

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANICE KRYGIER,
Appellant,
vs.
WAYNE KRYGIER,
Respondent.

No. 47534

FILED

JUN 16 2009

TRACIE LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court amended divorce decree and post-judgment orders granting motions to amend. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie Jr., Judge.

On appeal, appellant Janice Krygier challenges the district court's division of community property. Specifically, she argues that the district court erred when it allowed respondent Wayne Krygier to make post-separation transfers of community property. Janice further argues that the district court erred when it offset the amount Wayne owed her to account for a debt that the parties owed their children. Finally, Janice contends that the district court erroneously adopted a post-divorce interest that is contrary to Nevada law. For the following reasons, we conclude that each of Janice's challenges fails. We therefore affirm the district court order. The parties are familiar with the facts, and we do not recount them here except as necessary to our disposition.

Standard of review

We review a district court's decision regarding divorce proceedings for an abuse of discretion. Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). We have stated that determining "the credibility of the witnesses and the weight to be given to their

testimony are matters within the discretion of the district court.” Id. Accordingly, we will not disturb a district court order supported by substantial evidence. Id. “Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment.” Id.

Valuation of post-separation transactions

Janice challenges the district court’s valuation of the community assets because she alleges it deprived her of approximately \$3 million. She also argues that the district court acted contrary to Nevada law when it allowed for the post-separation transfer of community assets by Wayne. Specifically, Janice claims that Wayne’s decision to form two entities (collectively, Krygier Developments) for the purpose of estate planning and his investment decision with regard to a parcel of land (the Shelbourne Property) were both done to purposely dilute her interests in the community estate. She contends that Wayne engaged in financial misconduct and committed waste. After a five-day trial, during which nine witnesses testified, the district court concluded that Janice’s arguments lacked merit. We agree.

NRS 125.150 requires the district court to equally distribute community assets unless it finds a compelling reason for an unequal distribution. We have held that financial misconduct is a compelling reason for unequal division of community property. Lofgren v. Lofgren, 112 Nev. 1282, 1283, 926 P.2d 296, 297 (1996). We have further clarified that a compelling reason is “negligent loss or destruction of community property, unauthorized gifts of community property and even, possibly, compensation for losses occasioned by marriage and its breakup.” Putterman v. Putterman, 113 Nev. 606, 608, 939 P.2d 1047, 1048 (1997).

In the instant case, the district court heard extensive testimony by the parties and their respective experts. Susan Bergstrom Gaub, an accountant, testified on behalf of Janice and presented a report to the court to supplement her testimony. Gaub reviewed internal documents of Krygier Developments, such as financial statements, general ledgers, receipts, bank statements, and memos, but did not value the Krygier estate. She did, however, offer testimony that Wayne had mismanaged the community estate by conducting himself in a manner that was detrimental to Janice.

Clifford Beadle, an accountant, testified on behalf of Wayne. Beadle testified that the type of development and investment that Wayne was involved in was high risk. Beadle testified that based on his analysis of the Krygier estate, the community interest in Krygier Developments was slightly more than \$10 million. Beadle further testified that the community would have a tax consequence of more than \$3 million in the event of a liquidation of Krygier Developments.

As to the Shelbourne Property, Janice offered evidence that the property increased in value between 2003 and 2004. She asserted that Wayne could have sold the property, so as to add to the value of their community estate. Further, Janice alleged that Wayne's decision not to sell resulted in his committing waste upon the community estate.

Wayne testified that he used one of his entities to enter into a purchase contract for the Shelbourne Property, and due to financial issues, he could not afford to exercise the purchase option on the Shelbourne Property without the help of outside investors. Wayne explained that was why he entered into a contract with an outside investor, transferring his interest in the property. However, Wayne also managed to secure an

investment interest in a condominium project located on the Shelbourne Property.

We determine that there is no evidence supporting Janice's allegations that Wayne engaged in financial misconduct and committed waste upon community assets. Rather, our review of the record shows that if Wayne had not obtained the help of outside investors to secure the purchase of the Shelbourne Property, the Krygier estate would have lost all benefits from the land deal because Wayne could not afford to close the deal by himself. By negotiating a deal with outside investors, Wayne secured an interest in a condominium project with potential for community reward. Janice's arguments for an unequal division of community property in her favor thus fail.

