

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYLENE GUILLEN,
Appellant,
vs.
TONY GUILLEN,
Respondent.

No. 39107

RAYLENE GUILLEN,
Appellant,
vs.
TONY GUILLEN,
Respondent.

No. 39213

FILED

FEB 15 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

These are consolidated appeals from district court orders denying an NRCP 60(b) motion to set aside a divorce decree and denying a motion to modify a spousal support award. Second Judicial District Court, Washoe County; Charles M. McGee, Judge.

This court reviews both motions to set aside a divorce decree and motions to modify spousal support for an abuse of discretion, and the district court's determinations will not be disturbed on appeal unless an abuse of that discretion is evident.¹

Motion to set aside the decree

Although Raylene's² motion to set aside the decree does not specify, it appears that the motion was made pursuant to NRCP 60(b)(4), which allows a party to move the district court for relief from a judgment

¹Gilman v. Gilman, 114 Nev. 416, 422, 956 P.2d 761, 764 (1998); Cook v. Cook, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

²Since both parties share the last name of Guillen, hereinafter each will be referred to by first name.

“within a reasonable time” of service of the written entry of the judgment or order. The motion here was made some two years after the decree was entered, and in a previous, timely motion to set aside the decree, the alleged jurisdictional defect was not mentioned.³

Raylene contends that the district court erred in denying the motion to set aside the divorce decree for lack of jurisdiction, since Tony never filed a resident witness affidavit as stipulated by the parties. Raylene argues that failing to enforce all the terms of the stipulation renders such stipulations meaningless and is against public policy. Raylene further argues that such a jurisdictional defect makes the decree void under Nevada law.

NRS 125.020 requires a verified complaint for divorce, as well as Nevada residency of at least six weeks by the plaintiff prior to the filing of the complaint. NRS 54.010 requires corroboration of the evidence of such residency in “civil cases where the jurisdiction of the court depends upon the residence of one of the parties.” And NRS 125.070 mandates that “[t]he judge of the court shall determine all questions of law and fact arising in any divorce proceeding”

This court has held that the purpose of Nevada’s divorce residency requirement “is to prevent a fraud upon the law of the state by nonresidents.”⁴ In Patel v. Patel, this court held that “[t]he question of plaintiff’s residence in a divorce action is one of fact to be determined by

³The original motion to set aside the decree does not appear in the record, but is mentioned in the later motion to set aside the decree that is the subject of this appeal.

⁴Confer v. District Court, 49 Nev. 18, 29, 236 P. 1097, 1098 (1925).

the trial court[.]”⁵ and that there must be substantial evidence to support a finding of residency.⁶

As to stipulations, this court has held that “valid stipulations are controlling and conclusive and both trial and appellate courts are bound to enforce them.”⁷ However, this court has also held that “[a] stipulation requires assent to its terms in order to be valid[,] and will be enforced if it is entered in the minutes of the court in the form of an order or is in writing and subscribed by the party against whom the stipulation is alleged.”⁸

In Vaile v. District Court, a case with similar facts as here, this court held that a party is estopped from challenging jurisdiction if that party “has stated an oath in a prior proceeding, ‘as in a pleading,’” that the facts establishing jurisdiction are true.⁹ Estoppel is also properly applied when a party in a divorce action acquiesces to the other party’s representations of residency in both the pleadings and at trial.¹⁰

⁵96 Nev. 51, 52, 604 P.2d 816, 817 (1980).

⁶Id.

⁷Second Bapt. Ch. v. Mt. Zion Bapt. Ch., 86 Nev. 164, 172, 466 P.2d 212, 217 (1970).

⁸Szilagyi v. Testa, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983) (citation omitted).

⁹Vaile v. Dist. Ct., 118 Nev. 262, 273, 44 P.3d 506, 514 (2002) (a wife admitted the Nevada residency of her husband in a verified answer to his complaint for divorce, then appealed for lack of jurisdiction, claiming her husband had not been a Nevada resident at the time of the divorce) (quoting Sterling Builders, Inc. v Fuhrman, 80 Nev. 543, 549-50, 396 P.2d 850, 854 (1964)).

