No. SC-CV-08-18

SUPREME COURT OF THE NAVAJO NATION

Victoria June,
Appellant/Petitioner,

v.

Teddy W. Begay,
Appellee/Respondent.

OPINION

Before, JAYNE, J., Chief Justice, SHIRLEY, E., Associate Justice, and TUNI, R., Associate Justice by Designation.

An appeal of the decision of the Tuba City Family Court concerning Cause No. TC-FC-607-2011, the Honorable Victoria Yazzie, presiding.

Judy R. Apachee, Flagstaff, Arizona, for Appellant; Teddy W. Begay, Deceased.

Opinion delivered by TUNI, Associate Justice by Designation.

Appellant Victoria June is appealing a Judgment and Order of Dismissal (Judgment) entered by the Tuba City Family Court on January 23, 2018. The Tuba City Family Court in its Judgment, denied Appellant's petition to set aside divorce decree issued more than eight years ago.

I

On May 21, 2009, Teddy W. Begay (Teddy) filed an action for divorce requesting that his marriage to Victoria June (Victoria) be dissolved on the ground of inability to live together in agreement and harmony. Victoria was served on November 23, 2009, and she filed an answer on December 14, 2009. Victoria admitted that she and Teddy were married on February 9, 2009, in the state of Arizona and separated on April 8, 2009, but denied the allegation that they were unable to live together in agreement and harmony. A pretrial conference was held on February

16, 2010, at which Teddy appeared with his attorney and Victoria did not appear. The Family Court found notice of the hearing was sent to the address listed on Victoria's answer and Victoria had not contacted the court regarding her absence. The Family Court granted the divorce and Teddy was awarded only his personal effects. Thereupon, the court entered a divorce decree on March 15, 2010.

Victoria, through counsel, appealed the divorce decree on April 1, 2010. The Supreme Court dismissed the appeal on June 4, 2010, after Victoria failed to file the transcript of the proceeding within the extension of time provided. Victoria then petitioned this Court for reconsideration of that dismissal, which was denied on June 22, 2010.

On December 9, 2011, counsel for Victoria filed a petition in the same court to set aside the divorce decree under Rule 60(c) of the Navajo Rules of Civil Procedure. Teddy was served with the petition on January 20, 2012 and he filed an Answer on February 17, 2012, objecting to Victoria's attempt to re-open the divorce based on Navajo traditional principles in favor of finality in divorces. Finding an unreasonable delay in the filing of the petition, which was twenty-one (21) months after the entry of the divorce decree and eighteen (18) months after the failed attempt to appeal that divorce decree, the family court found no fairness would justify disturbing the divorce decree and dismissed the action on January 23, 2018, relying greatly on the Navajo principle of finality in divorce.

On February 21, 2018, Victoria appealed the dismissal order. Victoria named Teddy as Appellee and certified she served Teddy and his Estate at his last known address, which was the Chinle Nursing Home. In the notice of non-filing of transcript, Victoria informed the Court that Teddy died after he filed his response in the family court action and there was no substitution of party.

II

The issue is whether this Court will accept an appeal of a dismissal order arising from a petition to set aside the divorce decree when one party was deceased at the commencement of the appeal.

III

In the Navajo way of thinking, all things have a life cycle. The laws that dictate this are fundamental; they cannot be changed by man. They are rooted in our Natural Law. *See, e.g.* 1 N.N.C. § 202(A). When we are born we start our journey, *Si'ąh Naagháí Bik'eh Hózhó*. As Diné our life journey is to build a meaningful life and to reach old age.

At birth we are carried into the *hooghan*, supported and cared for by our family. As we age, we take on different roles throughout our lives, slowly moving around the *hooghan*. We gain life experience. We work. We marry. We build a life. We enjoy our family. We move to the west of the *hooghan* in middle age, and to the north as we gain wisdom and take on the role of elder.

Teddy reached the end of his journey before the filing of this appeal. This departure brought two overlapping cycles to a close. This case, like all other things, has a life cycle. It began with a disagreement and terminated with the death of an indispensable party to these proceedings. In this way, the end of this case is final. To treat it another way is to go against the Natural Law.

