

IN THE SUPREME COURT OF THE STATE OF NEVADA

NANCY SLOAN, N/K/A NANCY  
FERNANDEZ-NIES,  
Appellant,

vs.

SARA BETH GEIER LATORRE AND  
FREDERICK WURLITZER GEIER, CO-  
EXECUTORS OF THE ESTATE OF  
FREDERICK GEIER,  
Respondents.

No. 40411

**FILED**

JAN 31 2007

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is a proper person appeal from a district court judgment in a torts action and an order awarding damages for fraud. Eighth Judicial District Court, Family Court Division, Clark County; Robert W. Lueck, Judge.

In this appeal, appellant Nancy Sloan, n/k/a Nancy Fernandez-Nies, argues that the district court erred in (1) finding that she owed Frederick Geier (Fred) a duty of ensuring that he received independent counsel concerning the business transactions between them, (2) finding that she violated NRS 41.1395,<sup>1</sup> (3) setting aside the divorce decree and annulling the marriage, and (4) awarding Fred punitive damages. We agree with her second contention.

---

<sup>1</sup>The 1997 version of the statute applies in this case.

1. Nancy's fiduciary duties

This court defers to a district court's factual findings that are supported by substantial evidence.<sup>2</sup> When an attorney conducts business with a client, and that business is "potentially advantageous" to the attorney, the court will closely scrutinize those transactions on appeal.<sup>3</sup> Questions of law are reviewed de novo.<sup>4</sup>

An attorney who enters into business transactions with a client must, "by active diligence," ensure that the "client was fully informed."<sup>5</sup> To do that, the attorney must see "to it that [the] client either has independent advice in the matter, or else receives from the attorney such advice as the latter would have been expected to give had the transaction been one between [the] client and a stranger."<sup>6</sup>

The district court correctly determined that part of Nancy's fiduciary duty to Fred included making sure that he received independent counsel concerning the transactions between him and Nancy. We conclude

---

<sup>2</sup>Waddell v. L.V.R.V. Inc., 122 Nev. 15, 25, 125 P.3d 1160, 1166 (2006).

<sup>3</sup>Williams v. Waldman, 108 Nev. 466, 471-72, 836 P.2d 614, 618 (1992).

<sup>4</sup>Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 775, 121 P.3d 599, 602 (2005).

<sup>5</sup>Williams, 108 Nev. at 472, 836 P.2d at 618 (quoting Goldman v. Kane, 329 N.E.2d 770, 773 (Mass. Ct. App. 1975) (citations omitted)).

<sup>6</sup>Id. at 472-73, 836 P.2d at 619 (quoting Goldman, 329 N.E.2d at 773 (citations omitted)).

that substantial evidence supports the district court's finding that Nancy breached her fiduciary duties to Fred.

2. Elder abuse under NRS 41.1395

Statutory interpretation requires de novo review.<sup>7</sup> The language of a statute should be given its plain meaning, unless doing so “violates the spirit of the act”<sup>8</sup> or produces “absurd or unreasonable results.”<sup>9</sup> This court presumes that the legislature intended prospective application of civil statutes.<sup>10</sup> Prospective application of the law provides citizens with notice of how to govern their actions.<sup>11</sup> Absent that notice, a “manifest injustice”<sup>12</sup> might occur and “bring about a state of uncertainty and instability . . . [and] work serious injury in many cases.”<sup>13</sup>

---

<sup>7</sup>Las Vegas Police Prot. Ass'n v. Dist. Ct. (PPA), 122 Nev. \_\_\_, \_\_\_, 130 P.3d 182, 191 (2006).

<sup>8</sup>Id. (quoting McKay v. Bd. of Supervisors, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)).

<sup>9</sup>PPA, 122 Nev. at \_\_\_, 130 P.3d at 191 (quoting Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 642, 81 P.3d 532, 534 (2003)).

<sup>10</sup>Wildes v. State, 43 Nev. 388, 393, 187 P. 1002, 1003 (1920) (stating that “a law ought to be prospective, not retrospective, in its operation”); see also Allstate Ins. Co. v. Furgerson, 104 Nev. 772, 776, 766 P.2d 904, 907 (1988) (stating that statutes apply prospectively unless the legislature expresses a contrary intent).

<sup>11</sup>Wildes, 43 Nev. at 393, 187 P. at 1003.

<sup>12</sup>Id.

<sup>13</sup>Jones v. Stockgrowers' Nat. Bank, 67 P. 177, 179 (1901).

The 1997 Nevada Legislature enacted NRS 41.1395, which became effective on October 1, 1997. NRS 41.1395(1)<sup>14</sup> states that “if an older person . . . suffers a loss of money or property caused by exploitation, the person who caused the . . . loss is liable to the older person . . . for two times the actual damages incurred.” Pursuant to its plain meaning, that statute is not violated unless two events occur. First, a person must exploit an older person. Second, the older person must suffer a loss.

