IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENISE SPRACKLIN, N/K/A DENISE WILSON,
Appellant,
vs.
JAMES SPRACKLIN,
Respondent.

No. 85439-COA

ORDER AFFIRMING IN PART, VACATING IN PART AND REMANDING

Denise Spracklin, n/k/a Denise Wilson (Wilson), appeals from a district court post-divorce decree order regarding marital property. Second Judicial District Court, Family Division, Washoe County; Cynthia Lu, Judge.

In 2003, respondent James Spracklin purchased a home in Sparks.[1] Two years later, appellant Wilson and Spracklin married, and Wilson was added to the home's deed of trust. In 2008, the couple fell into default on their mortgage payments, and multiple tax liens were recorded against the home. That same year, Wilson and Spracklin filed jointly for bankruptcy in the United States Bankruptcy Court for the District of Nevada.

In 2009, while the bankruptcy proceedings were still ongoing, Wilson filed a complaint for divorce. During the divorce proceedings, Wilson testified under oath that the bankruptcy court had lifted the automatic stay on proceedings concerning the parties' home and vehicle, thereby allowing the district court to exercise jurisdiction over those assets. As a result, in December 2009, the district court entered a decree of divorce which stated

[1]We recount the facts only as necessary for our disposition.

"[t]hat this Court has complete jurisdiction to enter this Decree" and disposed of the marital home. Pursuant to the decree's terms, Wilson and Spracklin were to execute and record a deed transferring ownership of the home from themselves as trustees to themselves as tenants in common. In addition, Wilson was permitted to reside in the home until December 2010, but she was required by that time either to sell the home and divide the proceeds equally with Spracklin or to remove Spracklin from any encumbrance secured by the home and pay him 50% of the equity in the home that existed as of December 2010. In addition, the decree made Wilson "solely responsible for all costs associated with" the home, including mortgage payments and taxes, from the date of the decree until Spracklin was paid.

It is undisputed that Wilson never listed the home for sale nor paid Spracklin for any equity. Wilson also failed to make any mortgage payments on the home following the divorce. The parties were eventually discharged from bankruptcy in January 2017.

In November 2021, Spracklin filed a motion in the district court seeking an order requiring Wilson to comply with the provisions in the divorce decree concerning the marital home. Specifically, he requested an order vesting ownership of the home in his name alone or, in the alternative, requiring the home to be sold at Wilson's expense. He also requested an order finding Wilson in contempt for failing to abide by the decree.

In Wilson's opposition, she argued that Spracklin's motion was barred by the six-year statute of limitations for actions on court decrees in NRS 11.190(1)(a). During the evidentiary hearing on his motion, Spracklin testified that, during the years following the divorce, he made multiple requests for Wilson to sell the home, but that she declined to do so. Wilson

also argued that any rights that Spracklin had under the divorce decree were subject to the judgment renewal requirements of NRS 17.214.

Following the evidentiary hearing, the district court entered an order granting Spracklin's motion in part and denying it in part. The court concluded that the statute of limitations in NRS 11.190(1)(a) did not apply because Spracklin's motion concerned the enforcement of ownership rights to real property. The court also determined that Spracklin was not a "judgment creditor" and thus was not required to comply with the renewal procedures of NRS 17.214. The court found that Spracklin still retained a one-half ownership interest in the marital home. The court calculated that interest as "one half of the current value of the [home] minus what was owed on the [home]" on the date of divorce, to reflect Wilson's responsibility for all costs associated with the home. The court ordered the parties to sell the home, if possible, with a clouded title, and to otherwise use best efforts to clear the title so the home could be sold. Finally, the district court order denied Spracklin's request to find Wilson in contempt. This appeal followed.

On appeal, Wilson raises four arguments. First, she argues that the original 2009 divorce decree was void because the assets of the parties, including the home, were solely within the jurisdiction of the bankruptcy court, and therefore the district court did not have jurisdiction to dispose of the home in the decree. Second, she contends that the district court's order changed the terms from the original decree and therefore constituted an improper modification, rather than an enforcement, of the decree. Third, she claims that the court erred in finding that Spracklin was not a "judgment creditor" who was required to renew the judgment under NRS 17.214 prior to seeking enforcement. Fourth, she argues that Spracklin's motion should have been dismissed as time-barred under NRS 11.190(1)(a). We address each argument in turn.

