

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHANIE FELTON,
Appellant,
vs.
STEVEN FELTON,
Respondent.

No. 51442

FILED

FEB 25 2010

ORDER OF AFFIRMANCE

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

This is an appeal from a district court divorce decree. Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, Judge.

This case arises from a district court divorce decree ending the 12-year marriage of Stephanie and Steven Felton. The distribution of assets and apportionment of debt proceeded to a three-day trial. The district court awarded the marital residence and the couple's share in a tanning and salon business to Stephanie and the livestock business to Steven. Stephanie now appeals, arguing: (1) the district court abused its discretion by distributing community property unequally without stating compelling reasons, (2) substantial evidence did not support its conclusions regarding the value of certain assets, and (3) Stephanie was entitled to spousal support under statutory factors. We conclude: (1) that the district court distributed community property equally and that compelling reasons are unnecessary here; (2) that substantial evidence supports the district court's value regarding Felton Livestock, the alfalfa, and Electric Sun; and (3) that the refusal to award spousal support is supported by substantial evidence. Accordingly, we affirm the district court's divorce decree.

The parties are familiar with the facts and we do not recount them here except as necessary for our disposition.

DISCUSSION

I. Standard of review

A. Divorce proceedings

When considering divorce proceedings on appeal, this court generally upholds rulings of the district court supported by substantial evidence and free from abuse of discretion. Williams v. Waldman, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992). Substantial evidence is “more than a mere scintilla.” Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Edison Co. v. Labor Board, 305 U.S. 197, 229 (1938)). Substantial evidence has been defined as that which “a reasonable mind might accept as adequate to support a conclusion.” Id. (quoting Edison Co., 305 U.S. at 229). A determination by a trial court that is supported by substantial evidence should not be disturbed upon appeal. Williams, 108 Nev. at 471, 836 P.2d at 617.

B. Spousal support

In reviewing an award of spousal support, this court views the discretionary determination of the district court with deference. Gardner v. Gardner, 110 Nev. 1053, 1055, 881 P.2d 645, 646 (1994). This court withholds its power to modify or reverse absent an abuse of the trial court’s discretion evident in the record. Id. at 1056, 881 P.2d at 646.

II. The district court distributed the Feltons’ community property equally

After a three-day trial, the district court determined the value of the Feltons’ community assets and distributed those assets in order to achieve approximately equal equity for the parties. Rather than making a 50-50 division of the entire amount in equity, the district court allowed each party to retain an asset in its entirety. The district court awarded the marital residence and the 50-percent interest in Electric Sun to Stephanie and Felton Livestock to Steven. Stephanie contends that she

should have been awarded one half of the livestock, and the court's failure to do so made the distribution unequal. We disagree.

Distribution of Felton Livestock, marital residence, and Electric Sun

Under NRS 125.150(1)(b), the court shall, to the extent practicable, make an equal disposition of community property. If the disposition is unequal, the court must find a compelling reason to make such a disposition, and must state that reason in writing. *Id.* Here, the district court awarded Felton Livestock in its entirety to Steven, a lifelong rancher who had registered his livestock brand prior to marriage. The court awarded the marital residence to Stephanie, where she continued to live with the parties' two young children. The district court awarded Electric Sun, the tanning and salon business, to Stephanie who worked there and made substantial time investments to its success.

The district court made proper discretionary considerations regarding the value of each asset to the parties, though it did not divide the equity in half and then distribute it. The court heard testimony and considered the feasibility of awarding a portion of the livestock to Stephanie. After hearing Steven's testimony that Stephanie had no place to "run" the livestock and that the receipt of cattle already branded by respondent would create confusion over the ownership of the animals, the district court determined that awarding half the livestock to Stephanie would be impracticable. Substantial evidence supports the district court's determination, and we conclude the court distributed the assets equally.

III. Substantial evidence supports the district court's assignment of value for livestock, alfalfa, and Electric Sun

Findings of the district court must be supported by substantial evidence. *Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992). Stephanie argues that substantial evidence does not support the values assigned to the livestock, the alfalfa, and Electric Sun. We

conclude that substantial evidence supports the district court's values regarding these assets.

A. Livestock and alfalfa

The district court heard evidence from respondent and his business partner regarding the number of livestock owned and how to calculate their value. The district court found respondent's testimony persuasive, and used his figures of 100 cows, 50 heifers, and 120 to 130 calves to establish a value of \$133,000 for Steven's livestock.

"[J]udging the credibility of the witnesses and the weight to be given to their testimony are matters within the discretion of the district court." Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Here, the district court properly weighed the evidence, found Steven and his business partner to be credible witnesses, and determined value based upon their testimony. We conclude that substantial evidence supports the district court's value regarding the livestock.

Steven and his business partner also testified regarding the alfalfa that respondent cultivates to earn room and board on his partner's ranch property, and that Steven uses to feed his cattle. Both men testified that Steven does not receive money for the alfalfa he sells, but gives those profits to his partner. This testimony persuaded the district court that the alfalfa was not a community asset, but part of a business arrangement. The court deemed the alfalfa to have no value to the community and did not apportion it as an asset, stating that it would become a business expense of Felton Livestock if it were not available under this agreement. We conclude that substantial evidence supports the district court's removal of the alfalfa from the community asset tally.

