IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AARON RAY WOLSKI,
Appellant,
vs.
MAYRA JANETH GARZA-WOLSKI,
Respondent.

No. 71896

FILED

OCT 30 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Aaron Ray Wolski appeals from a district court divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

Aaron initiated divorce proceedings in January 2016, after respondent Mayra Garza-Wolski remained in Mexico with the couple's young son following the family's Christmas holiday. As the case moved toward trial, the district court set this matter for a calendar call, but Aaron failed to appear. At that time, without holding an evidentiary hearing, the district court defaulted Aaron and entered a divorce decree. The decree ordered that the marital residence be sold, with the proceeds split equally between the parties after Mayra received any awards of attorney fees, spousal support arrears and child support arrears. Child support was also awarded to Mayra moving forward. The decree further awarded Mayra full legal and physical custody of Steven, with parenting time for Aaron at Mayra's discretion, and effectively approved Mayra's pre-decree relocation to Mexico with Steven. This appeal followed.

While the parties present a variety of arguments regarding various aspects of the divorce decree, we need not address those specific arguments as the district court's resolution of the underlying case through

the entry of a default divorce decree was, in and of itself, improper. *See Blanco v. Blanco*, 129 Nev. 723, 726, 311 P.3d 1170, 1172 (2013) (addressing the propriety of the entry of a default divorce decree without a prove-up or evidentiary hearing).

To the extent the underlying divorce decree decided issues pertaining to child custody, relocation, and child support, the resolution of these issues by default is impermissible as they must be decided on their merits, rather than through a default, by "addressing the child's best interest and other relevant considerations." *Id.* at 730-31, 311 P.3d at 1174-75. On the custody and relocation front, the decree is further deficient because it contains no findings relating to the best interest of the child or the relocation factors. *See* NRS 125C.0035(4) (setting forth the statutory best interest factors); NRS 125C.007 (setting forth the relevant considerations for deciding a relocation request). And recent decisions from the Nevada Supreme Court have made clear that child custody orders must contain express written findings as to all of the statutory best interest factors, as well as any other pertinent factors. *See Lewis v. Lewis*, 132 Nev. ____, ____, 373 P.3d 878, 882 (2016) (holding that a district court abuses its discretion in modifying custody if it "fail[s] to set forth specific findings as to all of [the best interest] factors"); *Davis v. Ewalefo*, 131 Nev. ____, ____, 352 P.3d 1139, 1143 (2015) (providing that "Nevada law . . . requires express findings as to the best interest of the child in custody and visitation matters," and the "order must tie the child's best interest, as informed by specific, relevant findings respecting the [statutory best interest factors] and any other relevant factors, to the custody determination made").

Similarly, the district court made no findings in support of its child support determination. Instead, the divorce decree simply states,

without explanation, that the support award "is consistent with NRS 125B.070, meets the child's financial needs and [is] based upon the deviation factors enumerated in NRS 125B.080." But, among other things, if the award deviated from what was required by the statutory scheme in effect at the time,[1] the court must set forth specific findings as to the grounds for the deviation. *See* NRS 125B.080(6)(a) (2015); *see also Davis*, 131 Nev. at ____, 352 P.3d at 1142 (explaining that, while a district court's discretionary decisions are generally reviewed deferentially, "deference is not owed to . . . findings so conclusory they may mask legal error") (internal citations omitted).

As for the division of marital property, "[t]he equal disposition of community property may not be dispensed with through default." *Blanco*, 129 Nev. at 732, 311 P.3d at 1175. Indeed, as our supreme court has recognized, statutory law and procedural due process require the district court to make factual determinations in accordance with the applicable law to support the disposition of property and the resolution of these issues may require the court to hold an evidentiary hearing. *See id.*, 129 Nev. at 731-32, 311 P.3d at 1175-76; *see also Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 94, 787 P.2d 777, 781 (1990) (requiring a nonoffending party to establish a *prima facie* case in order to obtain a default judgment). Here, the district court failed to hold an evidentiary hearing or even determine whether such a hearing was necessary. Moreover, the court's property division lacks the necessary particularized findings to support a

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[1]NRS 125B.080 was amended in 2017, *see* Nev. Stat., ch. 371, § 2, at 2284-85, but the prior version of the statute governs this appeal.

determination that such division was equal in accordance with the applicable law.[2]

Because the district court impermissibly resolved issues pertaining to child custody, child support and the division of marital property through a default divorce decree, we conclude that those decisions must be reversed and remanded to the district court for further proceedings consistent with this order and the supreme court's decision in *Blanco*.[3] Pending further proceedings on remand consistent with this order, we leave in place the custody arrangement set forth in the underlying decree, subject to modification by the district court to comport with the current circumstances. *See Davis*, 131 Nev. at ___, 352 P.3d at 1146 (leaving certain

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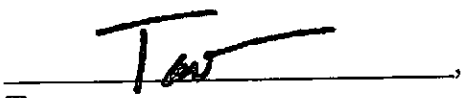
[2]In addition to the summary disposition of the parties' assets, it appears from the record that the district court may not have even addressed the entirety of the community property as, among other things, the motor vehicles identified in Aaron's complaint were not divided in the decree.

[3]In addition to the deficiencies in the underlying proceeding discussed above, while the *Blanco* court suggested that issues such as spousal support and attorney fees may be resolved through case-concluding sanctions, *Blanco*, 129 Nev. at 726, 311 P.3d at 1172, the district court failed to properly support the resolution of spousal support and attorney fees issues through the default divorce decree. Resolving such issues by default requires an "express, careful and preferably written explanation of the court's analysis" regarding, among other things, the offending party's willfulness, the potential prejudice to a nonoffending party from imposition of a lesser sanction, the feasibility and fairness of less severe sanctions, the policy favoring adjudication of cases on their merits, and the need for deterring similar offending actions. *See Young*, 106 Nev. at 93, 787 P.2d at 780. Further, to the extent that at least a portion of the spousal support may have been awarded prior to the entry of the decree, the basis for that award is unclear from the record before us. Accordingly, the award of attorney fees and temporary spousal support must be reversed and remanded for further proceedings.

provisions of a custody order in place pending further proceedings on remand).

It is so ORDERED.[4]


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Aaron Ray Wolski
Rocheleau Law Group/Right Lawyers
Eighth District Court Clerk

[4]Appellant has sought additional relief in subsequent filings. However, due to our resolution of this matter, we do not address them.