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### Summary of Doan v. Wilkerson, 130 Nev. Adv. Op. 48

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*Nevada Law Journal*

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FAMILY LAW: DIVORCE

**Summary:**

The Court determined two issues: 1) whether the six-month statute of limitations set forth in NRCP 60(b) applies to a motion for relief from a divorce decree, and (2) under what circumstances a marital asset adjudicated in court but omitted from the final divorce decree may be partitioned through a motion for relief from judgment.

**Disposition:**

Under NRCP 60(b), the six-month time limitation on motions for relief from judgment applies to motions for relief from or modification of a divorce decree. After the six-month time limit, relief is available only via an independent action in equity “to prevent a grave miscarriage of justice.”<sup>2</sup>

**Factual and Procedural History:**

Catherine Doan and appellant Craig Doan married in May of 1985. During their marriage, Craig worked as an air traffic controller with the Federal Aviation Administration (FAA) and received multiple retirement benefits as a federal employee. The parties filed an action for divorce before Craig retired.

Before trial, both parties exchanged affidavits of financial condition, which indicated that they owned retirement accounts or pensions. Craig also provided W-2 wage and tax statements indicating he had a retirement plan, pension plan, and deferred compensation. An agreement was reached during a settlement conference, and a final decree of divorce was entered in August 2003. This decree did not include Craig’s FAA retirement benefit.

Six years later, new counsel for Catherine discovered that Catherine was not receiving Craig’s FAA retirement benefits, and Catherine filed a motion for a division of an omitted asset. The district court denied the motion and found that the retirement benefits had been disclosed during discovery, and because there was full and fair disclosure of Craig’s retirement, it could not be treated as an omitted asset.

Shortly thereafter, Catherine filed a motion for reconsideration, which was granted. The court concluded that the retirement benefits were omitted by mutual mistake of the parties, and thus divided Craig’s retirement benefits. This appeal followed.

**Discussion:**

A divorce proceeding is reviewed under an abuse of discretion standard, and district court rulings supported by substantial evidence will not be disturbed absent an abuse of discretion.

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<sup>1</sup> By Kelsey Bernstein.

<sup>2</sup> *Bonnell v. Lawrence*, 128 Nev. \_\_\_, \_\_\_, 282 P.3d 712, 715 (2012).

### *Relief under NRCP 60(b)*

In accordance with NRS 125.090 and case precedent, NRCP 60(b)'s six-month time limitation does apply to a motion for relief from or modification of a divorce decree.<sup>3</sup> Where a motion for relief premised on a mistake, newly discovered evidence, or fraud is filed more than six months after final judgment, the motion is untimely. Once this six-month limitation has expired, Catherine's only means of relief is an independent action for relief on equitable grounds, under which this case will now be considered.

### *Equitable relief as an independent action*

An independent action for relief from a final judgment may be granted only to prevent a grave miscarriage of justice. The nonadjudication of marital assets may qualify as such an exceptional circumstance justifying equitable relief. Therefore, the determinative issue is whether Craig's FAA retirement benefit was adjudicated. Property is unadjudicated "where a party did not have a fair opportunity to present the issue of the property's disposition to the court."<sup>4</sup>

In this case, however, the marital asset in question was disclosed and discussed during the divorce proceedings, and the parties had a fair opportunity to litigate it. Craig attached statements of earnings and leave from the FAA, provided W-2 wage and tax statements, and listed his retirement contributions as a monthly expense. Therefore, the record supports the district court's original finding that the FAA retirement benefit was disclosed and considered.

The district court erred as to the law under the motion's reconsideration when it ruled that the retirement benefit was an omitted asset merely because it was not mentioned in the decree. The fact that the asset was not mentioned in the decree alone is not an exceptional circumstance justifying equitable relief in circumvention of NRCP 60(b).

### **Conclusion:**

Because Craig's FAA retirement benefits were adjudicated, the district court's original finding that Catherine's motion to divide the asset is untimely is supported by substantial evidence. Although exceptional circumstances may warrant equitable relief notwithstanding the six-month time limit set forth in NRCP 60(b), omission of an asset in the decree is not such an exceptional circumstance. Therefore, the district court's judgment on reconsideration dividing Craig's FAA retirement benefits was reversed.

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<sup>3</sup> NEV. REV. STAT. § 125.090 (2014); Williams v. Waldman, 108 Nev. 471, 836 P.2d 617 (1992).

<sup>4</sup> Williams, *supra* note 3, at 474, 619.