¹⁰Boisen v. Boisen, 85 Nev. 122, 124, 451 P.2d 363, 364 (1969).

Finally, this court has held that where there is a complete lack of proof of residency sufficient to confer jurisdiction, a divorce decree is void, but where there is proof that tends to show such residency, then the divorce decree is voidable, and is valid until and unless “set aside by a direct proceeding for that purpose.”¹¹

Here, both parties signed verified pleadings that attest to Tony’s Nevada residency sufficient to confer jurisdiction on the district court. The in-court stipulation about the affidavit was never reduced to writing. In addition, there was further proof adduced at the hearing, where Tony testified to his residency and Raylene did not challenge that testimony. According to the district court’s order denying the motion to set aside the decree, Raylene submitted a financial declaration that included an admission that both she and Tony resided in Fallon, and a motion for temporary support that alleged that Tony had been a dentist in Fallon since 1977. The district court went on to acknowledge that the jurisdictional requirements were to prevent the perpetration of a fraud upon the court, and found that no fraud was being perpetrated on the court as to the residency of the parties.

We conclude first that Raylene was estopped from challenging the jurisdiction of the district court based on residency, since she filed a verified pleading admitting such residency, acquiesced during both the proceeding where Tony testified to such residency and subsequent hearings, and filed an untimely motion under NRCP 60(b) to challenge jurisdiction.

¹¹Moore v. Moore, 75 Nev. 189, 193, 336 P.2d 1073, 1075 (1959) (quoting New Lamp Chimney Co. v. Ansonia Brass & Copper Co., 91 U.S. 656, 660 (1875)).

Furthermore, although the jurisdictional defect rendered the decree voidable, the district court made an explicit finding that the primary purpose of the residency requirements was satisfied since no fraud was perpetrated on the court. We conclude that it was within the discretion of the district court to find the evidence sufficient to prove that Tony met the statutory residency requirement so that jurisdiction over the divorce was proper, and that the decree was valid. Therefore, we affirm the district court's order denying the motion to vacate the decree.

Motion to modify spousal support

Raylene argues that the district court abused its discretion in denying her motion to modify spousal support by requiring her to show a crippling disability to warrant such a modification. Raylene also argues that it was error for the district court to set certain conditions on her ability to refile a motion to modify spousal support.

NRS 125.150(7) permits a district court to modify a spousal support award based "upon a showing of changed circumstances." The district court may consider any factors it deems relevant in determining whether to modify the award.¹²

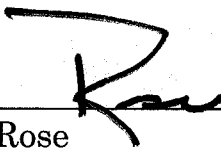
Raylene's motion was not specific as to what changed circumstances were alleged. Although the district court did not make a specific finding about changed circumstances, the court did indicate that the motion was premature. The district court also found that Raylene had not shown sufficient evidence of a disability that would warrant a modification. In addition, the district court provided Raylene and her


¹²NRS 125.150(7).

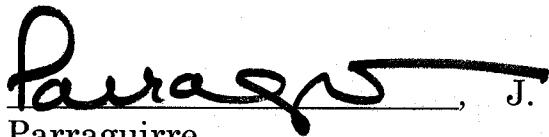
counsel with a blueprint for what sort of proof would be required, should Raylene care to renew her motion.

The district court clearly based its determination on a lack of sufficient evidence as to Raylene's alleged disability, which is well within the district court's statutory authority to consider factors it deems relevant. We conclude, therefore, that the district court found that there were insufficient changed circumstances to justify the modifications of spousal support sought by Raylene. Given the deferential standard of review for such determinations, this court finds that the district court did not abuse its discretion in denying the motion to modify spousal support. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

cc: Second Judicial District Court Dept. 2, District Judge
Rick Lawton
Sinai Schroeder Mooney Boetsch Bradley & Pace
Washoe District Court Clerk