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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT MAGINN JR., Appellant, vs. LING CHAI MAGINN, Respondent.	No. 88884

ORDER OF AFFIRMANCE

This is an appeal from the district court's dissolution of a preliminary injunction. Eighth Judicial District Court, Clark County; Hon. Joseph Hardy, Jr., Judge.

This case involves complex issues surrounding a Massachusetts divorce court's division of marital property and how that division impacts a limited partnership organized in Nevada. First, we find that issues of mootness, standing, judicial estoppel, and waiver do not prevent this court from considering Robert (Bob) Maginn's appeal. Turning to the merits, we find that Bob's partnership interest was extinguished by the current Massachusetts order. As a result, the Nevada district court properly dissolved the temporary restraining order. We affirm the district court.

Bob and Ling Maginn filed for divorce in Massachusetts. A special master divided their marital assets, and the Massachusetts court ultimately adopted the special master's report. The couple's marital assets included general and limited partnership interests in the Chai-Maginn Family Limited Partnership (FLP), a Nevada limited partnership, the sole asset of which is a 47.71% ownership interest in Jenzabar, a tech company. The FLP's Limited Partnership Agreement makes Bob and Ling general partners.

A day before the Massachusetts court entered judgment in the divorce case, Bob filed suit in Nevada. Bob challenged the Massachusetts court's jurisdiction over FLP, arguing that FLP was not a party to the divorce litigation. In the Nevada action, Bob sought a declaratory judgment that would both keep him on as a general partner of FLP and determine that Ling breached the FLP Agreement by seeking to remove Bob as a general partner. Days later, Bob also sought in the Nevada action a Temporary Restraining Order (TRO) that would (1) prevent his removal as a partner of FLP, (2) enforce the terms of the FLP Agreement (claiming there was no mechanism by which he could be removed as general partner), and (3) prevent amendment of the FLP Agreement. The Nevada district court ordered the parties to preserve the status quo pending further briefing and hearing.

Subsequently, the Massachusetts court awarded Ling, among other things, (1) the shares in Jenzabar owned by her individually; (2) the shares in Jenzabar owned by the family's limited liability company, the Chai-Maginn Family LLC; and (3) all partnership interests in FLP. Bob refused to transfer his interests in FLP to Ling, so the Massachusetts special master and Ling attempted to reassign Bob's partnership interests on their own. The Massachusetts court then entered a Second Amended Supplemental Judgment, which vacated the transfer of Bob's partnership interests in FLP and ordered the transfer of Jenzabar shares from FLP to achieve equalization without affecting Bob's general partner status. Relying on the Massachusetts court's Second Judgment Order, the Nevada court granted Bob's motion for a TRO and a preliminary injunction, temporarily restoring Bob as a general partner of FLP.

In response, Ling filed a motion in Massachusetts for relief from the Second Amended Supplemental Judgment. The Massachusetts court granted Ling's motion and entered a Third Supplemental Judgment Order, which assigned Bob's partnership interests in FLP to Ling again.

Ling then filed a motion in Nevada to dissolve the Nevada court's preliminary injunction based on Massachusetts' Third Supplemental Judgment Order and renewed assignment. The Nevada district court granted Ling's motion to dissolve because the Third Supplemental Judgment Order constituted a "significant change in facts upon which the Injunction Order was based." The court further found that the renewed assignment caused Bob to cease being a general partner under Nevada law. The court also found the FLP Agreement lacked language preserving partnership status following assignment of partnership interests, rendering Nevada's statutory opt-out provision inapplicable. As a result, the Nevada district court concluded the Preliminary Injunction Order maintaining Bob as a general partner was no longer appropriate. Bob now appeals.

Ling raises threshold challenges to Bob's ability to maintain the instant appeal, including mootness, standing, judicial estoppel, and waiver. None of these arguments are convincing.

Ling argues Bob's appeal became moot when the Nevada district court dissolved Bob's preliminary injunction and dismissed the declaratory relief action retaining Bob as general partner of the FLP. We disagree. Nevada law permits litigants to appeal dissolutions of preliminary injunctions. Because the district court dissolved the preliminary injunction, Bob is permitted to seek recourse in this court. *See* NRAP 3A(b)(3) (permitting appeals of orders dissolving preliminary injunctions). Therefore, Bob's appeal is not moot.

Additionally, Ling suggests Bob lacks standing because Bob is no longer a limited or general partner of FLP and cannot maintain an appeal as an injured party. We disagree. Bob's case in Massachusetts is solely related to the divorce and the division of marital assets, which he is appealing separately there. By contrast, Bob has sought declaratory relief in Nevada, requesting this court interpret Nevada law to maintain his status as a general partner of FLP. In other words, under Nevada partnership law, Bob seeks clarification of what the Massachusetts court's division of economic assets means for his general partner status. The issues overlap factually but are not identical. Whether the Massachusetts court's rulings affected Bob's ownership interest goes to the merits of Bob's claims, not to whether he remains an aggrieved party entitled to challenge the Nevada court's adverse rulings. Because Bob's Nevada declaratory relief action asserts different claims and he seeks specific relief related to the dissolution of the preliminary injunction, the Massachusetts court's order does not preclude Bob from having standing in this court.

