

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL MOZEN,
Appellant,
vs.
LORNA FONTANA,
Respondent.

No. 45527

FILED

MAY 14 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order directing the sale of real property in a partition action. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant raises three issues on appeal that we will address: 1) that the district court abused its discretion in finding that an agreement existed between the parties to share the ownership of the house equally; 2) that appellant was prejudiced by the introduction into evidence of information concerning his association with an organization called Nevadans for Equal Parenting and his prior marriage; and 3) that the offer of judgment was ambiguous and cannot be the basis for an award of attorney fees and costs pursuant to NRCP 68. We reject each of these claims of error.

The district court found that the parties entered into an agreement to share ownership of the house equally before they purchased it, and this finding is supported by substantial evidence. Findings of fact made by the district court that are supported by substantial evidence will not be disturbed unless clearly erroneous.¹

Appellant cites the cases of Sack v. Tomlin² and Langevin v. York³ to support his position, but the district court correctly determined that these cases are distinguishable because there was no agreement to equally divide the house in the two cited cases, as there is in this case. The district court did not abuse its discretion in making this determination.⁴

¹Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1031, 923 P.2d 569, 573 (1996).

²110 Nev. 204, 871 P.2d 298 (1994).

³111 Nev. 1481, 907 P.2d 981 (1995).

⁴See May v. Anderson, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005) (providing that “the question of whether a contract exists is one of fact”); NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2005) (noting that this court reviews a district court’s factual determinations for an abuse of discretion and that factual determinations supported by substantial evidence are not an abuse of the district court’s discretion).

One of appellant's claims was that placing respondent's name on the deed as a joint tenant was a gift contingent on the parties' future marriage. To rebut this claim, respondent introduced evidence about appellant's prior marriage and the bitter custody battle that followed its dissolution. It also was shown that appellant was associated with an organization known as Nevadans for Equal Parenting that advocated for men's rights in divorce and custody proceedings. This evidence was relevant on the issue of whether appellant would ever marry again, and if the claimed contingent gift was really illusory. Further, the district court stated that the evidence of appellant's involvement with this organization and issue played no part in its decision. Appellant suffered no prejudice from the introduction of this evidence.⁵

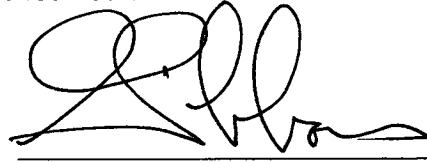
Respondent's offer of judgment stated that judgment could be entered to give appellant a sixty percent "ownership interest" in the house. In the context of a partition action and the facts of this case, the offer was

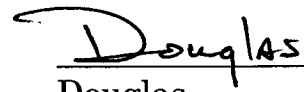
⁵See University & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 985, 103 P.3d 8, 16-17 (2005) (recognizing that the decision to admit relevant evidence is within the district court's sound discretion and will not be overturned unless the district court manifestly erred or abused its discretion).


sufficiently definitive and the exact division of proceeds could be ascertained with particularity when the house was sold.⁶

Accordingly, we affirm the district court's order.⁷

It is so ORDERED.⁸


_____, J.
Gibbons


_____, J.
Douglas


_____, Sr. J.
Rose

⁶See Stockton Kenworth v. Mentzer Detroit Diesel, 101 Nev. 400, 404, 705 P.2d 145, 148 (1985) (noting that an NRCP 68 offer of judgment must be “for a definite or ascertainable” amount).

⁷Having considered all the issues raised by appellant, we conclude that his remaining contentions are without merit.

⁸The Honorable Robert E. Rose, Senior Justice, participated in the decision of this matter under a general order of assignment entered on January 10, 2007.

cc: Hon. Steven R. Kosach, District Judge
Paul Mozen
Law Offices of Mark Wray
Washoe District Court Clerk