

IN THE SUPREME COURT OF THE STATE OF NEVADA

NOREEN L. STENNES,  
Appellant,  
vs.  
STEVEN L. STENNES,  
Respondent.

No. 50119

**FILED**

NOV 07 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART  
AND REMANDING

This is an appeal from a district court divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

In this appeal, we consider the district court's disposition of the parties' marital residence as community property and the court's determination of child support.

The parties were married in October 1995 and have a minor son. In 1998, the parties purchased a home in Las Vegas, Nevada, for \$101,850. In September 1999, respondent Steven Stennes was incarcerated on a sentence of 4 to 20 years for lewdness with a child under the age of 14. Following Steven's incarceration, appellant Noreen Stennes filed for bankruptcy. During Steven's incarceration, Noreen continued to make the monthly mortgage payment on the home, and as of November 2006, she had made 86 monthly mortgage payments totaling \$73,960. In 2003, the home was appraised at \$143,000. Three years later, in April 2006, at the height of the Las Vegas real estate boom, the home appraised for \$258,000.

In February 2003, Noreen filed a complaint for divorce. In her complaint, Noreen asked the court to award her child support and the marital residence. Specifically, Noreen requested that the district court find a compelling reason for an unequal distribution of the marital residence, which was community property, as Steven's intentional misconduct had resulted in adverse economic consequences for Noreen.

At a November 2006 hearing, in disposing of the Stennes's residence as community property, the district court calculated the equity in the home by subtracting the purchase price of the home, \$101,850, from the 2006 appraisal value of \$258,000. The court found that there was \$156,150 in equity in the property and deducted \$38,700, that being Steven's one-half share of the mortgage payments made by Noreen during his incarceration. The remaining equity in the home was \$117,450. The district court then awarded Steven half of that amount, \$58,725, as his share of equity in the home.

The court then subtracted a stipulated amount of \$24,000 for four years of child support arrearages from Steven's half of the equity, leaving Steven with \$34,725 in equity in the home. The court declined to set an amount for child support, stating that once Steven was on parole, his child support would "click back in immediately at \$100.00 per month without prejudice." The court then ordered Noreen to refinance the home and to send \$34,725, minus half of the appraisal and refinance costs, to Steven's prison account. These determinations by the district court were memorialized in the final divorce decree, from which Noreen appeals.

On appeal, Noreen argues that the district court abused its discretion in not finding a compelling reason for an unequal distribution of the community property and awarding her the marital residence in its

entirety, in using the 2006 appraisal to determine the equity in the home, in crediting Steven one-half of the mortgage payments made by Noreen while Steven was incarcerated, in subtracting Steven's child support arrearages of \$24,000 from his share of equity in the house rather than reducing the arrearages to judgment with statutory interest, and in not setting current child support. Having reviewed the record, we conclude that the district court abused its discretion in relying on the April 2006 appraisal of the home to determine its value, erred in its calculation of equity, and erred in not setting current child support. We affirm its division of the home's equity.<sup>1</sup>

This court reviews a district court's disposition of community property for an abuse of discretion.<sup>2</sup> On appeal, factual findings supported by substantial evidence will not be disturbed.<sup>3</sup>

Noreen first contends that the district court abused its discretion in not finding a compelling reason for an unequal distribution of the community property, as the district court did not award her the marital residence as she had requested. Under NRS 125.150(1)(b), the district court shall make an equal disposition of the parties' community property, "except that the court may make an unequal disposition of the

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<sup>1</sup>In light of this decision, we do not address appellant's argument that the district court abused its discretion in deducting the child support arrearages from Steven's share of the equity, rather than reducing it to judgment with statutory interest, as this determination is subject to change on remand.

<sup>2</sup>Wolff v. Wolff, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996).

<sup>3</sup>Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004).

community property. . . . if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition.”

Although the district court did not award Noreen the home in its entirety, the district court did make an unequal distribution of the community property, as it reduced Steven’s share of equity in the home by one-half of the mortgage payments made solely by Noreen after Steven’s incarceration. In the August 2007 decree of divorce, the district court set forth its reasons for reducing Steven’s share of the community property: “The Defendant was incarcerated in September of 1999. . . [H]is sentence is a 4 to 20 year sentence, during which time the Plaintiff is paying the mortgage which totals 86 months during which time the Defendant has not participated in the payment of the mortgage.” As the district court has “broad discretion in the distribution of community property,”<sup>4</sup> we conclude that the district court’s decision not to award Noreen the home in its entirety, but rather to make an unequal distribution of the equity in the home, was not an abuse of discretion and we affirm the decree in this regard.

