IN THE SUPREME COURT OF GUAM

VASUDEV B. HEMLANI,
Plaintiff-Appellee,

v.

PRERNA V. HEMLANI,
Defendant-Appellant.

Supreme Court Case No.: CVA14-031
Superior Court Case No.: DM0660-13

OPINION

Cite as: 2015 Guam 34

Appeal from the Superior Court of Guam
Argued and submitted on May 15, 2015
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

TORRES, C.J.:

[1] Defendant-Appellant Prerna V. Hemlani appeals the Superior Court's denial of her motion for relief from the default judgment that dissolved her marriage with Plaintiff-Appellee Vasudev B. Hemlani. The Superior Court found that she did not present any meritorious defense to the default judgment in her motion and consequently, denied her motion.

[2] For the following reasons, we reverse and vacate the decision of the Superior Court to deny Prerna relief from the default judgment, set aside the Final and Interlocutory Decrees for the Dissolution of Marriage, and remand for further proceedings not inconsistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Vasudev filed for divorce in the Superior Court of Guam and a few days later, Prerna was personally served at their home with the Complaint that alleged irreconcilable differences. After being served with the Complaint, Prerna alleges that the atmosphere in their marital home, which the couple shared with Vasudev's two daughters, was "one of happiness, status quo and good emotions which misled me into complacency, happiness and taking no action in the divorce court case." RA, tab 16 at 2 (Decl. Def. Prerna Hemlani, July 28, 2014). She claims that she believed the divorce had been "dismissed, dropped or withdrawn." *Id.* at 3. After Prerna's failure to appear or respond, Vasudev moved for default judgment, which was entered in an Interlocutory and Final Decree of Divorce on April 28, 2014.

[4] Prerna submitted a motion for relief from default judgment pursuant to Rule 60(b) of the Guam Rules of Civil Procedure, claiming the judgment should be set aside because her lack of response or appearance was due to excusable neglect and mistake. RA, tab 17 at 1, 4-6 (Def.'s Mot. & Mem. P. & A. Supp. Relief Default J., July 28, 2014). She claims her "limited English language skills" and unfamiliarity with the American judicial system made her unaware of the meaning of the Complaint that was served upon her. Record on Appeal ("RA"), tab 17 at 4 (Def.'s Mot. & Mem. P. & A. Supp. Relief Default J., July 28, 2014); RA, tab 16, Ex. 2 at 1 (Decl. Def. Prerna Hemlani, July 28, 2014). She also maintains that Vasudev and his daughters "created a false atmosphere of trust in [their] marital home that misled [her] into inaction and encouraged my mistaken belief that no final divorce was sought by Vas[udev]." *Id.* at 3. She further asserted in her motion that she was never served with the motion for default judgment or notice of the scheduled hearing on the motion. RA, tab 17 at 6-7 (Def.'s Mot. & Mem. P. & A. Supp. Relief Default J.). In her motion, she claimed that her meritorious defenses to the default judgment were the lack of irreconcilable differences to grant the divorce and that even if the divorce stands, the Premarital Agreement ("Agreement") incorporated into the Final Divorce Decree should be voided because of its unenforceability.

[5] The trial court denied Prerna's motion for relief and based its decision on "the judicially noticed testimony received at the protective order hearing" that she did not "lack[] sufficient ability or capacity to understand the English language or the significance of the complaint for divorce served upon her." RA, tab 26 at 5 (Dec. & Order, Oct. 13, 2014).[1] Neither party moved for judicial notice of these facts, but the court *sua sponte* took judicial notice of Prerna's capacity

[1] Vasudev alleged that after the divorce was finalized Prerna continued to harass him with calls, texts, and appearances at his work, which led him to request a protective order from the Superior Court. Hemlani v. Hemlani, PO0080-14 (Ex Parte Mot. & Pet. for Protective Order TRO, Aug. 22, 2014).

to comprehend the English language. The same judge who denied Prerna's motion for relief from default judgment had previously conducted the protective order hearing and felt that based on his observations of her, she had the capacity to comprehend both English and the proceedings.

[6] The trial court further reasoned that "[h]aving made this finding the credulity of [Prerna]'s other assertions of fact regarding a reconciliatory atmosphere is lessened." RA, tab 26 at 5 (Dec. & Order). The court denied the motion for relief and stated that Prerna's claims failed to "assert how these facts if true would change the ultimate outcome of the final decree." *Id.* at 6. Further, the court maintained that her assertions could not "support a finding of defensible merit." *Id.*

[7] Prerna timely appealed, arguing that the trial court improperly denied her motion for relief from default judgment and that it erred in taking judicial notice of her ability to speak and understand English from testimony made during proceedings in a separate case. She requests the order denying her relief from the default judgment be reversed and vacated and additionally, that her case be remanded and reassigned to a different judge.

[8] In a separate motion to this court, Prerna requested that all references to the transcripts from the Protective Order hearing be stricken from Vasudev's brief and also that the transcripts themselves be stricken from his Supplemental Excerpts of Record. She also objects to Vasudev's request that this court take judicial notice of the content of the transcripts made in his opening brief.