Further, Ling asserts Bob took inconsistent positions in Nevada and in Massachusetts. Based on that understanding, Ling argues Bob is judicially estopped from challenging the Massachusetts court's authority in this action because he stipulated to its authority in the Massachusetts court. Ling also argues Bob waived any challenges on appeal to the Massachusetts court's authority to assign his partnership interests because Bob failed to raise those arguments in district court. We disagree as to both arguments.

Judicial estoppel is an extraordinary remedy invoked "when a party argues two conflicting positions to abuse the legal system." *Delgado v. Am. Fam. Ins. Grp.*, 125 Nev. 564, 570, 217 P.3d 563, 567 (2009) (internal quotation marks omitted). To the extent Ling argues judicial estoppel, Ling conflates Bob's challenge to the Massachusetts court's interpretation of Nevada law with a challenge to the Massachusetts court's authority to enter orders in the divorce action. Bob did not take inconsistent positions in the Nevada court or the Massachusetts court. Neither did he take varying positions in district court or on appeal. Bob has consistently argued that the Massachusetts court's division of assets does not remove his status as a general partner under Nevada's statutes governing the assignment of partnership interests, and the circumstances under which a partner ceases to be a partner. NRS 88.530; NRS 88.450. As a result, Bob's claims are not barred by the doctrine of judicial estoppel.

Waiver also does not preclude Bob's claims. A waiver is the intentional relinquishment of a known right. *Mahban v. MGM Grand Hotels, Inc.*, 100 Nev. 593, 596, 691 P.2d 421, 423 (1984). When the issue of waiver "rests on the legal implications of essentially uncontested facts . . . it may be determined as a matter of law." *Nev. Gold & Casinos, Inc. v. Am. Heritage, Inc.*, 121 Nev. 84, 89, 110 P.3d 481, 484 (2005). Bob has maintained that the legal consequences of the Massachusetts court's orders, insofar as they concern a Nevada limited partnership, must be adjudicated by a Nevada court. Ling again conflates Bob's challenge to the Massachusetts court's interpretation of Nevada law with a challenge to the Massachusetts court's authority to enter orders in the divorce action. Because Ling's waiver argument does not address the issue raised in this appeal, waiver does not apply. In sum, Bob can maintain the instant appeal despite Ling's procedural challenges.

Turning to the merits of the appeal, Bob asserts the Massachusetts order cannot result in Bob's removal as a general partner of FLP. Bob argues that Nevada law supports maintaining his status as a general partner pursuant to FLP Agreement. We disagree. Under Nevada law, absent express agreement to the contrary, if a partner has assigned all their partnership interests to another, that individual ceases to remain as a partner. NRS

88.530. Nothing in the FLP Agreement provides differently. The FLP Agreement also does not prohibit the assignment of general or limited interests. The fact the FLP Agreement does specify certain methods by which partners may be removed does not imply that the parties intended to override Nevada's default rule concerning complete assignments of partnership interests. Reading the plain language of NRS 88.530 does not render any portion of the Nevada statute or the FLP Agreement superfluous. The existence of certain contractual procedures for removing a partner does not negate the legislature's separate instruction that a partner ceases to be a partner upon assignment of all partnership interests unless the partnership agreement provides otherwise. NRS 88.450(2); NRS 88.530. Because the FLP Agreement contains no express provision preserving a partner's status after assignment of all partnership interests, NRS 88.4530 applies and results in Bob's termination as a partner based on the Massachusetts order assigning all his interests to Ling.

Bob also argues the district court abused its discretion in dissolving the preliminary injunction following the third revised order from Massachusetts. Bob contends the Massachusetts order was erroneous, so the order cannot represent a significant change. We disagree. Here, the district court properly determined that the Massachusetts court's Third Supplemental Judgment Order constituted a significant change in the facts sufficient to warrant termination of the preliminary injunction. The Third Supplemental Judgment Order materially altered the status of Bob's partnership interests by directing the transfer of all of Bob's limited and general partnership interests to Ling. As a result, Bob lost his status as general partner. Bob could no longer demonstrate a probability of succeeding on the merits of his claim, because, under Nevada law, the transfer of his partnership interests terminated his status as a general partner. The district court was entitled to consider the practical effect of the Massachusetts judgment and conclude the circumstances underlying the preliminary injunction had changed substantially. Consequently, the district court acted within its discretion in dissolving the preliminary injunction based on that significant change in circumstances, and no grounds for relief exist on this issue. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Pickering, J.

Parraguirre, J.

Bell, J.

cc: Hon. Joseph Hardy, Jr., District Judge
Stephen E. Haberfeld, Settlement Judge
Howard & Howard Attorneys PLLC/Las Vegas
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The Eighth Judicial District Court Clerk