IN THE SUPREME COURT OF THE STATE OF NEVADA

CARRIE FRANCES CARTER,
Appellant,
vs.
GLENN ALAN CARTER,
Respondent.

No. 43764

FILED

MAR 22 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order concerning the division of property in a divorce proceeding. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Glenn and Carrie Carter separated in July 2003. Glenn signed a quitclaim deed, deeding his part of their residence to Carrie. At the same time, Carrie signed an acknowledgement of Glenn's community interest. The acknowledgement did not specify the amount of Glenn's interest in the residence or when it should be valued.

The district court determined that the residence should be valued at the time of divorce and did not award alimony or attorney fees to either party. We conclude that the district court erred, and Glenn's interest in the residence should be valued at the time he signed the quitclaim deed. The district court did not abuse its discretion in refusing to award alimony or attorney fees. Therefore, we reverse the district court's judgment as to Glenn's interest in the home, affirm the judgment of the district court in all other respects, and remand for proceedings consistent with this order.

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The value of Glenn's share of the residence

Parties to a marriage may contract with each other regarding the status of property.[1] When one spouse conveys real property to another spouse, the property is presumed to be a gift to the other spouse.[2] This presumption can be overcome by clear and convincing evidence.[3] The parties' home was community property until Glenn signed a quitclaim deed in June 2003 in favor of Carrie. Glenn's quitclaim deed established a gift presumption, but Carrie's acknowledgment, signed at the same time as the quitclaim deed, rebutted the presumption. Thus, Glenn has an interest in the property.

The district court valued Glenn's interest at the time of the divorce, finding that property acquired during a marriage is community property until a divorce decree is issued.[4] However, married parties may contract with each other to transmute property.[5] Here, the quitclaim deed and acknowledgment altered the property's character. When Glen executed the quitclaim deed, the residence became Carrie's separate property and one-half of the residence's value became Glenn's separate property. Therefore, the property must be valued as of the date of the execution of the quitclaim deed.

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[1]NRS 123.070.

[2]Kerley v. Kerley, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996).

[3]Id.

[4]Forrest v. Forrest, 99 Nev. 602, 606-07, 668 P.2d 275, 278-79 (1983); see NRS 123.220.

[5]NRS 123.070. This court reviews a district court's interpretation of contracts de novo. NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 661 (2004).

Carrie desired to refinance the property. Upon completion of the refinancing, the existing promissory note executed by Glenn and Carrie and secured by a deed of trust would be satisfied in full, thereby extinguishing Glenn's liability.

It is clear from the acknowledgment that Glenn would receive what Carrie owed him "at the time of the entry of the final Decree of Divorce in this matter." The acknowledgement also states that Glenn "will be credited his equitable share of the community residence." We do not interpret these clauses together to mean that Glenn and Carrie were speculating on the future value of their residence. Rather, Glenn's equitable share of the residence was his consideration in July 2003 for the quitclaim deed; in this case, his consideration was the value of the residence, $280,000, less the mortgage, $170,000, and then divided in half, $55,000. Glenn would simply not receive the $55,000 until the divorce was finalized. Therefore, on remand, the district court should recalculate the assets each party receives, using a value of $280,000 for the residence.[6]

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[6]As both Glenn and Carrie acknowledge that the value of the home at the time of the quitclaim deed was $280,000, the additional documents to that effect that Carrie sought to introduce are moot and we do not address that argument. Similarly, while the district court did err in ordering more evidence to be presented, this contention is moot in light of our decision that Glenn's portion of the house should be valued at the time he quitclaimed his portion to Carrie.

Alimony

This court reviews a district court's decision to deny alimony for an abuse of discretion.[7] Rehabilitative alimony is awarded to allow one spouse to get an education or otherwise facilitate his or her entry into the workforce,[8] or if one spouse has legitimate prospects to upgrade his or her earning power to supplement income.[9]

In the present case, Carrie was employed as a nurse and was taking classes toward a bachelor's degree in nursing. However, at her job, there was no real prospective for job advancement. One of her motivations for taking the classes was to set an example for her older children. Under these circumstances, we cannot say that the district court abused its discretion in denying rehabilitative alimony.

Traditional alimony may be awarded to allow one spouse to maintain the standard of living he or she enjoyed during the marriage.[10] When awarding alimony, a court must consider the non-exclusive Buchanan v. Buchanan factors.[11] The district court considered these factors, noting that the disparity in income after child support was only $898, the home gave Carrie a tax advantage, and Carrie could find a full-

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[7]Gardner v. Gardner, 110 Nev. 1053, 1055-56, 881 P.2d 645, 646 (1994).

[8]NRS 125.150(8); Gardner, 110 Nev. at 1057-58, 881 P.2d at 647-48; Johnson v. Steel Incorporated, 94 Nev. 483, 486-89, 581 P.2d 860, 862-64 (1978), limited on other grounds by Heim v. Heim, 104 Nev. 605, 763 P.2d 678 (1988).

[9]See Johnson, 94 Nev. at 486-88, 581 P.2d at 862-63.

[10]Id.

[11]90 Nev. 209, 215, 523 P.2d 1, 5 (1974).

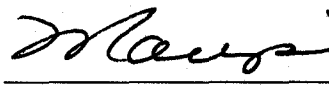
time job. Moreover, the disparity in incomes narrowed when Glenn's child support obligations increased in January 2005. The slight disparity in income between $6,053 and $5,165 per month is also similar to the difference in Gardner, $5,250 and $4,583 per month, where alimony was also denied. Therefore, we conclude that the district court did not abuse its discretion in denying alimony.

Attorney fees

Under NRS 125.150(3), the district court can award attorney fees to a party in a divorce. This court reviews the award of attorney fees in divorce proceedings for an abuse of discretion.[12] As the district court noted, the parties' assets were split equally and their incomes are similar. The cost of litigation equally impacts both Carrie and Glenn. Therefore, we conclude that the district court did not abuse its discretion when it refused to award attorney fees.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



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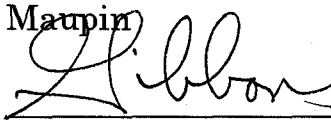

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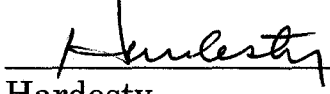

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[12]Sprenger v. Sprenger, 110 Nev. 855, 861, 878 P.2d 284, 288 (1994).

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Harris Merritt Chapman, Ltd.
Michael R. Pontoni
Clark County Clerk