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## Anderson v. Sanchez 132 Nev. Adv. Op. 34 (Apr. 28 2016)

Cassandra Ramey  
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FAMILY LAW: DIVORCE: CONTRACT LAW

**Summary**

The Supreme Court of Nevada held that the doctrine of mutual mistake is not grounds for rescission of a contract when the party bears the risk of mistake. The party bears the risk of mistake if the party is aware at the time of the formation of the contract that they only have limited knowledge of the facts to which the mistake relates, but treats that knowledge as sufficient, the court will allocate the risk of mistake to that party.

**Background**

In 2012, Mark Anderson (Mark) filed for divorce from Sophia Sanchez (Sophia). The parties reached a settlement agreement in regard to their property distribution; including a home located on East Wilson Avenue in Orange, CA (Wilson property). The agreement stated the Wilson property was owned by the parties' trust and agreed that the property would be awarded to Mark in exchange for Mark paying Sophia \$75,000, or half of the property's net value, from his retirement account. Mark and Sophia signed a written Memorandum of Understanding (MOU) to memorialize their agreement, acknowledging that they understood and would be contractually bound by its terms.

Mark subsequently filed a notice stating his intent to withdraw and revoke his signature from the MOU, while Sophia moved to enforce it. Mark moved to set aside the MOU as unenforceable, citing NRCP 60(b).<sup>2</sup> Even though Mark acknowledged that he and Sophia held title, Mark alleged that they had a prior oral agreement with his sister Cheryl Parr, under which Cheryl transferred title to them in order to obtain loans for the residence's renovation. Mark further argued that after these loans were paid off, he and Sophia were to transfer title back to Cheryl.

**Discussion**

Before the Supreme Court, Mark argues that the MOU should be set aside based upon the parties' mutual mistake. He argues that the Wilson property was not community property and that both parties mistakenly believed at the time of negotiations that their title to the Wilson property supplanted Cheryl's ownership interest.

Settlement agreements are contracts and therefore are governed by principles of contract law.<sup>3</sup> A mutual mistake may be grounds to render a contract void, or to equitably rescind the

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<sup>1</sup> By Cassandra Ramey

<sup>2</sup> Nevada Rule of Civil Procedure 60(b) states in part: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)..."

<sup>3</sup> *Grisham v. Grisham*, 128 Nev. Adv. Op. 60, 289 P.3d 230, 234 (2012).

contract. The Court defines mutual mistake as when “both parties, at the time of contracting, share a misconception about a vital fact upon which they based their bargain.”<sup>4</sup>

In this case, the Court held that there was no mutual mistake because both parties were aware of Cheryl’s interest in the property when they entered into the agreement. Mark had represented in his motion that the parties had always known that the Wilson property belonged to Cheryl, and attached offers of proof to support that decision. Because of this, the parties’ had no shared misconception of a vital fact concerning the Wilson property.

Even if the Court were to assume that both parties were unaware or misinformed of the legal effect of Cheryl’s purported interest had on their disposition of the Wilson property, mutual mistake is not grounds for rescission when the party bears the risk of mistake.<sup>5</sup> Here, Mark bore the risk of mistake even if he did not have sufficient knowledge of the legal consequences of his settlement agreement because he knew that the Wilson property may have been subject to an equitable trust, and thus, might not be appropriate for distribution under the MOU.

### **Conclusion**

The Court affirmed the divorce decree concluding that there was substantial evidence to support the district court’s decision to enforce the MOU.

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<sup>4</sup> Gen. Motors v. Jackson, 111 Nev. 1026, 1032, 900 P.2d 345, 349 (1995).

<sup>5</sup> Land Baron Inv., Inc. v. Bonnie Springs Family LP, 131 Nev., Adv. Op. 69, 356 P.3d 511 (2015).