In this case, the district court awarded enhanced damages under NRS 41.1395 only for Nancy’s actions committed after October 1, 1997. Those damages amounted to \$30,500. The district court found that Nancy exploited Fred. However, the exploitation occurred before October 1, 1997.

We conclude that NRS 41.1395 is not applicable to this case. First, the legislature did not intend to apply this statute retroactively.<sup>15</sup> Second, as a result, Nancy’s actions with regard to Fred occurred before she had notice that she could be liable for double damages should she exploit an elderly person. Third, without having exploited Fred on or after October 1, 1997, Nancy could not have violated the plain meaning of NRS 41.1395 after its enactment. We therefore conclude that the district court erred in awarding damages pursuant to NRS 41.1395, and we reverse that part of the district court’s judgment awarding an extra \$30,500 in damages.

**3. Setting aside the divorce decree and annulling the marriage**

---

<sup>14</sup>The 1997 version of the statute applies in this case.

<sup>15</sup>See Furgerson, 104 Nev. at 776, 766 P.2d at 907.

This court construes and administers the rules of civil procedure “to secure the just, speedy, and inexpensive determination of every action.”<sup>16</sup> The district court’s determination not to bifurcate the divorce proceeding is reviewed for abuse of discretion.<sup>17</sup> As noted, with regard to the district court’s factual determination, this court defers to the district court’s findings that are supported by substantial evidence.<sup>18</sup>

A. Six-month limitation of NRCP 60(b) does not apply

NRCP 60(b)(3) allows a party to seek relief from a judgment by filing a motion with the rendering court based on, inter alia, “fraud (whether heretofore denominated intrinsic or extrinsic).” Such a motion must be filed no later than six months after the judgment has been entered.<sup>19</sup> However, this six-month limitation does not prevent a court from entertaining an independent action to relieve a party from a judgment or to set aside a judgment for fraud upon the court.<sup>20</sup> Only the relevant statute of limitations or laches can time preclude an independent action to obtain equitable relief from a prior judgment.<sup>21</sup> An independent

---

<sup>16</sup>NRCP 1.

<sup>17</sup>C.S.A.A. v. District Court, 106 Nev. 197, 199-200, 788 P.2d 1367, 1368-69 (1990).

<sup>18</sup>Waddell v. L.V.R.V. Inc., 122 Nev. 15, 25, 125 P.3d 1160, 1166 (2006).

<sup>19</sup>NRCP 60(b).

<sup>20</sup>Id.

<sup>21</sup>Nevada Industrial Dev. v. Benedetti, 103 Nev. 360, 364-65, 741 P.2d 802, 805 (1987).

action is a new civil action,<sup>22</sup> which may be brought “on any cognizable basis”<sup>23</sup> and will not be precluded by the doctrine of former adjudication.<sup>24</sup>

Fred’s suit was not time-barred by NRCP 60(b). Fred brought an independent action by filing a new complaint to set aside the divorce based on fraud and undue influence within the relevant time period.<sup>25</sup> The district court properly permitted Fred’s suit to set aside the divorce decree.

**B. Vacating the divorce decree**

A district court may vacate a decree of divorce upon a showing of fraud in the inducement.<sup>26</sup> The courts cannot presume fraud.<sup>27</sup> Substantial evidence supports the district court’s finding that Fred proved, by clear and convincing evidence, that (1) Nancy made a false representation to Fred, (2) Nancy knew that the representation was false, (3) Nancy intended therewith to induce Fred to consent to the divorce, (4) Fred justifiably relied upon Nancy’s misrepresentation, and (5) Fred suffered damages because of that reliance.<sup>28</sup>

---

<sup>22</sup>Id. at 364, 741 P.2d at 805; see also NRCP 2.

<sup>23</sup>Murphy v. Murphy, 103 Nev. 185, 186, 734 P.2d 738, 739 (1987).

<sup>24</sup>Benedetti, 103 Nev. at 365, 741 P.2d at 805.

<sup>25</sup>NRS 11.190(3)(d).

<sup>26</sup>See Milender v. Marcum, 110 Nev. 972, 976, 879 P.2d 748, 750-51 (1994); NRCP 60(b).

<sup>27</sup>J.A. Jones Constr. v. Lehrer McGovern Bovis, 120 Nev. 277, 290-91, 89 P.3d 1009, 1018 (2004).

<sup>28</sup>Id. at 290, 89 P.3d at 1018.

When a district court vacates a divorce decree upon a showing of fraud, it is proper to set aside both the dissolution of the bonds of matrimony and the property distribution.<sup>29</sup> The bifurcation of a divorce action is discouraged and should be avoided.<sup>30</sup> The district court did not abuse its discretion by setting aside the divorce decree as a whole.

