

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANDIP KAUR,  
Appellant,  
vs.  
HANDIP SINGH GILL,  
Respondent.

No. 40681

**FILED**

JUN 15 2005

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

ORDER AFFIRMING IN PART  
AND REVERSING IN PART

This is an appeal from a district court order denying a motion to reconsider a previous order that adopted a stipulation to set aside a divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Lisa Brown, Judge.

Appellant Mandip Kaur and respondent Handip Singh Gill were married in Las Vegas in 1994. They have one child from the marriage. In July 1997, Gill filed, in the Nevada district court, a complaint for divorce. At that time, Kaur was residing with the child in California. Gill obtained an order from the district court for service by publication but concedes that he never served Kaur by either publication or personally. Kaur does not dispute that she was never served with the divorce complaint.

On October 7, 1997, attorney Samuel Anter filed an answer to the complaint for divorce on Kaur's behalf. Allegedly, Kaur had granted Anter a power of attorney to represent her in the proceedings. On October 15, 1997, an uncontested hearing was conducted. Kaur did not attend the

hearing. The following day, a divorce decree was entered. The decree is summary and does not dispose of any property or award child custody, but orders Gill to pay child support in the amount of \$100 per month.

In 1999, Kaur sent a letter to Gill's attorney, Marilyn Romanelli, informing Romanelli that Kaur had never signed a power of attorney authorizing Anter to represent her in the divorce proceedings. Kaur also stated that she had never received a copy of the complaint for divorce and asked that a copy of both the complaint and power of attorney be sent to her in California.

Thereafter, Romanelli sent a letter to Gill, informing him that if he did not contact her within five days, she would stipulate with Kaur to set aside the divorce decree. On August 27, 1999, a stipulation and order was entered in the district court on the basis that the district court lacked subject matter jurisdiction, and the decree was vacated. The stipulation and order was signed by Romanelli and Anter, but was not signed by Kaur or Gill. No written notice of the order's entry appears in the record.

Approximately three years later, Kaur, through her newly retained Nevada attorney, moved the district court to reopen the case for reconsideration of the August 1999 order and stipulation that set aside the divorce decree and for an order reinstating the decree. In her motion, Kaur contended that she never granted Anter a power of attorney, and did not consent to have the divorce set aside. Kaur also asserted that service by publication was proper, even though Gill concedes that such service was never made. Kaur insisted that when she contacted Gill's attorney, she requested a copy of the decree and the power of attorney simply to understand the divorce proceedings' outcome, and she did not express a

desire to have the decree set aside. Gill, through attorney Romanelli, opposed the motion.

Following a November 2002 hearing, the district court entered an order denying Kaur's motion. The district court found that Romanelli and Anter both believed that they had a valid power of attorney from Kaur, giving Anter authority to represent her. Further, the court determined that once the attorneys "learned that the power of attorney was not validly executed by [Kaur] and shortly thereafter [they] executed a stipulation and order to set aside the divorce decree in an effort to correct the mistake." Although the attorneys stipulated to set the decree aside on the basis that the district court lacked subject matter jurisdiction, the district court concluded that because Kaur was never served with the complaint for divorce, it lacked personal jurisdiction, and the court declared the decree void.

Kaur then appealed from the November 2002 order denying her motion for reconsideration of the August 1999 order that set the divorce decree aside. When our preliminary review of this appeal revealed potential jurisdictional defects, we ordered Kaur to show cause why her appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the district court's November 2002 order was not substantively appealable and that Kaur was not aggrieved by the district court's August 1999 order setting aside the decree, since she had

stipulated to the order. Kaur has since filed a response, and Gill has filed a reply. Additionally, the parties have briefed the appeal.<sup>1</sup>

In her response to our show cause order, Kaur contends that since written notice of entry of the August 1999 order was never served, the time for filing an appeal never expired and therefore, her appeal is timely as to that order. Kaur insists that she is aggrieved by the order because she never consented to set the divorce decree aside. Kaur also maintains that the November 2002 order denying her motion for reconsideration is substantively appealable because, in denying her motion to reopen and reconsider the August 1999 order, the district court declared the decree set aside. Gill counters that Kaur is not even a party to these proceedings because she was never properly served with the complaint for divorce, and cannot be an aggrieved party with standing to appeal. Gill insists that he is entitled to attorney fees as a sanction for Kaur's allegedly frivolous appeal.

With regard to the August 1999 stipulation and order, although it appears that no written notice of that order's entry was ever served, the doctrine of laches bars Kaur's appeal from this order.<sup>2</sup>

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<sup>1</sup>We deem this appeal suitable for disposition on the briefs, without oral argument. See NRAP 34(f)(1).

<sup>2</sup>See Buckholt v. District Court, 94 Nev. 631, 584 P.2d 672 (1978) (considering the applicability of laches, given the delay in filing an original writ petition), overruled in part on other grounds, Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004).

Additionally, Kaur never designated the August order in her notice of appeal or the docketing statement as an order that she was appealing.