The district court had jurisdiction over the marital home

Wilson, for the first time on appeal, collaterally attacks the divorce decree entered in December 2009 and argues that the district court did not have subject matter jurisdiction over the parties' assets at the time the decree was entered. Because the parties were undergoing bankruptcy proceedings in federal court at that time, she contends that the bankruptcy court had exclusive jurisdiction over the parties' assets because the stay had not been lifted, and therefore the provisions in the decree pertaining to the marital home were void.

Subject matter jurisdiction is the authority of the court to render judgment in a particular category of case. *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011). A lack of subject matter jurisdiction renders a court order void. *State Indus. Ins. Sys. v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984). A party can raise lack of subject matter jurisdiction for the first time on appeal, *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990), and the existence of subject matter jurisdiction is a question of law subject to de novo review, *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009).

The commencement of a bankruptcy case "creates an estate" that is comprised of the interests of the debtor and the debtor's spouse. 11 U.S.C. § 541(a) (2018). "[A]ll community property not yet divided by a state court at the time of the bankruptcy filing is property of the bankruptcy estate." *In re Mantle*, 153 F.3d 1082, 1085 (9th Cir. 1998) (holding that proceeds from the sale of community property were part of the bankruptcy estate where the district court did not enter an order dividing the community property before the bankruptcy petition was filed). In addition, the commencement of a bankruptcy case operates as an automatic stay on various proceedings concerning the assets and debts of the estate. 11 U.S.C.

§ 362(a). The bankruptcy court can lift this stay at the request of a party in interest. 11 U.S.C. § 362(d).

A judgment that is void for lack of subject matter jurisdiction may be subject to collateral attack. *State v. Sustacha*, 108 Nev. 223, 226 n.3, 826 P.2d 959, 961 n.3 (1992); *see also* 47 Am. Jur. 2d *Judgments* § 698 (2017) ("[A] collateral attack may be allowed if the judgment is void, such as where a judgment was rendered by a court without jurisdiction." (footnote omitted)). "[A] judgment is subject to collateral attack for lack of jurisdiction if the jurisdictional defect is apparent on the face of the record." 47 Am. Jur. 2d *Judgments* § 719. However:

> If the jurisdictional defect does not appear on the face of the judgment roll or record, the judgment is considered valid and therefore immune from collateral attack. Under this rule, the validity of a judgment when collaterally attacked must be tried by an inspection of the record alone, and no other or further evidence on the subject is admissible . . . . [*A*] *collateral attack of a judgment fails if the judgment contains jurisdictional recitals* . . . . Where the record is silent, it will be presumed that jurisdictional facts exist or were duly proved.

Id. (emphasis added) (footnotes omitted).

If a party believes a judgment is void, they may seek relief from that order pursuant to NRCP 60(b)(4) ("On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding [if] . . . the judgment is void."). However, an NRCP 60(b)(4) motion must be filed "within a reasonable time" after the date of the proceeding or the date of service of written notice of entry of the judgment or order. NRCP 60(c)(1). A delay of several years is generally considered unreasonable. *See, e.g.*, *In re Harrison Living Tr.*, 121 Nev. 217, 224, 112

P.3d 1058, 1062 (2005) (affirming the denial of an NRCP 60(b)(4) motion as untimely where the motion was filed eighteen months after judgment); *Deal v. Baines*, 110 Nev. 509, 512, 874 P.2d 775, 778 (1994) (holding that an NRCP 60(b) motion filed nearly two years after a judgment was untimely).

Where the existence of subject matter jurisdiction depends on a question of fact, a party must put forth sufficient evidence for this court to determine whether jurisdiction was proper. 47 Am. Jur. 2d *Judgments* § 719 (providing that the jurisdictional validity of a collaterally attacked judgment "must be tried by an inspection of the record alone"). In addition, it remains the appellant's responsibility to ensure an accurate and complete record on appeal, and "missing portions of the record are presumed to support the district court's decision." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 600, 172 P.3d 131, 133 (2007).

