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Lopez v. Lopez, 139 Nev. Adv. Op. 54 (Nov. 30, 2023)

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THE DISTRICT COURT HAS JURISDICTION TO DISTRIBUTE COMMUNITY ASSETS
HELD IN A REVOCABLE INTER VIVOS TRUST UPON DIVORCE AND THE TRUST IS
NOT A NECESSARY PARTY TO THE ACTION

Summary

The Nevada Supreme Court affirmed the district court's decision in regard to a revocable inter vivos trust dispute following a divorce. First, they determined that a revocable inter vivos family trust isn't a necessary party in a divorce action where the spouses are co-trustees, co-settlors, and beneficiaries. Second, the district court has jurisdiction to distribute community assets held in a revocable inter vivos trust.

Background

Maria Lopez (Appellant) and Pedro Lopez (Respondent) were married in Mexico in 1995 and then moved to the United States. Following their move, they created an inter vivos trust (the P & D Family Trust) whereas co-settlors and co-trustees, retained the right to revoke, alter, or amend the trust at any point during their lifetimes. Throughout their lives, they placed eight properties into this trust, seven of which they purchased together. Around 2008, the Lopez's defaulted on their mortgage payment for three of the properties. Following this, Maria was able to have close friends buy two of the properties and then gift them back to her titled as her sole and separate property while the third she claims paid off using her inheritance after which Pedro signed over his community interest in the property. Pedro denied conveying his interest and claims the deed signature was a forgery.

Throughout the marriage, Pedro and Maria maintained separate and joint bank accounts. Neither were honest about their funds. In April 2021, Pedro filed for divorce. The district court wanted the parties to comply with NCRP 16.2 mandatory financial disclosure requirements by producing accurate and thorough financial disclosure forms (FDFs). Throughout this process, Maria represented the 3 properties were her individual property and shouldn't be included in the court's community property distribution decisions. Further, she claimed there was a prenup that they signed in Mexico that demonstrated she had \$80,000 in personal savings and \$250,000 in inheritance that were her separate property. Pedro denied the prenup existed. Maria also argued that the district court didn't have jurisdiction over the family trust to make decisions regarding distribution.

Prior to trial, the district court found at a hearing found that neither Maria or Pedro had adequate FDFs and noted that any party claiming family trust property was personal property had to overcome presumption of community property by clear and convincing evidence. At trial, the court wasn't convinced that the money used to get back the three properties came from anywhere other than the community assets. Additionally, Maria's unsigned and untimely document that was only written in Spanish that she claimed was the prenup was deemed inadmissible. The court didn't allow her to cross-examine Pedro about the document. It was also discovered she had

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understated the total amount in her accounts by almost \$342,000 during her testimony which was deemed a material misrepresentation in an attempt to defraud. As a result, the district court deemed all family trust property to be community property and for it to be distributed equally among the parties. Maria then appealed.

Discussion

The district court has authority to distribute the P & D Family Trust's Assets

Appellant argued that the district court was wrong when it exercised authority over the family trust's assets. However, the court found that they have authority for two reasons: 1) because the trust was a revocable inter vivos trust that was established after marriage and 2) because the parties were co-settlors, co-trustees, and beneficiaries.

NRS 111.781(1) establishes that unless "otherwise provided by the express terms of a governing instrument," divorce revokes any revocable disposition of property made to a former spouse, including dispositions made pursuant to a trust.² Further, NRS 125.150(1)(b) grants courts in divorce actions express authority to make equal dispositions of any community property that is transferred into an irrevocable trust which are much more restrictive than inter vivos trusts.³

Additionally, in a divorce action where the spouses are the co-trustees, co-settlors, and beneficiaries of a revocable inter vivos trust, the court's distribution of the trust's joint assets will not impede the trust's interests because the necessary parties are already named in the litigation.⁴ Because neither Pedro nor Maria filed a motion to join the trust separately as a necessary party, the appellate court wasn't required to consider the argument. The court stated that the family trust was thus not a necessary party and failing to name the family trust in the action didn't preclude the district court's ability to distribute the trust's assets.

The district court did not make an unequal distribution or abuse its discretion when it distributed the three properties as community property

Maria and Pedro purchased the properties in the family trust jointly during their marriage, raising the presumption that they are community property which can only be overcome by clear and convincing evidence.⁵ NRS 123.220(1) also clarifies that all property is community property if it is acquired after marriage unless it is separately outlined or unless otherwise provided in a written agreement between the spouses.⁶

In terms of real property, sufficient evidence that traces the source of purchasing funds is required.⁷ Consequently, a deed that places a title to one spouse as separate property is insufficient to overcome the community presumption if the party can't show the home was purchased with separate funds.⁸ Because Maria was unable to show during discovery or trial that her separate funds financed the three properties, her separate property claims failed. The court

² NEV. REV. STAT. §111.781(1) (2022).

³ NEV. REV. STAT. §125.150(1)(b) (2022).

⁴ Tsai v. Hsu, No. 50549, 2010 WL 3270973 at *4-5 (Nev. Apr. 29, 2010).

⁵ Todkill v. Todkill, 495 P.2d 629, 631-32 (1972).

⁶ NEV. REV. STAT. §123.220(1) (2010).

⁷ In re Colman, 460 P.3d 452, 454 (2020).

⁸ Pascua v. Bayview Loan Servicing, LLC, 434 P.3d 287, 290 (2019).

also found that because both parties consistently co-mingled their funds, that all assets in the joint and separate bank accounts belonged to the community.

The district court didn't abuse its discretion when it disallowed questioning about the alleged prenuptial agreement

According to NRS 52.015(1), proper identification or authentication is a condition precedent to admissibility.⁹ NRS 123A.040 further requires a premarital agreement to be in writing and signed by both parties. Maria failed to obtain and produce the document prior to trial and only presented an unsigned, untranslated document in Spanish. She also never explained how she obtained the document, gave details surrounding the origination of the document, or included it as a proposed exhibit from trial in the record on appeal. Therefore, the court agrees with the district court that the document wasn't properly authenticated and unduly prejudicial.

The court also found that use of the prenup would have been considered a "trial by ambush" as she attempted to withhold discoverable information and then decided to solely introduce it at trial during cross-examination. She never explicitly mentioned impeachment of Pedro's credibility with the unsigned document or attempt to submit supplemental briefing to argue how she would be prejudiced by the district court's denial.

The case will not be assigned to a new judge

Maria argued that the case should be reassigned because the district court judge presiding over the case didn't find either party credible, though found Pedro more credible. The reassignment issue is moot because the judgement of the district court is affirmed. There is a presumption that judges are unbiased, and Maria has no sufficient evidence to show there was a bias sufficient to warrant disqualification.

Conclusion

The district court had authority to distribute the trust's assets between the parties because the revocable inter vivos family trust did not need to be named in the divorce or joined as a necessary party. Additionally, the court had authority to equally divide the family's trusts and assets because Maria failed to overcome to community property presumption by clear and convincing evidence. Lastly, the denial of the court to question Pedro about the prenuptial agreement was not an abuse of discretion because it would have amounted to trial by ambush. Thus, the district court is affirmed.

⁹ NEV. REV. STAT. §52.015(1) (2022).