

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANIE O. ROMERO,
Appellant,
vs.
EDWARD M. ROMERO,
Respondent.

No. 45160

FILED

FEB 02 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

This is a proper person appeal from a decree of divorce characterizing certain real property as community property and a post-decree order dividing equity in that property. Eighth Judicial District Court, Family Court Division, Clark County; Lisa Brown, Judge. For the reasons stated below, we affirm the district court's orders.

Appellant Janie Romero and respondent Edward Romero married in 1997. Janie filed for divorce four years later in August of 2001. Because Edward wished to buy-out Janie's interest in the marital property, the district court entered an order, while the divorce proceedings remained pending, requiring Janie to move out of the marital residence by September 28, 2001 (2001 order).¹ Janie complied with the order and moved out of the marital residence. Sometime thereafter, Janie purchased a residence commonly known as 2907 Soda Creek Lane in Henderson, Nevada (Soda Creek Property) with no money down. She placed title to this property in her name only and used her employment earnings to

¹While the district court held a hearing regarding the marital residence on September 24, 2001, it did not file its order until November 19, 2001.

reduce the outstanding principal on the mortgage. The parties do not dispute that Edward never resided at the Soda Creek Property.

In 2005, some three and one-half years after the parties separated, the district court entered the decree of divorce,² in which the court characterized the Soda Creek Property as community property. In a subsequent order, the district court awarded Edward a one-half equity interest in the property. Janie contends that the district court erred by characterizing the Soda Creek Property as community property and subsequently awarding Edward a one-half equity interest in the property. We disagree.

Property acquired during marriage is presumed to be community property absent an explicit written or oral agreement between the parties or an order entered by the court.³ A spouse seeking to overcome the presumption of community property has the burden of establishing the separate character of the property by clear and convincing evidence.⁴ On appeal, this court will affirm a district court's rulings regarding the characterization and disposition of property in divorce proceedings if the rulings are supported by substantial evidence.⁵

²It appears from the record that both parties changed counsel several times delaying the dissolution of the marital bonds.

³NRS 123.220; Pryor v. Pryor, 103 Nev. 148, 734 P.2d 718 (1987).

⁴Pryor, 103 Nev. at 150, 734 P.2d at 719 (providing that clear and convincing evidence is required to overcome the presumption that property acquired during marriage is community property).

⁵Williams v. Waldman, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992).

Upon our review of Janie's opening brief and the record, we conclude that substantial evidence supports the district court's orders in this matter. While Janie purchased the property during the parties' separation, in Nevada, the separation of a husband and wife does not dissolve the community and does not alter the character of property acquired during the separation.⁶ As such, the Soda Creek Property is presumptively community property. Additionally, Janie used her employment earnings, which were community property during the marriage, to reduce the outstanding principal on the mortgage.

Going further, Janie failed to present clear and convincing evidence of an agreement between the parties transmuting this piece of community property into Janie's separate property. Specifically, while the 2001 order required Janie to move out of the marital residence, the order does not explicitly indicate that the parties agreed that any future real property purchases by Janie would be her separate property. Janie's only other evidence of a written agreement between the parties is a letter from Edward's attorney indicating that Edward sought revisions to a proposed divorce decree clarifying that Janie was "to receive" the Soda Creek

⁶Hybarger v. Hybarger, 103 Nev. 255, 737 P.2d 889 (1987); see also NRS 123.220. Pursuant to NRS 123.220(2), property acquired after entry of a decree of separate maintenance may be a spouse's separate property. While the 2001 order required the physical separation of the party, this fact alone does not make the 2001 order a decree of separate maintenance. Specifically, neither of the parties here sought a decree of separate maintenance nor does the 2001 order indicate that it is such a decree. As such, we construe the 2001 order as an agreement between the parties allowing Edward to buyout Janie's interest in the marital residence and retain this residence as his separate property.

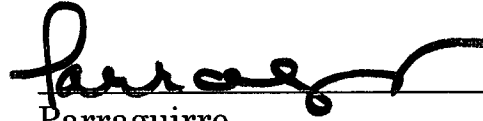
Property. The letter indicates that Edward wished to make this revision to ensure he incurred no liability in the Soda Creek Property. In the proceedings below, Edward argued that the letter was part of a settlement proposal which Janie rejected. Given the conflicting interpretations of this letter, and the lack of any other evidence of a written or oral agreement, we agree with the district court that Janie failed to rebut the community property presumption.⁷ Finally, we conclude that no compelling reasons warrant an unequal distribution of the Soda Creek Property.⁸

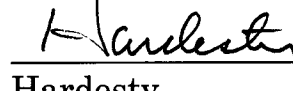
⁷Schreiber v. Schreiber, 99 Nev. 453, 455, 663 P.2d 1189, 1190 (1983) (providing that an oral agreement may be enforced if the party seeking enforcement establishes part performance of the contract or a basis for applying estoppel). We reject Janie's contention that her compliance with the 2001 order and acknowledgment of the letter from Edward's attorney satisfies the elements of estoppel.


⁸NRS 125.150(1)(b) (requiring the district court to make an equal distribution of community property in granting the divorce unless compelling reasons justify an unequal distribution). Delay in the dissolution of the marital bonds due to either party's difficulties with the attorneys involved in divorce proceedings is not a compelling reason to make an unequal distribution of community property in the case at bar.

Accordingly, we

ORDER the judgments of the district court AFFIRMED.⁹


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Lisa Brown, District Judge, Family Court Division
Janie O. Romero
Edward Romero
Eighth District Court Clerk

⁹We have considered Janie's other arguments on appeal and conclude that they are meritless. We do note, however, that the district court arguably erred by ordering Edward to be responsible for any debts incurred by him after the date of the parties' separation. Under Hybarger, debt acquired during the separation is still community debt. 103 Nev. 255, 737 P.2d 889. The district court must dispose of this debt equally unless the court sets forth compelling reasons in writing for making an unequal disposition. Here, the district court never set forth any compelling reasons. Regardless, since neither Janie nor Edward raised this as an issue on appeal, we will allow the court's ruling on this matter to stand. On July 11, 2005, we received appellant's proper person brief. We have considered the brief and direct the clerk of this court to file it.