

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDAL L. JACOBY,
Appellant,
vs.
ANN L. CASCARANO,
Respondent.

No. 45171

FILED

FEB 02 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting a final decree of divorce. Second Judicial District Court, Washoe County; Charles M. McGee, Judge.

In March 2005, the district court granted a final decree of divorce to appellant Randal L. Jacoby and respondent Ann L. Cascarano. In this appeal from that order, Jacoby argues that the district court erred when it apportioned his community property interest in a home located in Verdi, Nevada, and then awarded the home to Cascarano as her sole and separate property. More specifically, Jacoby argues that the district court erred when it failed to determine that a joint venture existed and that it improperly applied the community and separate property apportionment method set forth in Malmquist v. Malmquist.¹

Joint venture

A joint venture “is a contractual relationship in the nature of an informal partnership wherein two or more persons conduct some business enterprise, agreeing to share jointly, or in proportion to capital

¹106 Nev. 231, 792 P.2d 372 (1990).

contributed, in profits and losses.”² Whether a joint venture has been created depends on the evidence presented at trial. “Where the trial court, sitting without a jury, makes a determination predicated upon conflicting evidence, that determination will not be disturbed on appeal where supported by substantial evidence.”³ Accordingly, this court has stated that “[a] district court’s finding that the parties did not enter into an oral agreement will not be set aside if predicated upon conflicting evidence.”⁴

In this case, Cascarano testified that she never intended to enter into a joint venture with Jacoby. She also testified that she refinanced the property three times, which shows that she did not intend for Jacoby to have an ownership interest in the home. In contrast, Jacoby offered testimony that he and Cascarano had an oral agreement, under which he would provide the labor to improve the Verdi house and share in the profits after the house was sold. The district court determined that the evidence submitted at trial failed to demonstrate the specificity of any terms required for the creation of a joint venture. As this court has recognized, “[a] valid contract cannot exist when material terms are

²Radaker v. Scott, 109 Nev. 653, 658, 855 P.2d 1037, 1040 (1993) (quoting Bruttomesso v. Las Vegas Met. Police, 95 Nev. 151, 154, 591 P.2d 254, 256 (1979)).

³Barelli v. Barelli, 113 Nev. 873, 881, 944 P.2d 246, 250 (1997) (quoting Trident Construction v. West Electric, 105 Nev. 423, 427, 776 P.2d 1239, 1242 (1989)).

⁴Id.

lacking or are insufficiently certain and definite.”⁵ Because there is conflicting evidence in the record concerning the formation of a joint venture, and because no specific terms appear to show the existence of any joint venture contract, anyway, we will not disturb the district court’s determination on appeal.

The Malmquist apportionment method

“This court, in reviewing divorce proceedings on appeal, generally has upheld district courts’ rulings which are supported by substantial evidence and are otherwise free of a clear abuse of discretion.”⁶

In Malmquist, this court set forth the formula district courts should use to “apportion the community and separate property shares in the appreciation of a separate property residence obtained with a separate property loan prior to marriage.”⁷ A review of the record shows that the “starting” value assessed to the home was the only value within the Malmquist formula at issue in this case. However, the court used the \$405,000 figure argued by Jacoby as the best evidence of the acquisition price when it made its Malmquist calculations.

Jacoby argues that the district court used “insufficient evidence” when it apportioned the community and separate property. Additionally, Jacoby argues that the district court improperly applied the Malmquist formula. However, Jacoby failed to offer a different

⁵May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (“Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration.”).

⁶Kerley v. Kerley, 111 Nev. 462, 465, 893 P.2d 358, 360 (1995).

⁷106 Nev. at 238, 792 P.2d at 376.

apportionment for the district court to review. Jacoby also fails to point out exactly how the district court misapplied the Malmquist formula or what evidence it should have considered.⁸ A review of the record reveals that the district court did not abuse its discretion when it applied the Malmquist formula in this case.

Additionally, Jacoby argues that the district court improperly considered fraudulent and perjured testimony. This court has stated that “we will not reweigh the credibility of witnesses on appeal; that duty rests within the trier of fact’s sound discretion.”⁹ Therefore, we will not disturb the district court’s credibility determinations.

Finally, Jacoby contends that the district court impermissibly prevented him from presenting all of his witnesses at trial. “The decision whether to permit a witness to testify is within the sound discretion of the district court, and that determination will not be disturbed on appeal absent an abuse of discretion.”¹⁰ The district court permitted Jacoby to file a short brief setting forth the expected testimony of the excluded five witnesses and any pertinent differences between their expected testimony and the testimony of the four witnesses permitted at trial. We conclude that the district court did not abuse its discretion when it limited Jacoby

⁸Jacoby alleges that Cascarano placed the home on the market for \$1.2 million after the case was completed. However, this number does not reflect the actual sale price of the home, nor does it reflect the actual fair market value of the home at the time of appraisal, neither of which Jacoby provided.

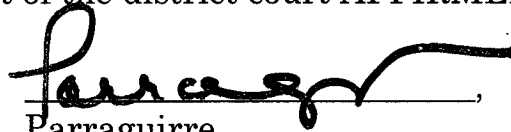
⁹Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004).

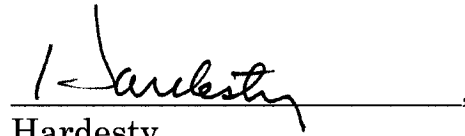
¹⁰Barry v. Lindner, 119 Nev. 661, 667, 75 P.3d 388, 392 (2003).

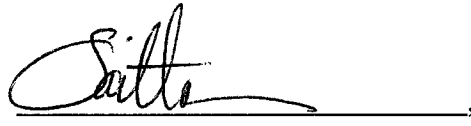
to four trial witnesses because the five other witnesses Jacoby planned to call during the trial were to present repetitious testimony.

Because the district court did not err or abuse its discretion,¹¹ we,

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Second Judicial District Court Dept. 2, District Judge
Randal L. Jacoby
Marilyn D. York
Washoe District Court Clerk

¹¹Jacoby also argues that the district court improperly required that the trial be completed in two days and postponed the second day of the trial for almost a month. However, Jacoby failed to show any prejudice, and we determine that these additional arguments are without merit.