IN THE SUPREME COURT OF THE STATE OF NEVADA

G & G PARTNERS, L.C.; RONALD N. GOLDBERG, M.D.; AND ROBERT A. GOLDBERG,
Appellants/Cross-Respondents,
vs.
EDELE LEE SINGER GOLDBERG,
Respondent/Cross-Appellant.

No. 33331

FILED

JAN 15 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY Richardson
CHIEF DEPUTY CLERK

G & G PARTNERS, L.C.; RONALD N. GOLDBERG, M.D.; AND ROBERT A. GOLDBERG,
Appellants,
vs.
EDELE LEE SINGER GOLDBERG,
Respondent.

No. 33880

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal and cross-appeal from a final judgment in consolidated cases challenging the district court's award in divorce and tort proceedings. Appellants G & G Partners, L.C., Ronald N. Goldberg, and Robert A. Goldberg challenge the district court's judgment on various grounds. We conclude that all of the appellants' contentions lack merit except one -- the district court erred in granting Edele Goldberg a personal judgment against Ronald and Robert. In addition, on cross-appeal Edele Goldberg challenges the district court's post-judgment order striking her post-judgment interest on the Incline Village home. We conclude that her contention lacks merit.

First, appellants Ronald and Robert contend that the district court erred in concluding that they owed Edele a fiduciary duty, and therefore, the district court erred in imposing personal judgment against

them. We conclude that the district court's finding that Ronald and Robert owed a duty to Edele is not supported by substantial evidence.[1] Thus, the district court's personal judgment award against Ronald and Robert was improper.

Second, appellants argue that the district court erred in concluding that G & G Partners was the alter ego of Philip Goldberg. Specifically, appellants contend that the alter ego theory was "totally unexpected" because it had not been originally pleaded, nor was it tried by express or implied consent as permitted by NRCP 15(b). This contention, however, was not raised to the district court and we will not consider it on appeal.[2] Moreover, appellants had an opportunity to raise the issue in their opposition to the proposed findings of fact and conclusions of law, but did not make the objection. In any event, we conclude that the appellants tried the alter ego theory by implied consent because Edele had referenced the theory in an early court document, argued the theory in opening argument, presented unobjected-to evidence to establish the theory at trial, and argued the theory in closing argument.

Third, appellants contend that the district court erred in denying their NRCP 60(b) motion to set aside the judgment in light of

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[1]See James Hardie Gypsum, Inc. v. Inquipco, 112 Nev. 1397, 1401, 929 P.2d 903, 906 (1996) (observing that findings of fact must be upheld if supported by substantial evidence, and may not be set aside unless clearly erroneous).

[2]See Borden v. Silver State Equipment, 100 Nev. 87, 89 n.1, 675 P.2d 995, 996 n.1 (1984) (noting that a failure to raise a contention to the district court precludes its review on appeal).

newly discovered evidence. We disagree and conclude that the district court did not abuse its discretion in denying appellants' motion.[3]

Finally, appellants contend that the district court erred in awarding Edele $100,000 in attorney fees against G & G. We disagree and conclude that the district court did not abuse its discretion in awarding attorney fees against G & G because the district court found that G & G was initiated, funded, and controlled by Philip, and thus was his alter ego.[4]

On cross-appeal, Edele Goldberg contends that the district court erred in striking her post-judgment interest on the award of half of the Incline Village home. We disagree and conclude that the district court properly struck Edele's post-judgment interest award regarding the home because Edele received half ownership in the home pursuant to the divorce action.

As an aside, we note that although the deed to the home names Ronald as the sole owner, the district court correctly awarded Edele half ownership in the home. It was uncontested at trial that the home was originally purchased by Philip and a friend. However, Edele contended at trial that regardless of Ronald being named in the deed, G & G, in fact, owned the home, its purchase having been funded by community property. Substantial evidence supports this contention, including the fact that the

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[3]See Union Petrochemical Corp. v. Scott, 96 Nev. 337, 338, 609 P.2d 323, 323 (1980) (reviewing the district court's decision of NRCP 60(b) motion under an abuse-of-discretion standard).

[4]See County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982) (reviewing the district court's award of attorney fees under an abuse-of-discretion standard).

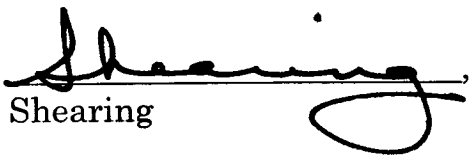
brothers could not produce evidence that they purchased the home from Philip and his friends with their own money; Philip testified at trial that Ronald owned the home "on behalf of G & G partnership"; the home was treated as a rental home owned by G & G for tax purposes; and G & G paid the mortgage, taxes, insurance and maintenance on the home. It is unclear from the district court's findings of fact and conclusions of law whether the district court found that the home was owned by G & G or was community property of Edele and Philip. However, it can be inferred that the district court found that it was a marital asset and awarded Edele half of this asset. We conclude that there is substantial evidence supporting this conclusion and it was not error for the district court to award Edele half ownership in the house.

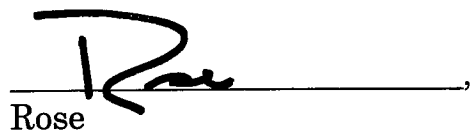
Notably, appellants argue that the district court's judgment results in a double recovery for Edele. Because we relieve appellants Ronald and Robert from personal judgment, we believe this overcomes any issue of double recovery. In any event, Edele is only entitled to one full recovery.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART and we AFFIRM the district court's

post-judgment order striking Edele's post-judgment interest.


Shearing, J.


Rose, J.


Becker, J.

cc: Hon. Peter I. Breen, District Judge
Beckley, Singleton, Chtd./Las Vegas
Kirton & McConkie
Lemons Grundy & Eisenberg
Washoe County Clerk