In this case, Wilson fails to establish a jurisdictional defect that would entitle her to collaterally attack the decree. The record demonstrates that Wilson testified during the divorce proceedings that the bankruptcy stay had been lifted as to "the car and house." In reliance upon her testimony, the district court expressly concluded in the divorce decree that it had "complete jurisdiction to enter this Decree and the orders regarding the distribution of assets and debts." Wilson's collateral attack necessarily fails because "the judgment contains jurisdictional recitals." 47 Am. Jur. 2d *Judgments* § 719. Further, Wilson has not provided any evidence correcting her original assertion that the bankruptcy stay had been lifted.[2]

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[2]Notably, Wilson conceded in her reply brief that "[t]here is *no evidence in the record* . . . to confirm that the Bankruptcy stay *had or had not been lifted* at the time the Decree of Divorce was issued." (Emphases added.)

Wilson also did not file an NRCP 60(b)(4) motion in the district court. As a result, the district court was not afforded an opportunity to rule in the first instance on whether she unreasonably delayed in challenging the divorce decree. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance.").

Moreover, as noted above, the only evidence in the appellate record pertaining to the bankruptcy jurisdiction is Wilson's own testimony, given under oath during the divorce proceedings, that the bankruptcy stay had been lifted as to the home. As appellant, it is Wilson's obligation to provide a sufficient record to permit this court to review her claims on the merits. *Cuzze*, 123 Nev. at 600, 172 P.3d at 133. Because Wilson failed to provide this court with any contrary record from the bankruptcy proceedings, we presume that the district court had jurisdiction over the marital home at the time of divorce. *Id.* at 604, 172 P.3d 131, 135.[3]

The district court's order enforced the terms of the divorce decree and did not impermissibly modify those terms

Wilson contends that the district court exceeded its jurisdiction by "modifying" the divorce decree without a lawful basis for doing so. She argues that the district court's order contains terms that are "different" than the decree because the order determined that Spracklin's property interest was half of the current value of the property, rather than the value of the

[3]We also note that Wilson has taken two inconsistent positions by testifying in the parties' divorce proceedings that the bankruptcy stay had been lifted as to the home, and then arguing on appeal in this case that the stay had *not* been lifted.

property in December 2010. Thus, Wilson contends that the order impermissibly modified the divorce decree.

The district court lacks continuing jurisdiction to modify provisions of a divorce decree regarding property rights except as provided by statute or rule. *See Kramer v. Kramer*, 96 Nev. 759, 761, 616 P.2d 395, 397 (1980) ("A decree of divorce cannot be modified or set aside except as provided by rule or statute."). However, the district court retains jurisdiction to *enforce* its divorce decree. *See Davidson v. Davidson*, 132 Nev. 709, 715-16, 382 P.3d 880, 883-84 (2016) (holding that courts have continuing jurisdiction to enforce divorce decrees). Though this argument was not raised before the district court, as noted above, a party can challenge subject matter jurisdiction at any time. *Swan*, 106 Nev. at 469, 796 P.2d at 224.

We conclude that the district court's order enforced, rather than modified, the provisions of the decree. Under the original divorce decree, Wilson was required either to sell the home *and divide the proceeds equally* with Spracklin or to pay him the equity as it existed in December 2010. Wilson was also responsible for paying all costs associated with the property from the date of the decree until Spracklin was paid. The district court's subsequent order required the home to be sold, if possible, and stated that Spracklin's interest was equal to half of the current value of the home, minus what was owed on the property as of the date of the decree. Accordingly, that provision of the order does not impose any new or different obligations on the parties. Instead, it calculates the present-day value of Spracklin's interest in the home based on obligations set forth in the initial decree, namely, Wilson's responsibility for all costs associated with the home, including any mortgage payments. Therefore, we conclude that Wilson is not entitled to relief on this claim.

The district court did not err in finding that Spracklin was not a judgment creditor under NRS 17.214(1)

Wilson argues that the district court erred in finding that Spracklin was not a "judgment creditor" who was required to renew an unpaid judgment under NRS 17.214(1). We disagree.

Under NRS 17.214(1)(a), a "judgment creditor" may renew an unpaid judgment by "[f]iling an affidavit with the clerk of the court . . . within 90 days before the date the judgment expires by limitation." That affidavit must make certain specifications, including "[t]he names of the parties[,] . . . [t]he date and amount of the judgment[,] . . . [and] [w]hether there is an outstanding writ of execution for enforcement," etc. NRS 17.214(1)(a)(1), (3), (4). The statute, however, does not define "judgment creditor."

