IN THE SUPREME COURT OF THE STATE OF NEVADA

GLORIA ANNE RODNEY, Appellant, vs. MICHAEL ANDREW RODNEY, Respondent.	No. 45706
MICHAEL ANDREW RODNEY, Appellant, vs. GLORIA ANNE RODNEY, Respondent.	No. 48003

FILED
MAY 07 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

These are consolidated appeals from a district court divorce decree and a post-judgment order denying a new trial, and an order, entered on limited remand, modifying the divorce decree as to spousal support. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie Jr., Judge.

Appellant/cross-respondent Gloria Rodney filed a complaint for divorce from respondent/cross-appellant Michael Rodney. Subsequently, the district court entered a divorce decree, awarding Gloria $45,000 as her portion of the equity in the marital residence and $600 per month in spousal support for two years.[1] Gloria appealed and while the appeal was pending before this court, Gloria moved for an order granting remand on the issue of an increase in spousal support. This court ordered

[1]The divorce decree contained numerous other provisions disposing of the parties' property, not at issue in this appeal.

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a limited remand under Huneycutt v. Huneycutt,[2] instructing the district court to consider Gloria's motion to modify the divorce decree as to spousal support.[3] On limited remand, the district court increased the award of spousal support to $1,100 per month for an indefinite duration. On appeal, Gloria argues that the district court abused its discretion by: (1) declaring the proceeds from refinancing the marital residence, $14,875.98, community property subject to equal division; (2) relying on an outdated appraisal to value the marital residence; and (3) denying Michael's motion for a continuance of trial. On cross-appeal, Michael argues that the district court abused its discretion by modifying the award of spousal support on remand. Because the parties are familiar with the facts, we will not recount them except as necessary for our disposition.

We review a district court's decision concerning a divorce proceeding for an abuse of discretion, and we will affirm the court's rulings regarding the disposition of property in such proceedings if supported by substantial evidence.[4] Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment.[5] In dividing community property, the district court must, to the extent practicable,

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[2]94 Nev. 79, 575 P.2d 585 (1978).

[3]Rodney v. Rodney, Docket No. 45706 (Order of Limited Remand, July 6, 2006).

[4]Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998).

[5]See Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999).

make an equal disposition of such property.[6] The district court is entitled to wide discretion in determining whether to grant spousal support and the amount thereof.[7] NRS 125.150(1)(a) authorizes the district court to award spousal support as is just and equitable. Finally, this court reviews district court decisions concerning motions for continuances for an abuse of discretion.[8]

First, Gloria argues that the district court abused its discretion by determining that the $14,875.98 that Gloria received from Michael pursuant to a refinance of the marital residence was community property subject to equal division. Gloria points to the existence of a typed agreement, signed by Michael, stating "I will not consider Metropolitan Bank Services, or the monies paid to Gloria Rodney as any part of any future settlement resulting from the divorce proceedings in progress." Gloria contends that the phrase "monies paid" refers to the $14,875.98. We reject Gloria's argument. Michael testified that he did not intend to gift the $14,875.98 to Gloria. Additionally, the language of the agreement is in the past tense, referring to monies already paid, and Gloria testified that she received the $14,875.98 after she signed the typed agreement. We conclude that substantial evidence supports the district court's decision that the $14,875.98 was community property subject to equal division.

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[6]NRS 125.150(1)(b).

[7]Fick v. Fick, 109 Nev. 458, 464, 851 P.2d 445, 450 (1993).

[8]Southern Pac. Transp. Co. v. Fitzgerald, 94 Nev. 241, 243, 577 P.2d 1234, 1235 (1978).

Gloria contends further that the district court abused its discretion by failing to equally divide the $14,875.98. We agree. The district court may make an unequal division of community property "in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition."[9] In this case, the district court determined that the parties' marital residence was valued at $360,000. The court subtracted the $252,000 mortgage on the residence from its $360,000 value and determined that Gloria was entitled to half of the remainder, or $54,000. The court then determined that the $14,875.98 was community property subject to equal division, but then awarded Gloria $7,000, subtracted that amount from the $54,000 and awarded Gloria a total of $45,000 in equity from the marital residence.[10] Gloria's community property share of the $14,875.98 is actually $7,437.99.

We conclude that the district court's error resulted in an unequal disposition and that the court did not make a finding of "compelling reasons" to justify its unequal disposition.[11] We therefore

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[9]NRS 125.150(1)(b).

[10]The district court's calculations appear to result from the use of rounded numerical values during the trial.

