IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROCHELLE MEZZANO,
Appellant,
vs.
JOHN TOWNLEY,
Respondent.

No. 87863-COA

FILED

FEB 19 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Rochelle Mezzano appeals from a district court's findings of fact, conclusions of law, decree of divorce, judgment, and order. Second Judicial District Court, Family Division, Washoe County; Bridget E. Robb, Judge.

Mezzano and respondent John Townley were in a relationship and signed a prenuptial agreement before getting married. The prenuptial agreement contained various provisions, including provisions that any property titled in a party's name is that party's separate property, that the parties intended to "acquire no community property (unless title to property acquired after marriage is specifically taken as community property or joint tenancy property with right of survivorship) during their marriage and that all property acquired during marriage shall be owned by the acquiring party or the person contributing the acquisition funds." The prenuptial agreement further indicated that the parties could acquire community property by holding property jointly in title, in a joint account, designating it as community property via a written instrument jointly signed,

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purchasing it solely from community funds, or purchasing it using both separate and community funds.

In September 2019, Townley initiated a complaint for divorce. After Townley obtained a default divorce decree against Mezzano, Mezzano subsequently moved to set the decree aside due to improper service, which the district court denied. That decision was later reversed on appeal to the Nevada Supreme Court which held that the default divorce decree was void. *See Mezzano v. Townley*, No. 81379, 2021 WL 5002540 (Nev. Oct. 27, 2021) (Order of Reversal and Remand).

Upon remand, Mezzano filed an answer, counterclaim, and crossclaim (against Townley in his capacity as trustee of an Animal Rescue Organization) in September 2022. Mezzano's counterclaim contained causes of action for divorce, conversion, breach of fiduciary duty, abuse of process, breach of contract, and breach of good faith and fair dealing. In paragraphs 11-13 of Mezzano's first cause of action for divorce, she sought an unequal distribution of community assets based on an allegation that Townley improperly used community assets for the benefit of his girlfriend; requested that separate property assets and debts be allocated in accordance with the prenuptial agreement; and, requested an unequal distribution based on an allegation that Townley's girlfriend utilized Mezzano's separate property to Mezzano's detriment. The crossclaim asserted was for conversion.

After Mezzano did not respond to discovery requests from Townley, did not appear for her scheduled deposition, and did not make NRCP 16.1 disclosures, Townley filed a motion for dismissal of claims and sanctions. He separately filed a motion for summary judgment as to claims two through six in Mezzano's counterclaim and crossclaim (claims for

conversion, breach of fiduciary duty, abuse of process, breach of contract, and breach of good faith and fair dealing), arguing that there were no genuine disputes of material fact. However, he did not seek summary judgment on the first cause of action, which was for "divorce." Mezzano did not file an opposition to Townley's motion for summary judgment.

During a hearing, the district court addressed Townley's pending motions. The court found that while it would not dismiss Mezzano's claims, it would impose other sanctions. The court entered the following sanctions precluding Mezzano from "introducing any document she failed to produce in discovery; or as required by NRCP 16.1 or 16.2; and she is precluded from offering any testimony or evidence in support of her affirmative claims and defenses, particularly any claim of damages against Mr. Townley." Additionally, the district court granted Townley's motion for summary judgment as to Mezzano's causes of action two through six in her counterclaim, and the district court also sua sponte granted summary judgment as to paragraphs 11-13 of Mezzano's first cause of action for divorce.

Subsequently, the case proceeded to trial to resolve the issues of the division of the parties' assets and debts. One of the remaining issues was that Mezzano had acquired an interest in two real properties in Reno during the marriage (the "Yellowstone properties"). While Mezzano's position was that she had a separate property interest in these two properties, as the deeds were in her name (along with a third-party), Townley testified at trial that he was unaware of the source of money used to purchase these properties and that there was no proof that community funds were not used to purchase them.

The district court subsequently entered its findings of fact, conclusions of law, decree, and judgment. With respect to the Yellowstone properties, the court found that "Mezzano did not provide the court clear and convincing evidence to rebut the presumption her interest acquired during the marriage is community property. Therefore, the presumption controls." After dividing all the assets, the court ordered Mezzano to pay Townley $740,647 as an equalization payment. The court also noted that it had previously dismissed Mezzano's claims two through six of her counterclaims. The court then denied Mezzano's crossclaim. This appeal followed.

On appeal, Mezzano first asserts that the district court failed to apply the prenuptial agreement's separate property presumption to the Yellowstone properties. Conversely, Townley asserts that the district court properly presumed that the Yellowstone properties were community property, as the source of the funds used to purchase the properties were unknown.