"Issues of statutory construction are reviewed de novo." *Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007). When the language of a statute is plain and unambiguous, the court is to apply its plain meaning. *Id.* Where, however, a statute is ambiguous, a court may examine the statutory language through reason, considerations of public policy, and the workability of different interpretations. *Id.*

In *Kuptz-Blinkinsop v. Blinkinsop*, 136 Nev. 360, 363, 466 P.3d 1271, 1275 (2020), an ex-wife argued that a divorce decree was void because her ex-husband did not renew it pursuant to NRS 17.214. The Nevada Supreme Court rejected her argument, holding that NRS 17.214 applies to "a monetary judgment or type of indebtedness." *Id.* Because the ex-husband had filed quiet title and declaratory relief claims to establish ownership of real property, the court concluded that NRS 17.214 did not apply. *Id.* at 363-64, 466 P.3d at 1275. Rather, NRS 17.214 is implicated by the presence of an "unpaid judgment" to be paid by a debtor to a creditor. *Id.* As the court

explained, "[w]e do not intend today to read into the statute a requirement that property owners must renew their judgments every six years in order to enforce their ownership rights when the statute clearly applies to renewal of monetary judgments." *Id.* at 364, 466 P.3d at 1275.

Here, Spracklin was not the creditor of an "unpaid judgment" that needed to be renewed under NRS 17.214. To the extent that the decree may reflect a type of indebtedness because Wilson failed to make her required mortgage payments, the creditor of those payments would have been the entity in possession of the property's mortgage note—not Spracklin.

Moreover, it would have been impossible for Spracklin to strictly comply with the affidavit requirements in NRS 17.214. The plain language of NRS 17.214 requires that only judgments for a fixed monetary sum are subject to renewal. Under NRS 17.214(1)(a)(5), (7), the judgment creditor must specify "[t]he exact amount due on the judgment" as well as the "date and amount of any payment on the judgment." The procedural requirements of NRS 17.214 are strict, and failure to comply with each requirement may permit the debtor to have the judgment declared void. *Leven v. Frey*, 123 Nev. 399, 409-10, 168 P.3d 712, 719 (2007) (holding that NRS 17.214 requires strict compliance and remanding for district court to grant a motion to declare the expired judgment void).

Here, the divorce decree contained both a property interest option, based on Wilson's choice to sell the home and equally divide the proceeds, and a monetary option based on Wilson's choice to pay Spracklin a certain amount of equity to be determined at a future date. The decree did not specify a monetary award, and so Spracklin would have been unable to specify "[t]he exact amount due on the judgment" in an affidavit seeking renewal of the judgment. NRS 17.214(1)(a)(7). Accordingly, requiring Spracklin to comply with NRS 17.214 would amount to an unworkable

interpretation of that statute. *See Nelson*, 123 Nev. at 224, 163 P.3d at 425 (declining to adopt an unworkable interpretation of a statute). Therefore, we conclude that the district court did not err in determining that the judgment renewal requirements for judgment creditors under NRS 17.214 did not apply to Spracklin.

The district court erred in finding that Spracklin's request to sell the home was not governed by the six-year statute of limitations in NRS 11.190(1)(a)

Wilson argues that the district court erred in failing to dismiss Spracklin's motion under the six-year statute of limitations for actions upon a court decree, as set forth in NRS 11.190(1)(a). Spracklin argues that the statute of limitations does not apply here because his motion was an action "for the recovery of real property," rather than a monetary judgment, and as such, was statutorily excluded from the six-year limitations period.

> NRS 11.190 provides, in relevant part, that
>
> actions *other than those for the recovery of real property* . . . may only be commenced as follows:
>
> 1. Within 6 years:
>
> (a) . . . an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

(Emphasis added.) The applicability of a statute of limitations is subject to de novo review. *Holcomb Condo. Homeowners' Ass'n, Inc. v. Steward Venture, LLC*, 129 Nev. 181, 186-87, 300 P.3d 124, 128 (2013).