Noreen next argues that the district court abused its discretion in using the 2006 appraisal to determine the equity in the marital residence. The district court was provided with two appraisals of the Stennes’s home. The 2003 appraisal valued the home at \$143,000. The 2006 appraisal valued the home at \$258,000. While the district court had discretion to use either of the appraisals,<sup>5</sup> it could not use an

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<sup>4</sup>Forrest v. Forrest, 99 Nev. 603, 606, 668 P.2d 275, 278 (1983).

<sup>5</sup>Id.

appraisal that, according to its own finding, inaccurately represented the value of the home at the time of the disposition. During the divorce proceeding, the district court stated, “If you were to get an appraisal today, sir, of the same location, I will guarantee you that it will be less than the 258 because appraisals—amounts are going down; they’re not going up.” However, the court then proceeded to use the 2006 appraisal of \$258,000 to determine the equity in the home. We conclude that using the \$258,000 figure was an abuse of discretion, as the district court had acknowledged that the home would no longer appraise for that value. Accordingly, we remand for the district court to recalculate the equity in the home using an appropriate appraisal value.

Also, in determining the equity in the Stennes’ home, the district court subtracted the purchase price of the home, \$101,850, from the 2006 appraisal value of \$258,000 to net \$156,150 in equity.<sup>6</sup> But the formula for determining equity in community property, where no separate property has been used to acquire or maintain the property, is the appraised value less the outstanding mortgage.<sup>7</sup> Because the district court subtracted the purchase price of the home, rather than the outstanding mortgage, from the appraisal value, the court erred in determining the equity in the home. Accordingly, we remand for the

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<sup>6</sup>The formula used by the district court, appraised value less purchase price, determines the appreciation of real property. See Black’s Law Dictionary 67 (Abr. 6th ed. 1991).

<sup>7</sup>Equity in real estate is equal to the difference between the fair market value and the debt against the property. Black’s Law Dictionary 374 (Abr. 6th ed. 1991).

district court to use the proper formula in order to calculate the equity in the Stennes's home.

Finally, Noreen argues that the district court abused its discretion in not setting current child support. A district court's award of child support is also reviewed for an abuse of discretion.<sup>8</sup> Nonetheless, "[a] district court has limited discretion to deviate from child support guidelines set forth in NRS 125B.070."<sup>9</sup> Any deviation from the statutory formula must be based upon the factors provided under NRS 125.080(9).<sup>10</sup>

During the hearing, the court reduced Steven's share of equity in the home by child support arrearages in the amount of \$24,000. The parties had stipulated that Steven owed \$24,000 for four years of child support arrearages. The court however, did not set a current amount for child support, explaining that once Steven was paroled, "child support will click back in immediately at \$100 a month without prejudice." The court then ordered the balance of Steven's equity in the home, \$34,725, to be sent to "his prisoner's account."

Under NRS 125B.080(4), the minimum amount of monthly child support that may be awarded by a court is \$100, unless the court makes a written finding that the obligor is unable to pay the minimum amount. In this case, the district court did not enter written findings that Steven was unable to pay this minimum amount. Rather, the court had

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<sup>8</sup>Anastassatos v. Anastassatos, 112 Nev. 317, 320, 913 P.2d 652, 654 (1996).

<sup>9</sup>Love. v. Love, 114 Nev. 572, 579, 959 P.2d 523, 528 (1998).

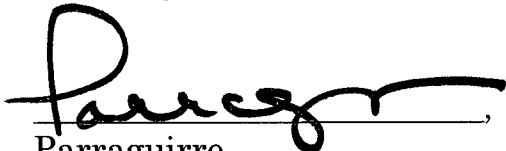
<sup>10</sup>Id.

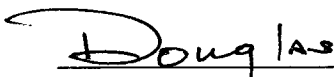
ordered that Noreeen send \$34,725, Steven's share of equity in the home as determined by the court, to his prison account. Steven therefore, while not currently working, had sufficient funds with which to pay child support. Because Steven had sufficient funds to pay child support and the district court made no written findings to the contrary, we conclude that the court abused its discretion in not setting current child support. Accordingly, we remand in order for the district court to properly determine child support.

Based on the above discussion, we affirm the district court's unequal distribution of the home's equity, and we reverse its calculation of equity, its determination of the marital home's value, and its decision not to award current child support. We remand this matter to the district court for further proceedings consistent with this order.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division  
Gayle F. Nathan  
Steven Leroy Stennes  
Eighth District Court Clerk