B. Electric Sun

Stephanie testified regarding the debts and assets of Electric Sun, which currently earns \$8,700 per month from retail and tanning

services, and earns \$3,000 per month in rent income. Monthly debts of \$13,705 offset the business's earnings. On its most recent tax return, Electric Sun reported a loss of \$7,430 for yearly income. The district court indicated that it did not find Stephanie's testimony credible regarding the debts of Electric Sun and her desire to continue working there for \$1,000 a month. The district court determined its value to be \$100,000, and based on the parties' 50-percent ownership of the business, apportioned \$50,000 to Stephanie.

We conclude that substantial evidence from the record supports the assigned value of \$100,000 for Electric Sun. The court heard Stephanie's testimony regarding Electric Sun and its assets and debts and derived the \$100,000 value from appellant's continued participation in the endeavor together with the tax returns. Stephanie did not present expert testimony to calculate the value through a business appraisal. Therefore, we must presume the factual findings of the district court are correct.¹

IV. The district court properly denied alimony

The district court denied awarding alimony to Stephanie, and noted the parties' current disparity in income, but attributed this disparity to Stephanie's decision to continue working at Electric Sun for \$1,000 a month. Stephanie argues that she meets many of the statutory factors for an alimony award and the district court abused its discretion in denying her some form of spousal support. Stephanie contends she is legally entitled to alimony because she earned her bachelor's degree in accounting many years ago and has not worked as an accountant since early in the

¹See Hampton v. Washoe County, 99 Nev. 819, 821 n.1, 672 P.2d 640, 641 n.1 (1983) (providing that if the record is insufficient to allow review of the district court's decision, this court will presume the lower court acted correctly).

marriage, but sacrificed her career, education, and skills in order to raise the couple's two children. We disagree.

A. Statutory factors for alimony

Under NRS 125.150(1)(a), a court may award alimony to a husband or wife as appears just and equitable. NRS 125.150(8)(a)-(k) allows the court to consider a host of factors in deciding to award alimony, including but not limited to the financial condition of the parties, any individual property, the contribution of each spouse to property, the income, earning capacity, health, and age of the spouse, the duration of the marriage, the career before marriage of the receiving spouse, the standard of living during the marriage, any specialized education or training, contributions as a homemaker, the overall property award in the divorce, and the physical or mental condition of a spouse related to working.

The award of alimony should enable a spouse to live as nearly as possible to the station in life enjoyed before the divorce. Sprenger v. Sprenger, 110 Nev. 855, 860, 878 P.2d 284, 287 (1994). The court may award alimony "in order to satisfy the demands of justice and equity." Gardner v. Gardner, 110 Nev. 1053, 1057, 881 P.2d 645, 647 (1994).

Stephanie meets several of the statutory factors for considering alimony, such as a 12-year marriage to Steven, contributions as a homemaker, and a lowered standard of living after the marriage. But, we conclude that the district court did not abuse its discretion by refusing to award appellant standard alimony. We agree with the district court's distribution of assets and that any disparity of income between the parties was a result of appellant choosing to invest in Electric Sun.

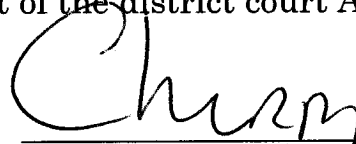
B. Statutory factors for rehabilitative alimony


The district court, in its discretion may also consider rehabilitative alimony, which allows for the spouse who helped facilitate

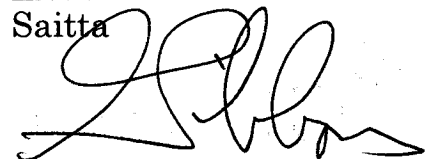
the other spouse's superior earning capacity to acquire or update skills in order to enter the labor market. Johnson v. Steel Incorporated, 94 Nev. 483, 486, 581 P.2d 860, 862 (1978). NRS 125.150(9)(a)-(b) allows the court to award alimony to a spouse for the purpose of obtaining education or training relating to a career, and allows the court to consider whether the spouse paying such alimony has obtained greater job skills during the marriage, and whether the spouse receiving alimony provided financial support to the other spouse while obtaining his or her education.

Stephanie has a superior education to her husband, with a bachelor's degree, a substitute-teaching license, and, at one time, a real estate license. Steven did not complete his college education and has been a rancher his entire life. Stephanie testified that she plans to continue working at Electric Sun for \$1,000 a month rather than pursue other, more lucrative, career options. Stephanie will not re-enter the workforce in any significant way, as she has worked at Electric Sun since 2005. Thus, she is not eligible to receive rehabilitative alimony from Steven. Accordingly we,

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Deborah Schumacher, District Judge, Family Court Division
Shawn B. Meador, Settlement Judge
Pederson & Kalter, P.C./Yerington
Kenneth J. McKenna
Washoe District Court Clerk