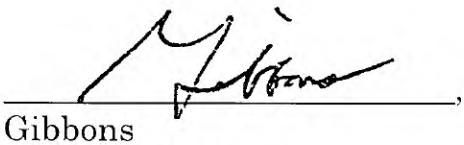
Next, we turn to whether the district court erred in determining that Maria's claim had not expired pursuant to the statute of limitations. The applicability of a statute of limitations is subject to de novo review. *Holcomb Condo. Homeowners' Ass'n, Inc. v. Steward Venture, LLC*, 129 Nev. 181, 186-87, 300 P.3d 124, 128 (2013). Claims to enforce property distribution provisions in a decree of divorce are subject to the six-year statute of limitations provided by NRS 11.190(1)(a). *Davidson v. Davidson*, 132 Nev. 709, 718, 382 P.3d 880, 886 (2016). In such a case, "the statute of limitations begins to accrue when there is evidence of indebtedness." *Id.* Pursuant to NRCP 8(c)(1)(R), the statute of limitations is an affirmative defense. Thus, Charles had the burden of proof to establish that the statute of limitations would have barred Maria from enforcing the decree of divorce. *See Nev. Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev. 949, 955, 338 P.3d 1250, 1254 (2014) (noting that the party asserting an affirmative defense bears the burden of proving each element of that defense).

Here, contrary to Charles's assertions, the statute of limitations does not commence at the time the decree is entered. Rather, pursuant to NRS 11.200, "the statute of limitations begins to accrue when there is evidence of indebtedness." *Davidson*, 132 Nev. at 718, 382 P.3d at 886. Although Charles argues on appeal that he last made payment on the loan in 2012, the record is devoid of evidence to support this. As reflected in the record, the earliest notice that the loan against the marital home was in arrears was dated August 2023, which triggered Maria to timely file her motion in October 2023. Additionally, the "notice of breach and default and of election to sell the real property under deed of trust" contained in the

record stated that the loan became due on October 1, 2019. Thus, based on the evidence that is contained in the record, Maria timely filed her motion for enforcement within six years of when the debt was due in 2019, and shortly after she received notice that the loan was in arrears in 2023. Accordingly, the district court did not err in concluding that the statute of limitations had not expired on Maria's claim concerning the loan on the marital home.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[1]



_____, C.J.
Gibbons

_____, J.
Westbrook

cc: Hon. Paul M. Gaudet, District Judge, Family Division
Charles David Landan
Maria Jaramillo Landan
Eighth District Court Clerk

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[1]To the extent Charles raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.

The Honorable Bonnie A. Bulla did not participate in the decision in this matter.