

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALI REZA ZAKERI,
Appellant,
vs.
SOHELIA NAVIDNIA,
Respondent.

No. 43766

FILED

SEP 29 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order granting a NRCP 60(b) motion to set aside an annulment. Eighth Judicial District Court, Family Court Division, Clark County; Robert W. Lueck, Judge.

Appellant Ali Raza Zakeri brings this appeal in proper person contending that the district court abused its discretion in setting aside the annulment of his marriage to respondent Sohelia Navidnia. Zakeri further contends that the district court abused its discretion in ordering him to pay Navidnia's lawsuit costs. We disagree for the reasons discussed below, and we affirm the orders of the district court.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

A trial court has wide discretion in deciding whether to grant or deny a motion to set aside judgment.¹ Thus, motions to set aside judgments for mistakes, inadvertence, excusable neglect, or fraud are within the sound discretion of the district court, and this court will not disturb the district court's decision absent an abuse of discretion.²

¹Cook v. Cook, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

²Deal v. Baines, 110 Nev. 509, 512, 874 P.2d 775, 777 (1994).

Setting aside the annulment

Zakeri argues that there was sufficient evidence to uphold the annulment of his marriage with Navidnia. He further contends that the district court abused its discretion in setting aside the annulment because there was no legal basis to set aside the annulment. Zakeri asserts that the only way Navidnia could set aside the annulment was if she could successfully allege fraud. Further, Zakeri argues that there was indeed fraud being perpetrated during his relationship with Navidnia. However, he contends that it was Navidnia who defrauded him and that he did not perpetrate any fraud.

Navidnia responds that it was indeed incumbent upon her to prove that Zakeri perpetrated fraud upon the district court in order to set aside the annulment, pursuant to NRCP 60(b). However, Navidnia contends that she did prove by clear and convincing evidence that she did not sign the annulment documents and, thus, that Zakeri perpetrated fraud in obtaining the annulment.³

In considering whether the district court erred in setting aside the annulment, we will review the district court's decision for an abuse of discretion.⁴ Thus, when judging the credibility of the witnesses and the weight given to the testimony of those witnesses, those matters are within the discretion of the district court.⁵ Moreover, rulings supported by

³See Miller v. Lewis, 80 Nev. 402, 403, 395 P.2d 386, 387 (1964) (holding that fraud must be established by clear and convincing proof).

⁴See Williams v. Williams, 120 Nev. 559, 566-67, 97 P.3d 1124, 1129 (2004).

⁵Id. (citing Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004)).

substantial evidence will not be disturbed on appeal.⁶ Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment.⁷ Therefore, we will apply this standard when considering whether the district court erred in granting Navidnia's motion to set aside the annulment.

The district court set aside the annulment based on NRCP 60(b). NRCP 60(b)(3) permits the setting aside of a judgment or order procured by fraud, misrepresentation, or other misconduct of an adverse party. Generally, "[e]xtrinsic fraud consists of fraud which prevents the opposing party from knowing its rights or defenses, or from having a fair opportunity to present them at trial. A judgment obtained by extrinsic fraud may later be set aside."⁸

After reviewing the record, we conclude that there is substantial evidence of fraud to support the district court's order setting aside the annulment. Specifically, the record supports the district court's inferences concerning the credibility of the various witnesses. Furthermore, the district court reasonably relied upon the signature exemplars and annulment documents in evidence to substantially determine that Navidnia's signature on the annulment documents were not genuine.

⁶Id. (citing Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998)).

⁷Id. (citing Schmanski v. Schmanski, 115 Nev. 247, 251 984 P.2d 752, 755 (1999)).

⁸Muscelli v. Muscelli, 96 Nev. 41, 42, 604 P.2d 1237, 1237 (1980).

Therefore, we conclude that the district court did not abuse its discretion in finding that Navidnia met her burden of proving extrinsic fraud by clear and convincing evidence and in setting aside the annulment.

Exclusion of Zakeri's handwriting expert

Zakeri's argument that he was unfairly prejudiced by the district court's exclusion of his handwriting expert is completely without citation or reference to any relevant legal authority.

Navidnia contends that the district court's order excluding handwriting experts applied to both parties and, thus, had no prejudicial effect on the proceeding. Navidnia further argues that Zakeri had no right to use a handwriting expert at trial and that the district court was within its statutory authority to examine and rule on the handwriting issue itself as the trier of fact, under NRS 52.045. NRS 52.045 allows that a handwriting "[c]omparison by the trier of fact or by expert witnesses with specimens which have been authenticated is sufficient for authentication."

It is not clear from the district court's order whether the exclusion of Zakeri's expert was an evidentiary ruling or a sanction for Zakeri's noncompliance with the district court order awarding costs to Navidnia. Even so, this court in Watson v. State held that the trial court has discretion to determine "what evidentiary areas mandate the use of experts."⁹

Thus, we conclude that it was proper for the district court to exclude expert witness testimony concerning the signatures and to make

⁹94 Nev. 261, 264, 578 P.2d 753, 756 (1978).

its own determination as to the genuineness of the questioned signatures. Therefore, the district court did not abuse its discretion in excluding the handwriting experts.