In *Davidson*, 132 Nev. at 711-12, 382 P.3d at 882, a divorce decree provided that the ex-wife was to execute a quitclaim deed to her ex-husband in exchange for half of the equity in the martial home. The ex-wife delivered the deed, but, shortly after the divorce, the parties reconciled and began living together again. *Id.* at 712, 382 P.3d at 882. More than six years after the divorce decree issued, the ex-wife filed a motion to enforce the

decree, claiming she had never received her equity in the home. *Id.* The Nevada Supreme Court held that the motion was time-barred under NRS 11.190(1)(a). *Id.* at 718, 382 P.3d at 886. The ex-wife delivered the quitclaim deed to the husband, triggering the statute of limitations, and therefore her only claim at that time was for a monetary judgment in the equity. *Id.* The court concluded that the six-year limitations period "applies to claims for enforcement of a property distribution provision in a divorce decree" and affirmed dismissal of the case. *Id.*

The supreme court revisited the statute of limitations issue in *Blinkinsop*. 136 Nev. at 361, 466 P.3d at 1273. In that case, the decree awarded the marital property to the ex-husband "as his sole and separate property" and ordered his ex-wife to execute a quitclaim deed removing her name from the title. *Id.* However, she never did so. *Id.* More than six years after the divorce decree issued, the ex-wife sought to partition the property, claiming that she remained a 50% owner because the divorce decree had expired. *Id.* The ex-husband counterclaimed for quiet title and declaratory relief based on the original provisions in the divorce decree. *Id.* The Nevada Supreme Court held that the ex-husband's claims were plainly actions "for the recovery of real property" and that the six-year statute of limitations was not implicated. *Id.* at 363, 466 P.3d at 1274-75. The court further clarified "that our holding in *Davidson* does not apply to claims for enforcement of *real property* distribution in divorce decrees because NRS 11.190(1)(a) unambiguously excludes from its purview actions for recovery of real property." *Id.* at 360, 466 P.3d at 1273 (emphasis added).

In this case, the divorce decree awarded Spracklin a real property interest and provided that the parties were each to have an interest in the marital home as tenants in common. Therefore, to the extent that the district court's subsequent order confirmed that Spracklin still had a one-

half ownership interest in the home as a tenant in common, this finding did not implicate NRS 11.190(1)(a) because it merely acknowledged a prior distribution of real property pursuant to a divorce decree, which is similar to the declaratory relief deemed permissible in *Blinkinsop*. *Id.* at 363, 466 P.3d at 1274-75. We therefore affirm this portion of the district court's order.

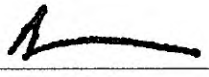
However, the district court's order also granted Spracklin's request to force the sale of the home and further calculated the present monetary value of Spracklin's equity interest in the home in light of Wilson's obligation to pay all costs associated with the property from the date of the decree forward. Under *Davidson*, these aspects of the court's order fall within the limitations period under NRS 11.190(1)(a) because they are not related to the recovery of real property, but rather constitute the "enforcement of a property distribution provision in a divorce decree," which are subject to the six-year limitations period. 132 Nev. at 718; 382 P.3d at 886. Therefore, we conclude that the district court erred in determining that the statute of limitations in NRS 11.190(1)(a) did not apply to Spracklin's request to enforce the provisions of the divorce decree that required the sale of the home and that imposed an obligation on Wilson to pay all costs associated with the property.

Because the district court failed to apply the statute of limitations, it necessarily failed to determine the date on which the statute of limitations began to run on the enforcement of those provisions. Pursuant to NRS 11.200(1), "[t]he time in NRS 11.190 shall be deemed to date from the last transaction or the last item charged or last credit given." But where the parties did not litigate the issue of the accrual date in the district court or any possible tolling of the accrual date, we are unable to make this factual determination in the first instance. *See Ryan's Express*, 128 Nev. at 299, 279 P.3d at 172.

Therefore, we affirm the district court's determination that Spracklin retains a one-half ownership interest in the marital home. However, we vacate the court's order to the extent it calculated Spracklin's interest in the marital home and ordered the home to be listed for sale, and we remand this case to the district court for a determination of when the statute of limitations began to accrue. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART, AND REMAND for proceedings consistent with this order.

_____, C.J.
Gibbons



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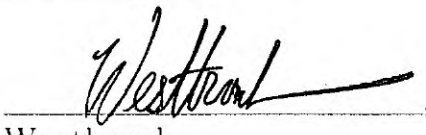
Bulla



_____, J.
Westbrook

cc: Hon. Cynthia Lu, District Judge, Family Division
Shawn Meador, Settlement Judge
Clifton J. Young
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