The Navajo have great respect for relatives who have passed on. The four days of reverence is left to the Holy People for the person's final journey into the universe. There is, as a practical matter, no way to restore this marriage. For the following reasons this appeal cannot stand: 1) this is a uniquely personal action and there is no party who can stand in the decedent's

shoes, 2) there is no longer a dispute that is cognizable in the eyes of the Court; 3) finality is favored in the Navajo way of thinking, and 4) finally, *Diné* people have a reverent place for those who have passed on that this Court will not intrude upon.

First, as a procedural matter, there is no way to serve Teddy. All appeals originate with the filing of a notice of appeal. N.R.C.A.P. 7(a). The Navajo Rules of Civil Appellate Procedure requires the notice of appeal to be served by the appellant on the appellee at or before the time of filing, and service may be personal service or by mail. Here, Victoria knew Teddy passed on when she filed her appeal. Although Victoria filed a certificate of service that Teddy was served at his last known address service on Teddy was never possible. This matter is personal. There cannot be a successor.

Where parties are no longer in disharmony, it is inappropriate for a court to continue with the case. *Bizardi v. Navajo Nation.* 8 Nav. R. 593, 597 (Nav. Sup. Ct. 2010). The death of Teddy renders this dispute largely irrelevant. Even if this Court were to take the appeal, there is no reason to believe that Victoria could resume her relationship with the deceased. Although he is, at this point, more likely to acquiesce to Victoria's argument, the dispute has been resolved – the relationship is irreparably severed in the eyes of the law. We cannot simply sit on our rights; at some point in our time our inaction with the resultant delay will be deemed negligence and the asserted right will not be enforced by the courts. *Watson v. Watson*, 9 Nav. R. 299, 307 (Nav. Sup. Ct. 2010). The opportunity to renew the marriage expired with Teddy, making this missed opportunity on the part of Victoria. The most basic requirement of a marriage is that of two people. This appeal presents only one, delay in expeditious resolution has left this case without the remedy Victoria seeks. Thus, this Court cannot undo what has been done. There is no way to restore this marriage as Victoria requests, no remedy at law.

Additionally, "[t]here [is] a principle of finality in Navajo customary divorce, and the principle of restoring harmony in the community by quickly and finally breaking ties so the community can soon return to normal is one which is common-sense. To permit a former spouse to keep such ties that she or he may be said to be lurking behind the *Hogan* waiting to take a portion of the corn harvest is unthinkable, since each spouse returns to his or her own family after the divorce. Each former spouse should return home after making the break and disturb others no more." *Apache v. Republic Nat'l Life Insurance Co.*, 3 Nav. R. 250, 254 (Nav. Ct. App. 1982). Victoria is doing what Navajo tradition discourages. Moreover, Teddy passing on brought, finality to this case.

Finally, revisiting the issue for purposes of setting aside the divorce decree after Teddy's death is contrary to *Diné Bi Beenahaz'áanii*. *See generally* 1 N.N.C. § 202. The parties parted ways three months after their marriage in 2009, and Teddy lived a separate life since. When Victoria filed to set aside the divorce decree in 2011, Teddy adamantly opposed up until his death. Not only did the marriage end by divorce, the marriage terminated upon the death of Teddy under *Diné Bi Beenahaz'áanii*. This Court is without power to restore this marriage. For this Court to act would be contrary to all that we are as *Diné*.

The leaders of the Judicial Branch must uphold the values and principles of *Diné Bi Beenahaz'áanii*, 1 N.N.C. § 202 et seq., in rendering decisions and judgments. 1 N.N.C. § 203(E). "[U]nder Dine fundamental law, custom and practice, affairs of the deceased need to be taken care of immediately and with the utmost care." *Hall v. Watson*, 9 Nav. R. 235, 238 (Nav. Sup. Ct. 2009). Out of respect for the deceased and for the safety of Victoria, the Court will not permit this appeal.

IV

The Court hereby denies this appeal for no service, no possibility of relief and because hearing this case would be unconscionable to our Navajo way of life. This appeal is dismissed.

Dated this 19th day of October, 2018.

Chief Justice

Associate Justice

Associate Justice