As to the November 2002 order denying reconsideration, an order simply denying a motion for reconsideration is not authorized under any statute or rule and is not generally an appealable order.<sup>3</sup> In Morrell v. Edwards,<sup>4</sup> however, this court observed that, “whether an appeal is properly taken from an amended judgment rather than the judgment originally entered depends upon whether the amendment disturbed or revised legal rights and obligations [that] the prior judgment had plainly and properly settled with finality.” Here, the August 1999 stipulation and order vacated the divorce decree, and the November order did not change this result. But, the August order was based on a lack of subject matter jurisdiction, whereas the November order was based a lack of personal jurisdiction. Consequently, the November order is properly considered an amended judgment since it relies on different legal principles that implicate the scope of Kaur’s right to relief.

Also, only an aggrieved party has standing to appeal.<sup>5</sup> A party is "aggrieved" within the meaning of NRAP 3A(a) when an order adversely

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<sup>3</sup>See Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

<sup>4</sup>98 Nev. 91, 92, 640 P.2d 1322, 1324 (1982).

<sup>5</sup>See NRAP 3A(a); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994).

and substantially affects either a personal or property right.<sup>6</sup> Here, the district court's November order, by denying Kaur's motion to reopen and reconsider the August order, substantially affected Kaur's personal rights. Because Kaur never wanted the divorce set aside, and because she did not consent to the August stipulation and order to set aside the decree, or participate in the proceedings to set the decree aside, Kaur is aggrieved within the meaning of NRAP 3A(a). Finally, a person named in a judgment or order may challenge that order, even if never served.<sup>7</sup> Accordingly, we conclude that we have jurisdiction to consider this appeal as to the November 2002 order.

On appeal, Kaur insists that she waived service of the complaint and is not challenging personal jurisdiction because she wants to be divorced. She contends that while attorney Anter did not have her consent to enter the stipulation to set aside the decree, because the power of attorney was allegedly fraudulently obtained, she did not object to Anter filing an answer to the divorce complaint on her behalf. Gill contends that the district court properly declared the divorce decree void, because Kaur was never properly served with the complaint, and thus the district court lacked personal jurisdiction.

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<sup>6</sup>Ginsburg, 110 Nev. 440, 874 P.2d 729.

<sup>7</sup>See generally Jean F. Rydstrom, Annotation, Who is a "Party" Within Provision of Rule 60(b) of Federal Rules of Civil Procedure Permitting Court to Relieve "Party or His Legal Representative" From Final Judgment or Order For Specified Reasons, 35 ALR Fed. 973 (1977).

Since service of process is the means by which a court asserts jurisdiction to adjudicate the rights of a party,<sup>8</sup> courts have recognized that a judgment is void when service of process has not been satisfied.<sup>9</sup> Nonetheless, a number of courts have adopted the divisible divorce doctrine, which provides that a state court may grant a divorce in an in rem proceeding without having personal jurisdiction over the non-resident spouse, but which precludes the court from dividing the non-resident spouse's property of without personal jurisdiction.<sup>10</sup> The doctrine is grounded on the notion that "each state, by virtue of its command over its domiciliaries and its large interest in the institution of marriage, can alter within its own borders the marriage status of the spouse domiciled there, even though the other spouse is absent."<sup>11</sup>

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<sup>8</sup>See Mississippi Pub. Corp. v. Murphree, 326 U.S. 438, 444-45 (1946); F.T.C. v. Compagnie de Saint-Gobain-Pont-A-Mousson, 636 F.2d 1300, 1319 (D.C. Cir. 1980); Attwell v. LaSalle Nat. Bank, 607 F.2d 1157, 1159 (5th Cir. 1979).

<sup>9</sup>See Williams v. Capital Transit Co., 215 F.2d 487, 490 (D.C. Cir. 1954); Hospital Mtg. Group, Inc. v. Parque Ind. Rio Canas, 653 F.2d 54, 57 (1st Cir. 1981); Central Operating Co. v. Utility Workers of America, 491 F.2d 245, 251 (4th Cir. 1974).

<sup>10</sup>See Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957) (concluding that a Nevada divorce court, in an ex parte divorce proceeding, was powerless to extinguish a pre-existing right to spousal support or property the wife had under New York law); Estin v. Estin, 334 U.S. 541 (1948) (holding that a Nevada divorce court, which lacked personal jurisdiction over the wife, could not terminate a husband's spousal support obligation under a prior New York separation decree).


<sup>11</sup>Williams v. North Carolina, 317 U.S. 287, 298-99 (1942).

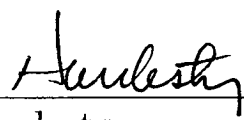
We conclude that the divisible divorce doctrine applies here, even though the district court did not have personal jurisdiction over Kaur, because at the time of the divorce proceedings, Gill was a Nevada resident, and the district court had jurisdiction over the parties' marital status. In other words, the district court had jurisdiction to grant the parties a divorce, but since it lacked personal jurisdiction over Kaur, the court had no authority to award child support. Consequently, the district court erred when it denied Kaur's motion to reopen the case and to reinstate the decree, with respect to the divorce itself. Accordingly, we reverse the November 2002 order to the extent that it denied Kaur's motion to reinstate the decree, with respect to the parties' divorce, and we affirm the order to the extent that it declined to reinstate the decree as it related to child support.

Finally, because this appeal is not frivolous, we deny Gill's request for attorney fees.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty



cc: Hon. Lisa Brown, District Judge, Family Court Division  
Hansen & Hansen, LLC  
Marilyn V. Romanelli  
Clark County Clerk