We review determinations "made in a divorce decree for an abuse of discretion." *Devries v. Gallio*, 128 Nev. 706, 709, 290 P.3d 260, 263 (2012). Nevada law provides that property acquired after marriage is community property and that "the spouse claiming such property as their separate property must prove their interest by clear and convincing evidence." *Draskovich v. Draskovich*, 140 Nev., Adv. Op. 17, 545 P.3d 96, 99 (2024). However, parties to a prenuptial agreement may contract with respect to their rights and obligations in property in a manner that obviates community property law. NRS 123A.050 (discussing contents of premarital agreements). Valid prenuptial agreements are enforceable as contracts. *Buettner v. Buettner*, 89 Nev. 39, 44, 505 P.2d 600, 603 (1973). And in this

case, there is no dispute that the prenuptial agreement was valid and enforceable. Indeed, the district court specifically found in the decree that "the prenuptial agreement is valid and enforceable."

In arguing that the district court abused its discretion, Mezzano points to the prenuptial agreement, which provides that any property not specifically defined as community property is the separate property of the acquiring party and that "the parties intend by this Agreement [Prenuptial] to acquire no community property (unless title to property acquired after marriage is specifically taken as community property or joint tenancy property with right of survivorship) during their marriage and that all property acquired during marriage shall be owned by the acquiring party or the person contributing the acquisition funds." She asserts that the Yellowstone properties should have been presumed to be her separate property under the agreement, and that the burden would then shift to Townley to prove that they were community property. However, Townley asserts that the prenuptial agreement also provides that "the parties may purchase real or personal property using both separate and community funds. At the time of any such purchase, the parties shall designate by written instrument signed by both parties, the separate and community interests in such property. If no such written designation is made, the property so purchased shall be deemed to be community property." Therefore, Townley's assertion is that, because the source of the funds used to purchase the Yellowstone properties were unknown, they were properly presumed to be community properties.

Despite the provisions contained in the parties' prenuptial agreement that both parties point to, the district court made no findings regarding and offered no discussion of the prenuptial agreement when

determining whether the community had an interest in the Yellowstone properties. Instead, the district court found that Mezzano did not provide clear and convincing evidence to rebut the presumption that her interest acquired during the marriage was community property, thus appearing to rely on Nevada's community property presumption. *See Draskovich*, 140 Nev., Adv. Op. 17, 545 P.3d at 99. Because the district court did not undertake any analysis as to the prenuptial agreement with respect to the Yellowstone properties, we conclude the district court abused its discretion in resolving the parties' dispute over their status. *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 82, 319 P.3d 606, 616 (2014) (noting that the district court abuses its discretion when it "fail[s] to apply the full, applicable legal analysis"); *see also* NRS 123.259(2) ("The court shall not enter such a decree if the division is contrary to a premarital agreement between the spouses which is enforceable pursuant to chapter 123A of NRS."). We therefore reverse this portion of the divorce decree and remand for further proceedings consistent with this order.

Next, Mezzano argues that the district court's sanctions against her were case concluding, but this argument is without merit as no dismissal occurred in this case and the exclusion of evidence does not amount to a case-concluding discovery sanction. *See Kirsch v. Redwood Recovery Services, LLC*, No. 73576, 2019 WL 6119252, at *1 (Nev. Nov. 15, 2019) (Order of Affirmance) (noting that the exclusion of evidence at trial was not case-concluding). In *Kirsch*, the supreme court determined that the district court was within its discretion to prohibit the appellant from introducing evidence at trial where the appellant refused to disclose any witnesses or documents in compliance with NRCP 16.1, refused to appear for deposition, refused to respond to requests for production, and refused to

respond to interrogatories. 2019 WL 6119252, at *1. Here, Mezzano similarly failed to appear for her deposition and failed to respond to written discovery requests. Thus, the district court was within its discretion to prohibit Mezzano from introducing evidence at trial as a discovery sanction.

And to the extent Mezzano asserts that the district court erred by sua sponte entering summary judgment as to paragraphs 11-13 in her first counterclaim for divorce, the court issued this ruling in the same order that the court imposed the discovery sanctions. Given that Mezzano was precluded from introducing any evidence in support of any affirmative claim for relief, she cannot show that she was prejudiced by the court's sua sponte grant of summary judgment as to paragraphs 11-13 in her counterclaim for divorce in light of the court's discovery sanction. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that, to establish an error is not harmless and reversal is warranted, "the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"). Thus, we affirm the district court's decision in this regard.

It is so ORDERED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Bridget E. Robb, District Judge, Family Division
Andrew Switlyk
Silverman, Kattelman, Springgate, Chtd.
Washoe District Court Clerk