We further note that the district court carefully considered the evidence offered by both parties and their experts. This court has long recognized that the district court is in a better position to assess the credibility of a witness. State v. Rincon, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006). The district court found that Beadle's testimony was helpful in determining the valuation of the community assets, in light of the high risk involved with the type of business ventures undertaken by Wayne. It considered all of Wayne's post-separation business transactions in determining the valuation of the community property. Therefore, we conclude that the district court did not abuse its discretion in its valuation of the Krygier community estate.

Community debt owed to the Krygier children

Janice claims that the district court abused its discretion when it offset the amount Wayne owed her to make up for a debt that the district court found the community estate owed the three Krygier children. We disagree.

Beadle testified and offered evidence, in the form of a report and summary, showing that during the marriage, Janice and Wayne took approximately \$5 million from one of Wayne's entities, Kryfam. Beadle testified that this type of withdrawal was similar to a loan from a business entity to its owners, who have to pay it back. The Krygiers' three children each own a 16 percent interest in Kryfam. Accordingly, the district court found that the Krygiers would have to reconcile the so-called loan with their children at some date in the future and considered the "contingent liability" in reaching the net community value. In its divorce decree, the district court stated that the evidence presented regarding this issue was "sufficiently certain to warrant consideration in reaching the net community value of this marital estate."

Our review of the record indicates that the evidence presented at trial supported the district court's decision to treat the \$5 million that Janice and Wayne borrowed as a debt owed to Kryfam. See Waldman v. Waldman, 97 Nev. 546, 547, 635 P.2d 289, 290 (1981) (in concluding there was no community debt owed to respondent's parents, this court noted that there was no evidence presented to support such a finding). We, therefore, conclude that the district court did not abuse its discretion when it offset the amount the Krygiers borrowed from Kryfam from the total net worth of the business. In so doing, it allocated \$2.5 million to each of the Krygiers as community debt. This equal distribution of a community debt

was supported by the evidence presented at trial and was therefore well within the district court's discretion to distribute it as such.

Post-divorce interest rate

Janice claims that the district court abused its discretion when it (1) declined to reduce the equalization payment to a judgment for immediate payment and (2) imposed a 6 percent interest rate on the deferred equalization payments. We note, in making this claim, that Janice concedes there is no formal judgment. Yet, Janice bases her argument that the 6 percent interest rate was an abuse of discretion pursuant to NRS 17.130, the statute governing interest rates following the entry of a judgment.

Our review of the record indicates that the district court properly exercised its discretion in determining that an equalization payment plan was in the best interest of both parties. It found that Janice's share of the community property was almost \$6 million. The district court decided that an equalization payment plan, with a 6 percent interest rate, would result in Janice receiving in excess of \$25,000 a month; it would also allow Wayne to continue to operate his business ventures so that he could continue to pay Janice. In making its decision, the district court took into consideration the evidence presented at trial, the parties' living standards, and their respective ages, earning capacities, and educational backgrounds. See Rodriguez v. Rodriguez, 116 Nev. 993, 998, 13 P.3d 415, 418-19 (2000) (explaining the factors taken into consideration when determining an equitable alimony award as including the financial condition, earning capacity, ages, and health of the parties). Moreover, the district court retained jurisdiction over the spousal support issue until the full amount of approximately \$6 million is paid to Janice,

thereby protecting Janice in the event of unforeseen circumstances that could impair her ability to collect. Finally, as the equalization payment plan was not a judgment for immediate payment, we reject Janice's contention that the district court abused its discretion by not abiding by NRS 17.130. Therefore, we determine that the district court did not abuse its discretion in calculating the equalization payment plan and the interest rate applied thereto.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Pickering, J.
Pickering

¹The Honorable Mark Gibbons, Justice, voluntarily recused himself from participation in the decision of this matter.

cc: Hon. T. Arthur Ritchie Jr., District Judge, Family Court Division
Michael D. Davidson, Settlement Judge
Jones Vargas/Las Vegas
Lewis & Roca, LLP/Las Vegas
Eighth District Court Clerk