

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT N. SCHWEIGERT,  
Appellant,  
vs.  
CANDACE J. SCHWEIGERT,  
Respondent.

No. 51995

**FILED**

MAR 03 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court divorce decree. Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

Appellant Robert Schweigert assigns error to the district court's division of community property and argues that the district court abused its discretion when it awarded respondent Candace Schweigert her entire pension. He further assigns error to the district court's valuation of his business and argues that the district court erred in its division of the community debt by assigning him the outstanding balance on his truck.<sup>1</sup>

For the following reasons, we conclude that Robert's arguments are without merit and therefore affirm the district court's division of community property. The parties are familiar with the facts, and we do not recount them here except as necessary to our disposition.

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<sup>1</sup>Robert further assigns several other errors, without citing to any legal authority. This court need not consider arguments which do not cite to legal authority. Sengel v. IGT, 116 Nev. 565, 573, 2 P.3d 258, 263 (2000). Notwithstanding Sengel, we determine that the remaining assignments of error are without merit.

### Standard of review

This court will not interfere with a district court's disposition of community property or spousal support unless the entire record indicates that the district court abused its discretion. Shane v. Shane, 84 Nev. 20, 22, 435 P.2d 753, 755 (1968). "This court's rationale for not substituting its own judgment for that of the district court, absent an abuse of discretion, is that the district court has a better opportunity to observe parties and evaluate the situation." Wolff v. Wolff, 112 Nev. 1355, 1359, 929 P.2d 916, 919 (1996).

In reviewing the district court's determinations, this court looks at whether the district court considered all of the evidence presented and if it made a just and equitable division. Shane, 84 Nev. at 22, 435 P.2d at 755. An equitable division does not necessarily require an equal distribution of community property and debts. McNabney v. McNabney, 105 Nev. 652, 657-58, 782 P.2d 1291, 1294-95 (1989). The district court must look to the facts and decide each case on its merits. Id. at 657, 782 P.2d at 1294.

### Candace's pension fund and Robert's business

Robert argues that the district court abused its discretion when it awarded Candace her entire pension in lieu of spousal support because it found Robert's company, Intermountain Range Consultants (IRC), to be a lucrative business and awarded it, in its entirety, to Robert.

"Retirement benefits earned during a marriage are community property," even if the benefit has not vested. Gemma v. Gemma, 105 Nev. 458, 460-61, 778 P.2d 429, 430 (1989); see also Walsh v. Walsh, 103 Nev. 287, 288, 738 P.2d 117, 117 (1987). In Nevada, community property is to be divided equally, unless the district court finds a compelling reason to

make an unequal distribution and sets forth those reasons in writing. NRS 125.150(1)(b); see also Rodriguez v. Rodriguez, 116 Nev. 993, 997, 13 P.3d 415, 417 (2000). From the record, we conclude that the district court found, after careful consideration, a reason to deviate from the “equal distribution” mandate of NRS 125.150(1)(b) and instead used an “equitable” formula for distribution.

We have explained that an equitable division of community property does not necessarily require an equal distribution of community property. McNabney, 105 Nev. at 657-58, 782 P.2d at 1294-95. In addition, whether a retirement benefit should be divided equally depends on the circumstances of each case. See Hoyt v. Hoyt, 559 N.E.2d 1292, 1294-95 (Ohio 1990); Srinivasan v. Srinivasan, 396 S.E.2d 675, 678 (Va. Ct. App. 1990). In Srinivasan, the Virginia court of appeals was faced with a similar situation—the lower court had awarded the husband his entire pension plan. 396 S.E.2d at 678. In affirming, the Srinivasan court noted that

[w]hile the court was required to consider the pension as marital property, the judge was not required to award the wife any part of it so long as the overall distribution of the marital property was equitable. It is clear from the opinion of the trial judge that he considered the pension marital property but made provisions for the wife from marital property other than the pension.