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II. JURISDICTION

[9] This court has jurisdiction over appeals from a final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-51 (2015)); 7 GCA §§ 3107, 3108(a) (2005); *see also* 7 GCA §§ 25101, 25102 (2005).

III. STANDARD OF REVIEW

[10] We review a denial of a motion for relief from a default judgment under Rule 60(b) of the Guam Rules of Civil Procedure ("GRCP") for an abuse of discretion. *Mariano v. Surla*, 2010 Guam 2 ¶ 7 (citing *Midsea Indus., Inc. v. HK Eng'g Ltd.*, 1998 Guam 14 ¶ 4). The review of a trial court's ruling on a GRCP 60(b) motion for relief from a default judgment looks for a "clear abuse of discretion." *Midsea*, 1998 Guam 14 ¶ 4 (citing *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 687 (9th Cir. 1988)). The decision should not be reversed unless this court has "a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors." *Id.* (quoting *Santos v. Carney*, 1997 Guam 4 ¶ 4).

IV. ANALYSIS

A. Motion for Relief from Default Judgment

[11] "[D]efault judgments are generally disfavored and whenever possible, cases should be decided on their merits." *Mariano*, 2010 Guam 2 ¶ 35 (citing *Midsea*, 1998 Guam 14 ¶ 6). This court in *Midsea* pointed out that "a default judgment is considered to be a drastic measure, only appropriate in extreme circumstances." 1998 Guam 14 ¶ 6.

[12] In *Midsea*, this court adopted, from the Ninth Circuit, a three-factor analysis for denying a motion for relief from a default judgment, 1998 Guam 14 ¶ 5, and the Superior Court, in

considering Prerna's GRCP 60(b) motion, correctly identified this analysis, RA, tab 26 at 4 (Dec. & Order). The Superior Court recognized that such motions should be denied when it finds that "(1) the defendant's culpable conduct led to the default, (2) the defendant has no meritorious defense, or (3) the plaintiff would be prejudiced if the judgment is set aside." *Id.* While identifying the *Midsea* analysis, the Superior Court also correctly stated that "default judgments are generally disfavored and deciding a case on its merits is encouraged whenever possible." RA, tab 26 at 4 (Dec. & Order).

[13] The Superior Court's decision was based only on the second prong that Prerna had no meritorious defense and did not consider the other two factors. *Id.* at 6. Both parties argued that the evidence of the two unconsidered factors favored their positions with respect to the motion for relief and maintain those arguments on appeal; however, to consider these arguments on appeal would require this court to weigh that evidence. Appellant's Br. at 27-30; Appellee's Br. at 20-21 (Feb. 20, 2015). However, because the standard of review is an abuse of discretion, this court must limit its inquiry to what was considered by the trial court. *See People v. Tuncap*, 1998 Guam 13 ¶ 12-13 ("When using this standard, a reviewing court does not substitute its judgment for that of the trial court. Instead, we must first have a definite and firm conviction the trial court, after weighing relevant factors, committed clear error of judgment in its conclusion."). It is not this court's duty to consider these factors *de novo* when reviewing for an abuse of discretion. *See generally Midsea*, 1998 Guam 14 ¶ 4. By failing to consider all of the required factors, the court erred. However, it needed to find only one of these factors to deny the motion. Therefore, this error itself of not considering all of the factors does not warrant reversal. *Id.* ¶ 5 (citing *Cassidy v. Tenorio*, 856 F.2d 1412, 1415-16 (9th Cir. 1988)). We now must

evaluate the court's finding that Prerna did not establish any meritorious defense warranting the default judgment to be set aside.

[14] The Superior Court decided Prerna's motion on the second *Midsea* factor, which considers whether the defendant had a meritorious defense. 1998 Guam 14 ¶ 10. The factor requires the court to determine "whether there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default." *Id.* (quoting *Haw. Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986)). Because this standard was adopted from the Ninth Circuit, it is informative to consider the Ninth Circuit's explanation that "[a]ll that is necessary to satisfy the 'meritorious defense' requirement is to allege sufficient facts that, if true, would constitute a defense. . . ." *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1094 (citing *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 700 (9th Cir. 2001)).

[15] Prerna argues that she presented two legitimate defenses to the Superior Court: the first, a lack of irreconcilable differences, and second, the unenforceability of the Agreement. Appellant's Br. at 21-26. Both parties dispute the existence of irreconcilable differences and the enforceability of the Agreement, and both allege facts supporting their position. *Id.*; Appellee's Br. at 18-19.

[16] The Superior Court cited the Ninth Circuit's standard and found that Prerna had not alleged facts that "if true, would constitute a legitimate defense." RA, tab 26 at 5 (Dec. & Order) (citing *Mesle*, 615 F.3d at 1094). Specifically addressing Prerna's allegation regarding the enforceability of the Agreement, the court found that this assertion failed to allege a defense that could affect the outcome of the case. *Id.* at 5-6. Further, Vasudev claims that the Agreement is

subject to arbitration and therefore, Prerna's claims regarding its enforceability cannot constitute a meritorious defense because it is not a matter for the court to decide. Appellee's Br. at 19. However, we find these arguments unpersuasive.

