

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN LEROY STENNES,
Appellant,
vs.
NOREEN LEE STENNES,
Respondent.

No. 41401

FILED

JUL 12 2004

ORDER OF REMAND

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

This is a proper person appeal from a default divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge.

On February 4, 2003, respondent Noreen Stennes filed a complaint for divorce. Noreen sought custody of the parties' minor child, child support, and the division of property. On February 13, 2003, appellant Steven Stennes was personally served with the summons and complaint for divorce. Proceeding in proper person, Steven submitted an answer and counterclaim, which the district court clerk received on February 24, 2003. The clerk did not file the documents at that time, however, because Steven failed to pay the filing fee or obtain a waiver of fees.

On March 10, 2003, Noreen served Steven with a ten-day notice of intent to take default. The notice informed Steven that he had until March 24, 2003, to file an answer. On March 20, 2003, Steven filed a motion for leave to proceed in forma pauperis. On April 7, 2003, the district court clerk entered a default, and Steven was served with notice of

the default's entry on April 11, 2003. Thereafter, Steven was granted leave to proceed in forma pauperis, and his answer and counterclaim were filed in the district court on April 18, 2003. On April 24, 2003, the district court entered a default divorce decree. This timely proper person appeal followed.

On August 25, 2003, Noreen, through counsel, filed a motion to continue briefing and hold this appeal in abeyance. Noreen explained that after reviewing the record "there may be some procedural defects in the lower court proceedings. In the interest of efficiency, we hope to stipulate with Steven to drop his appeal, vacate the Decree of Divorce, and have the case re-heard in the district court on the merits." On October 20, 2003, a stipulation to dismiss, signed by Noreen's counsel and appellant in proper person, was filed for the purpose of having "the underlying Decree of Divorce vacated, and [having] the merits of the divorce re-heard in the district court."

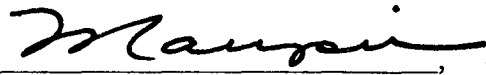
After reviewing the record before this court, we declined to approve the stipulation to dismiss, and directed the parties to follow the procedure outlined in Huneycutt v. Huneycutt,¹ under which the parties must first obtain an order from the district court certifying that it is inclined to grant the relief requested. If the district court certifies that it is inclined to grant relief, the parties must then file a motion for remand in this court accompanied by the district court's certification.

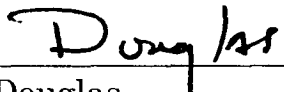
¹94 Nev. 79, 575 P.2d 585 (1978).

On June 17, 2004, respondent's counsel filed a notice advising us that the district court has entered an order certifying its inclination to set aside the default divorce decree and hear the divorce complaint on the merits. A copy of the district court's order is attached to the notice. We construe respondent's notice as a motion for remand under Huneycutt. We grant the motion, and remand this matter to the district court.

It is so ORDERED.²


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

²Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from appellant. Also, in light of our order, we deny as moot respondent's motion to continue briefing.

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Steven Leroy Stennes
Clark County Legal Services Program, Inc
Law Office of Marshal S. Willick, PC
Clark County Clerk