[11]See Putterman v. Putterman, 113 Nev. 606, 608, 939 P.2d 1047, 1048 (1997) (pursuant to the Legislature's 1993 amendment to NRS 125.150(1)(b), which altered the dispositional requirement from "'just and equitable'" to "equal," district courts are bound to make equal dispositions of community property). Courts may make an unequal disposition of community property only if they find "'compelling reasons'" to do so and make written findings setting forth those reasons. Id. at 607, 939 P.2d at 1047 (quoting NRS 125.150(1)(b)).

therefore reverse the district court's award to Gloria of $45,000 in equity from the marital residence. We remand this matter to the district court and instruct it to modify its divorce decree to reflect that Gloria is entitled to $46,562.01 in equity from the marital residence ($7,437.99, which represents her one-half share of the $14,875.98 subtracted from the $54,000, which represents her one-half share of the value of the marital residence).

Second, Gloria argues that the eight-month-old appraisal of the marital residence was "stale and inadequate" and that the district court abused its discretion by relying on it. We note initially that Gloria failed to cite to any legal authority in support of her contention. Regardless, we conclude that the district court did not abuse its discretion by relying on the appraisal because no evidence was submitted that it was inaccurate or otherwise untrustworthy.

Finally, Gloria argues that the district court abused its discretion by denying Michael's motion for a continuance to obtain a third appraisal.[11] We disagree. The district court explained the department's policy of disposing of divorce cases within one year, that two continuances had previously been granted, and that the case had been pending for thirteen months. Additionally, as discussed above, the court was in possession of an appraisal adequate for use in valuing the marital residence. Therefore, we conclude that the district court did not abuse its discretion by denying Michael's motion for a continuance.

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[11]Although Michael moved for the continuance, Gloria argued in favor of the motion.

On cross-appeal, Michael argues that the district court abused its discretion by modifying the spousal support award because it did so without conducting an evidentiary hearing, it substituted its findings of fact and conclusions of law for the trial judge's by increasing the duration, and not solely the amount, of the support obligation, and it did not require Gloria to prove by a preponderance of the evidence that a change in circumstances occurred that warranted the modification. We reject each of Michael's contentions.

The district court did not abuse its discretion by accepting affidavits from the parties in lieu of holding an evidentiary hearing on the motion to modify spousal support. At a July 19, 2006, hearing, the district court advised the parties that it was unable to set a hearing date before its modified order was due to this court because of scheduling conflicts between the parties. The district court's consideration of the parties' affidavits was an acceptable substitute for a formal evidentiary hearing in light of the 30-day deadline imposed by this court and the scheduling conflicts between the parties and the district court.

The district court did not abuse its discretion by increasing the duration and not solely the amount of spousal support. This court did not limit the district court to considering only the amount of spousal support on remand. The district court was therefore entitled to modify the support award as to duration or amount as it saw fit under the applicable law, and its decision to modify the duration as well as the amount of the obligation was not an inappropriate substitution of its judgment for the judgment exercised in granting the award in the original divorce decree.

Finally, the district court did not abuse its discretion by failing to require Gloria to establish a change in circumstances justifying the

increased award. Under NRS 125.150(7), the district court may modify non-accrued spousal support payments "upon a showing of changed circumstances." Among the factors appropriate for the district court's consideration when determining a proper support award are the earning capacity of each spouse and the district court's distribution of property, other than child support and alimony, to the spouse seeking alimony.[12] In the instant case, the district court specifically found, based on the affidavits submitted by the parties, that Gloria lost her job and was receiving unemployment, that Gloria's earning potential was inadequate to meet her needs, and that Michael had an increased ability to pay because he was no longer making Gloria's vehicle loan and insurance payments pursuant to the original divorce decree. The district court found that Gloria had established changed circumstances warranting the increased award.

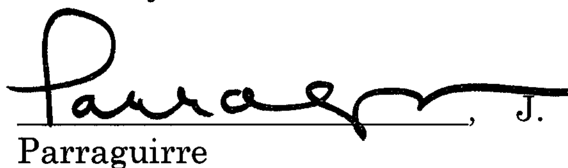
Accordingly, we affirm district court's divorce decree except as it relates to its award to Gloria of $45,000 in equity in the marital residence. On that issue, we reverse the district court and remand this matter for it to modify its divorce decree and award Gloria $46,562.01 in

[12]NRS 125.150(8)(e), (j).

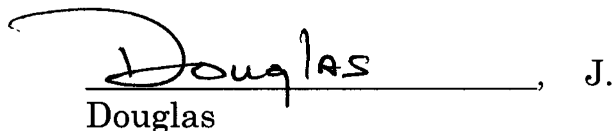
equity in the marital residence. Finally, we affirm the district court's post-judgment order denying a new trial and order, entered on limited remand, modifying the divorce decree as to spousal support.

It is so ORDERED.

_______________________, J.
Hardesty



_______________________, J.
Parraguirre



_______________________, J.
Douglas

cc: Hon. T. Arthur Ritchie Jr., District Judge Family Court Division
Carolyn Worrell, Settlement Judge
Graves & Leavitt
Michael H. Schwarz
Graves & Leavitt
Michael H. Schwarz
Eighth District Court Clerk