[17] Prerna's assertion that the Agreement is unenforceable creates "some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by default," and therefore, forms a sufficient basis for a meritorious defense. *Midsea*, 1998 Guam 14 ¶ 10 (quoting *Haw. Carpenters'*, 794 F.2d at 513). The presence of an arbitration clause does not preclude this finding. If Prerna's claim, that the Agreement is unenforceable, is permitted to be submitted to arbitration, no matter how the arbitrators decide, the default judgment will be impacted. *See Dean Witter Reynolds, Inc. v. Roven*, 609 P.2d 720, 722-23 (N.M. 1980) (finding that the presence of an arbitration clause was a meritorious defense to a default judgment). If the arbitrators decide the Agreement is enforceable, then the trial court would be required to enforce the Agreement that acknowledges the existence of community property, which the court failed to do in the Interlocutory and Final Decree of Divorce. RA, tab 12 (Interlocutory Decree Divorce, Apr. 28, 2014); RA, tab 13 (Final Decree Divorce, Apr. 28, 2014); RA, tab 16, Ex. 2 at 2 (Decl. Def. Prerna Hemlani). If the arbitrators decide the Agreement is not enforceable, then the trial court's Final Decree cannot be upheld as it does not include a disposition of property and implicitly incorporates the now unenforceable Agreement. RA, tab 12 (Interlocutory Decree Divorce); RA, tab 13 (Final Decree Divorce).

[18] Consequently, we find that Prerna did allege a meritorious defense in her motion for relief from default judgment in her assertion that the Agreement that was implicitly incorporated into the Interlocutory and Final Dissolution Decree is unenforceable. The contrary finding of the

Superior Court was an abuse of discretion. Therefore, we reverse the denial of the motion for relief from default judgment and vacate the Interlocutory and Final Decrees of Divorce.

B. Irreconcilable Differences, Judicial Notice, and Motion to Strike

[19] Because we reverse on the grounds that Prerna alleged a meritorious defense in asserting the unenforceability of the Agreement, her alternative alleged meritorious defense regarding the absence of irreconcilable differences need not be addressed. Additionally, this renders the issues of the trial court's decision to take judicial notice and Vasudev's request for this court to take judicial notice of the transcripts, which was opposed in Prerna's motion to strike, as moot. It is not necessary to decide these issues or Prerna's motion to strike as our opinion does not rely on a disposition of these issues.

C. Reassignment

[20] Prerna additionally has asked this court to exercise its inherent power, pursuant to *Dizon v. Superior Court of Guam*, 1998 Guam 3, to reassign this case on remand to a different judge to avoid potential future impartiality involving the improper judicial notice. Appellant's Br. at 39-40. In order for reassignment to be proper, this court must determine if recusal is necessary pursuant to 7 GCA § 6105. The statute provides that a judge is disqualified from "any proceeding in which his or her impartiality might reasonably be questioned." 7 GCA § 6105(a) (2005). This court has held that "the appearance of impropriety" is the standard for recusal and that "no actual showing of bias is necessary for recusal." *Dizon*, 1998 Guam 3 ¶ 8.

[21] However, in *Dizon*, this issue of recusal was first considered by the trial court, and its analysis was found flawed by this court. 1998 Guam 3 ¶ 10. Only after that determination did this court order reassignment. *Id.* ¶ 19. The issue of recusal has not been decided by the

Superior Court. If Prerna wishes to have the issue decided, she should first make the appropriate request for recusal at the trial court level on remand. Generally, only after such request has been denied in the first instance by the trial court and appealed will this court decide the merits of recusal and reassignment. Therefore, we decline to address the recusal issue at this time.

V. CONCLUSION

[22] Because we find that Prerna alleged a meritorious defense when she asserted the unenforceability of the Agreement, we **REVERSE, VACATE** the Interlocutory and Final Decrees of Divorce, and **REMAND** for further proceedings not inconsistent with this opinion. We need not address the other alleged meritorious defense of irreconcilable differences raised by Prerna since the issue is moot. Likewise, we do not address the issue of judicial notice or the motion to strike as we did not rely on the alleged transcripts and these issues are also moot.

F. PHILIP CARBULLIDO
Associate Justice

KATHERINE A. MARAMAN
Associate Justice

ROBERT J. TORRES
Chief Justice

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Original Signed By: F. Philip Carbullido

F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: Katherine A. Maraman

KATHERINE A. MARAMAN
Associate Justice

Original Signed By: Robert J. Torres

ROBERT J. TORRES
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam.

NOV 16 2015

By: Charlene T. Santos
Deputy Clerk
Supreme Court of Guam

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Associate Justice

Original Signed By: **Katherine A. Maraman**

KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **Robert J. Torres**

ROBERT J. TORRES
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam.

NOV 16 2015

By: Charlene T. Santos
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Supreme Court of Guam