

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK W. ANDERSON,
Appellant,
vs.
LOIS R. ANDERSON,
Respondent.

No. 41007

MARK W. ANDERSON,
Appellant,
vs.
LOIS R. ANDERSON,
Respondent.

No. 41594

FILED

NOV 09 2004

ORDER OF AFFIRMANCE

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

These are consolidated appeals from district court orders dismissing an action for lack of subject matter jurisdiction and granting attorney fees and costs to the respondent. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

In July 2002, appellant Mark W. Anderson and respondent Lois R. Anderson obtained a divorce in California.¹ The California court incorporated Mark and Lois' marital settlement agreement, which granted a California condominium to Mark and a Nevada house to Lois. In August 2002, Mark filed a lawsuit in Nevada to reclaim his prior interest in the Nevada home, alleging fraud, coercion, and menace. Lois moved the district court to dismiss Mark's complaint, arguing that the Nevada court lacked subject matter jurisdiction because the Nevada home was a part of their divorce settlement. The district court agreed and dismissed Mark's

¹During the pendency of this appeal, the California Superior Court set aside the decree of divorce pursuant to a motion filed by Mark W. Anderson.

action. The court stated that it was required to give full faith and credit to the California court's judgment. The district court also awarded attorney fees and costs to Lois pursuant to NRS 18.010 and NRS 18.020.

Mark filed two appeals. We consolidated these appeals in the interest of judicial economy. In the first appeal, Mark contends that the district court erred in concluding that it lacked jurisdiction over the claims. In the second appeal, Mark argues that if this court overrules the district court, Lois' attorney fees and costs award should not be upheld. We conclude that the district court should have dismissed the case based on forum non conveniens instead of a lack of subject matter jurisdiction. Accordingly, the district court reached the correct result, although for the wrong reasons, and we affirm.²

Mark argues that the district court erred in dismissing his complaint because Nevada had subject matter jurisdiction under a Nevada venue statute, NRS 13.010.³ Mark also argues that the district court erred in applying the full faith and credit doctrine to the California judgment.

A motion to dismiss is appropriately granted when there is a lack of subject matter jurisdiction on the face of the complaint.⁴ In reviewing a motion to dismiss based on a pleading, we determine whether "the challenged pleading sets forth allegations sufficient to [establish] the

²See Hotel Riviera, Inc. v. Torres, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981).

³NRS 13.010 permits actions for the recovery of real property to be tried in the county where the property is located.

⁴See Girola v. Roussille, 81 Nev. 661, 663, 408 P.2d 918, 919 (1965); see also NRCP 12(b)(1).

elements of a right to relief."⁵ In addition, when assessing the challenged pleading, we are bound to accept all factual allegations made therein as true.⁶

"Subject matter jurisdiction deals with [a] court's competence to hear a particular category of cases."⁷ "The burden of proving the jurisdictional requirement is properly placed on the plaintiff."⁸ We have previously determined that "a court, state or federal, which first assumes jurisdiction of property is entitled to maintain and exercise its jurisdiction, to the exclusion of any other court, even to the point of enjoining proceedings in the other court."⁹ Additionally, forum non conveniens is an exercise in judicial discretion where a court may decline jurisdiction when justice and the convenience of the parties would be better served in another forum.¹⁰

In the instant case, the complaint named Lois and Mark as parties and made allegations affecting the real property in Nevada. Mark alleged that at all times mentioned in the complaint, Mark and Lois were

⁵Pemberton v. Farmers Ins. Exchange, 109 Nev. 789, 792, 858 P.2d 380, 381 (1993) (quoting Edgar v. Wagner, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985)).

⁶Id.

⁷Black's Law Dictionary 1278 (5th ed. 1979).

⁸Morrison v. Beach City LLC, 116 Nev. 34, 36, 991 P.2d 982, 983 (2000).

⁹Bergeron v. Loeb, 100 Nev. 54, 58, 675 P.2d 397, 400 (1984).

¹⁰See Payne v. District Court, 97 Nev. 228, 229, 626 P.2d 1278, 1279 (1981).

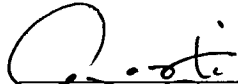
married. The complaint also lists two claims for relief, "Duress and Menace" and "Undue Influence - Constructive Fraud." Mark asserts that because the complaint contains all the necessary provisions, the district court had exclusive jurisdiction. We agree that the district court has subject matter jurisdiction to determine title disputes over real property in Nevada. Therefore, we conclude that the district court erred in dismissing Mark's complaint based on a lack of subject matter jurisdiction. However, the error was harmless. The district court should have dismissed the complaint based on forum non conveniens. The California divorce proceedings were commenced prior to the filing of the Nevada complaint. Mark has made a general appearance in California. California has personal jurisdiction over Lois and Mark to order them to execute legal instruments pertaining to the Nevada real property.¹¹

Finally, the district court did not abuse its discretion by ordering Mark to pay costs and attorney fees for initiating the Nevada litigation. Accordingly, we

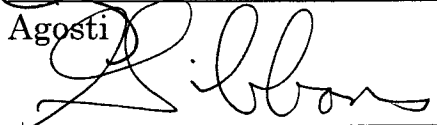
ORDER the judgments of the district court AFFIRMED.

 _____, J.

Becker

 _____, J.

Agosti

 _____, J.

Gibbons

¹¹Bergeron v. Loeb, 100 Nev. 54, 58, 675 P.2d 397, 400 (1984).

cc: Hon. Jerome Polaha, District Judge
Bruce R. Mundy
Robin A. Wright
Washoe District Court Clerk