

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD DESPENZA,
Appellant,
vs.
GISELE DESPENZA,
Respondent.

No. 51736

FILED

NOV 06 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a district court divorce decree and post-judgment order denying appellant's motion for new trial, to alter or amend the judgment, or for NRCP 60(b) relief. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie Jr., Judge.

On appeal, appellant contends that the district court (1) failed to address all the issues that were presented at trial, (2) improperly prohibited him from presenting specific evidence, (3) abused its discretion in awarding spousal support, (4) failed to award appellant any offset for community funds that were purportedly wasted by respondent, (5) improperly held appellant responsible for the debt that respondent incurred after the parties' separation, and (6) improperly denied his request for a new trial based on respondent's counsel's alleged misconduct at trial and the alleged existence of new evidence.

Having reviewed the parties' appellate arguments and the appellate record, we conclude that none of appellant's arguments warrant reversal of the district court's judgment. Gepford v. Gepford, 116 Nev. 1033, 1036, 13 P.3d 47, 49 (2000) (explaining that a district court's factual findings will be upheld if supported by substantial

evidence in the record); Smith v. Smith, 102 Nev. 110, 716 P.2d 229 (1986) (explaining that this court will uphold the district court's order denying an NRCP 60(b) motion if there is substantial evidence in the record to support the decision).¹

First, to the extent that the district court's divorce decree does not specifically address all matters presented at trial, we determine that substantial evidence supports the district court's denial of appellant's requested relief. Cf. Bd. of Gallery of History v. Datecs Corp., 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (noting that the district court's failure to rule on a request constitutes a denial of the request). Here, the appellate record demonstrates that the district court considered all matters presented at trial. Second, we conclude that the district court did not abuse its discretion in prohibiting appellant from introducing specific evidence at trial. Grosjean v. Imperial Palace, 125 Nev. ___, ___, 212 P.3d 1068, ___ (2009) (providing that the district court's decision to exclude evidence is reviewed for an abuse of discretion). Third, the district court did not abuse its discretion in awarding respondent spousal support. Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998). Fourth, the district court's decision not to award appellant any offset for community funds expended by respondent is supported by substantial evidence. Id. (providing that this court will affirm the district court's rulings in divorce proceedings if supported by

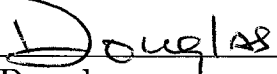
¹We note that although the district court incorrectly stated that appellant's motion for a new trial should be made to this court and not the trial court, the district court also found that appellant's motion had no merit. Thus, the district court's inaccurate statement does not warrant reversal of its denial of appellant's new trial motion.


substantial evidence). Fifth, the district court did not abuse its discretion in dividing the community debts between the parties, and its decision is supported by substantial evidence. Id. Sixth, we determine that the district court did not err in denying appellant's motion for a new trial, as appellant failed to object to the complained-of conduct and the unobjected-to alleged misconduct does not amount to plain error. Lioce v. Cohen, 124 Nev. 1, ___, 174 P.3d 970, 981-82 (2008). Finally, we conclude that the district court did not abuse its discretion in denying appellant's motion for a new trial based on the purported existence of newly discovered evidence. Allstate Insurance Co. v. Miller, 125 Nev. ___, ___, 212 P.3d 318, ___ (2009) (providing that the district court's denial of a motion for a new trial is reviewed for an abuse of discretion).

Based on the above discussion, we

ORDER the judgment of the district court AFFIRMED.²


Parraguirre, J.


Douglas, J.


Pickering, J.

²On September 14, 2009, respondent submitted a letter to this court addressing the merits of this appeal and requesting a decision in this appeal. Because respondent is represented by counsel, it was improper for her to communicate directly with this court. Further, as respondent presented information that is outside the district court record, we did not consider the September 14 letter in resolving the issues raised by appellant. Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981) (recognizing that this court will not consider any documentation not properly appearing in the district court record). Thus, we direct the clerk of this court to return, unfiled, respondent's September 14, 2009, letter.

cc: Hon. T. Arthur Ritchie Jr., District Judge, Family Court Division
Bowen Monson, LLC
Lizzie R. Hatcher
Eighth District Court Clerk