Evidentiary rulings

As to the issue of the propriety of the district court's evidentiary rulings, neither party provides this court with any relevant authority other than Nevada's evidentiary statutes.

Zakeri contends that the evidence of his prior divorces and Navidnia's testimony that he had paranoid and narcissistic tendencies was clearly irrelevant and unjustly prejudicial.

Navidnia counters that the evidence was relevant to demonstrate his motive and opportunity to commit fraud in the annulment proceedings. Navidnia also points out that some of the evidence objected to was only admitted for limited purposes, and that under NRS 48.045, Navidnia was permitted to rebut Zakeri's accusations that she was acting fraudulently.

NRS 48.025 provides that the admissibility of evidence depends generally upon its relevance. NRS 48.035 mandates the exclusion of relevant evidence if the probative value is exceeded by the danger of unfair prejudice. NRS 48.045 prohibits admission of evidence of a person's character to prove that he or she acted in conformity therewith, with several exceptions. Finally, NRS 48.055 permits character evidence if that trait or character is an essential element of a claim.

This court has held that "[t]he decision to admit or exclude relevant evidence, after balancing the prejudicial effect against the probative value, is within the sound discretion of the trial judge, and the

trial court's determination will not be overturned absent manifest error or abuse of discretion."¹⁰

Because Navidnia brought this action under a claim of fraud by Zakeri, we conclude that it was not an abuse of discretion for the district court to permit evidence of Zakeri's mental state. Further, the district court had expressly ruled that the prior divorce evidence, including mention of possible kidnapping charges against Zakeri made by one of his ex-wives, was being considered only for the limited purpose of context. Moreover, the district court order made no mention of any of the potentially improper evidence, except for noting that Zakeri's two prior divorces in the United States lent support to the inference that he would have more knowledge of the legal system than Navidnia.

Therefore, we conclude that the district court did not abuse its discretion when it permitted the use of Zakeri's two prior divorces as admissible evidence, as it was relevant and not unjustly prejudicial. Furthermore, no manifest error is apparent.¹¹

¹⁰Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 1506, 970 P.2d 98, 123 (1998), overruled in part on other grounds by GES, Inc. v. Corbitt, 117 Nev. 265, 21 P.3d 11 (2001).

¹¹ Even assuming, arguendo, that some of the evidentiary rulings were improper, this court has held that, in a bench trial, reversal based on admission of incompetent evidence "is only warranted when it is apparent from the record that competent evidence was insufficient to support the judgment, or, when it is affirmatively shown that the improper evidence affected the result." Caye v. Caye, 66 Nev. 78, 92, 211 P.2d 252, 256 (1949).

Order awarding costs

Zakeri argues that the district court had no authority to award pretrial discovery or litigation costs to Navidnia because the parties were not legally married at the time and because there is no precedent in Nevada for such an award in an annulment action. Zakeri further contends that the record does not support an award of costs because he could not afford to pay them and that the award gave Navidnia an unfair advantage in the litigation.

NRS 125.040 provides that “[i]n any suit for divorce the court may, in its discretion . . . require either party to pay moneys necessary to assist the other party in . . . carry[ing] on or defend[ing] such suit.”¹² This court has extended that discretion to post-decree proceedings, “as part of the continuing jurisdiction of the court.”¹³

Even though Zakeri and Navidnia both discuss the propriety of extending such discretionary authority to an annulment action, neither party has cited any case where this court has expressly extended that authority. In 1912, in Poupart v. District Court, this court held that the district court had the discretion to award temporary alimony and litigation expenses to a wife who was contesting her husband’s annulment action.¹⁴ This court noted that such expenses were permitted by statute in divorce actions and held that extending the practice to cases of contested

¹²See also Sargeant v. Sargeant, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972) (enumerating the policy that a party to a divorce “should be able to meet her adversary in the courtroom on an equal basis”).

¹³Leeming v. Leeming, 87 Nev. 530, 532, 490 P.2d 342, 343 (1971).

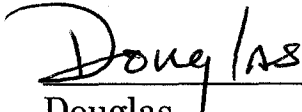
¹⁴34 Nev. 336, 339, 123 P. 769, 770 (1912).

annulments was proper because, as alleged by the wife, the couple had a valid marriage.¹⁵

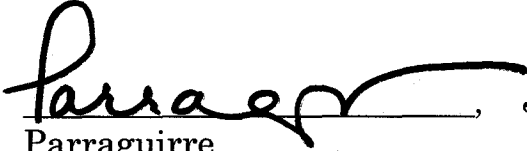
Thus, we conclude that it was within the discretion of the district court to award costs to Navidnia, a decision supported by the financial affidavits of the parties.

Based on the foregoing, we conclude that Zakeri's appeals from the district court's orders (1) setting aside the annulment, (2) excluding Zakeri's handwriting expert, (3) deciding evidentiary matters, and (4) awarding costs are not an abuse of discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Eighth Judicial District Court Dept. E, District Judge, Family Court
Division
Ali Reza Zakeri
Dickerson, Dickerson, Consul & Pocker
~~Smith-Larsen & Wixom~~ Bruce I. Shapiro, Ltd.
Clark County Clerk

¹⁵Id.