C. Annuling the marriage

A district court may annul a marriage if “the consent of either party was obtained by fraud.”<sup>31</sup> The fraud must be proved by clear and convincing evidence.<sup>32</sup> A marriage may also be annulled for any reason that constitutes an equitable basis for setting aside a contract.<sup>33</sup> A contract may be set aside upon a showing of undue influence.<sup>34</sup> A presumption of undue influence arises when an attorney enters self-serving transactions with her client.<sup>35</sup>

---

<sup>29</sup>See Milender, 110 Nev. at 976, 879 P.2d at 750-51.

<sup>30</sup>Id. at 982, 879 P.2d at 754 (Young, J., concurring and dissenting) (citing Gojack v. District Court, 95 Nev. 443, 596 P.2d 237 (1979)); Smith v. Smith, 100 Nev. 610, 613 n.1, 691 P.2d 428, 431 n.1 (1984) (“[B]ifurcated divorce proceedings and the problems they are likely to engender are disfavored and should generally be avoided.”).

<sup>31</sup>NRS 125.340(1).

<sup>32</sup>Irving v. Irving, 122 Nev. \_\_\_, \_\_\_, 134 P.3d 718, 720 (2006).

<sup>33</sup>NRS 125.350.

<sup>34</sup>Peardon v. Peardon, 65 Nev. 717, 766, 201 P.2d 309, 333 (1948).

<sup>35</sup>See Close v. Flanary, 77 Nev. 87, 95, 360 P.2d 259, 263-64 (1961); Peardon, 65 Nev. at 769, 201 P.2d at 334-35.

The district court found that Fred proved by clear and convincing evidence that Nancy obtained Fred's consent to the marriage by fraud and undue influence. Based upon the standard set forth in Irving v. Irving,<sup>36</sup> we conclude that substantial evidence does not support that finding as to the fraud. However, substantial evidence supports the district court's finding of undue influence in that (1) Nancy acted as Fred's attorney at the time Fred and Nancy married, (2) Nancy entered the marriage for financial gain, and (3) Nancy did not rebut the presumption that she exercised undue influence over Fred at the time she and Fred married. Thus, the district court properly annulled the marriage because Nancy exercised undue influence over Fred to obtain the marriage.

#### 4. Punitive damages

Whether the family court has authority to impose punitive damages is a question of law. "Questions of law are reviewed de novo."<sup>37</sup> Because of the subjective nature of punitive damages, "workable standards by which to evaluate the propriety of such an award" are difficult to create.<sup>38</sup> For that reason, the district court has discretion in making an award of punitive damages, "unless the evidence . . . shows that the amount . . . would financially destroy or annihilate the

---

<sup>36</sup>122 Nev. at \_\_\_, 134 P.3d at 720.

<sup>37</sup>SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

<sup>38</sup>Dillard Department Stores v. Beckwith, 115 Nev. 372, 381, 989 P.2d 882, 887-88 (1999) (quoting Hale v. Riverboat Casino, Inc., 100 Nev. 299, 306, 682 P.2d 190, 194 (1984)).

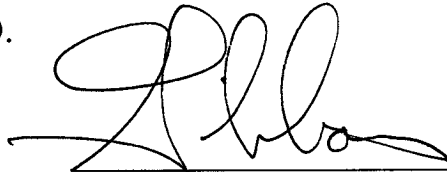



defendant.”<sup>39</sup> We will not disturb an award “unless it is so large as to appear ‘to have been given under the influence of passion or prejudice.’”<sup>40</sup>

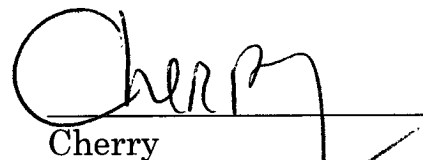
A punitive damages award of \$150,000 is not excessive. At trial, Nancy presented evidence that a punitive damages award would annihilate her. The district court found that evidence incredible and rejected it. Substantial evidence supports that finding. We cannot say that the punitive damage award is so large as to have been given under the influence of passion or prejudice. Therefore, we conclude that the district court did not abuse its discretion by awarding Fred \$150,000 in punitive damages.

We have considered Nancy’s other contentions and conclude that they lack merit. Accordingly, the judgment of the district court is affirmed in part and reversed in part, and we remand this matter to the district court for proceedings consistent with this order.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

---

<sup>39</sup>Id. (quoting Hale, 100 Nev. at 306, 682 P.2d at 194).

<sup>40</sup>Hale, 100 Nev. at 306, 682 P.2d at 194 (quoting NRCP 59(a)(6)).

cc: Eighth Judicial District Court Dept. E, District Judge, Family Court  
Division  
Lester H. Berkson, Settlement Judge  
Nancy Fernandez-Nies  
Law Office of Daniel Marks  
Eighth District Court Clerk