Id. at 678-79. The court concluded that “[b]ecause of the unique circumstances of this case, we find no abuse of discretion in shaping this division of the marital property.” Id. at 678. The Ohio Supreme Court came to a similar conclusion in Hoyt, stating that

[t]he general rule is that pension or retirement benefits earned during the course of a marriage are marital assets and a factor to be considered

not only in the division of property, but also in relationship to an award of alimony. However, general rules cannot provide for every contingency and no specific rule can apply in every case. . . . [T]his court holds that when considering a fair and equitable distribution of pension or retirement benefits in a divorce, the trial court must apply its discretion based upon the circumstances of the case, the status of the parties, the nature, terms and conditions of the pension or retirement plan, and the reasonableness of the result . . . .

Hoyt, 559 N.E.2d at 1294-95 (footnotes omitted).

In the case before us, the district court made an equitable division of all the community assets, but declined to divide Candace's pension plan or Robert's business. Rather, it awarded Candace her pension plan and Robert his entire business, IRC. In its divorce decree, the district court set forth its reason for shaping the division of marital property in this manner by explaining that by awarding Robert IRC, it had awarded him "the ability to obtain substantial amounts from that business over the coming years." Accordingly, the district court found that dividing the community assets in such a manner would narrow any gap as to post-divorce earning capacities of the parties and would allow them to continue living in the manner that they enjoyed during the course of their marriage. We determine that in so doing, the district court acted within its discretion because it considered all of the evidence before it and made an equitable distribution.

Substantial evidence on the record supports a finding that awarding Candace her entire pension and Robert his entire business would result in a fair, just, and equitable division of marital property. While the exact value of IRC was disputed at trial, the district court averaged the business's worth at \$75,000, with substantial earning power

in the coming years. Michelle Salazar, a CPA, testified on behalf of Candace that IRC was worth \$75,000. Blair Mitchell, a CPA, testified on behalf of Robert and disagreed with that figure but did not conduct his own business valuation. Rather, Mitchell's testimony consisted of criticism of Salazar's business valuation—not his own research. More importantly, Mitchell testified that he agreed with Salazar's methodology. Further, Mitchell's valuation that IRC was worth approximately \$3,000 is inconsistent with Robert's own spreadsheet of IRC's gross and adjusted gross income. Robert's spreadsheet showed that the business grossed between \$150,000 to \$250,000 a year, with a net income ranging between \$50,000 to \$160,000. In addition, Robert testified that in 2007 alone, IRC grossed approximately \$212,700.

It is also important to note that the discrepancies that existed as to the expert witness testimony dealt with the adjustments—which, in turn, concerned business expenses. Robert's comingling of personal and business expenses contributed to the vast difference between the experts' figures (with Salazar estimating IRC's value at \$75,000 and Mitchell estimating it at \$3,000). An example of Robert's comingling was a trip to Singapore which he took with his girlfriend. Robert admitted using company credit cards during the trip and then listing those purchases as business expenses.

We therefore conclude that there was substantial evidence supporting the district court's valuation of Robert's business. We note the conflicting testimony but, in accordance with this court's long-standing tradition of not replacing its own judgment for the district court's decision, absent a palpable abuse of discretion, we do not overturn the district

court's findings. See, e.g., Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004).

Robert's truck

Robert next argues that the district court abused its discretion when it assigned to him the \$12,114 automobile loan due on his truck because the debt was incurred during the course of the marriage. We disagree.

Nevada's statutory scheme on community property is silent as to the division of community debt. However, in Wolff, this court implicitly held that community debt, like community property/assets, requires an equitable distribution. 112 Nev. 1355, 1361, 929 P.2d 916, 920 (1996) (citing to NRS 125.150(1)(b) in observing that the lower court mistakenly made an unequal distribution of a community debt). This court has further held that where a debt is incurred after separation and not for the benefit of the community, it is not a community debt for which both spouses are responsible. Barry v. Lindner, 119 Nev. 661, 671, 81 P.3d 537, 543 (2003).

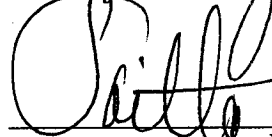
In the instant case, the Schweigerts separated in January 2005. More than a year later, in October of 2006, Robert purchased the truck because his former car was totaled in an accident. He received \$8,000 for the insurance payoff, all of which he used for operating expenses for IRC. He bought the new truck without a down payment and with a loan totaling approximately \$35,000. Whether he purchased the pickup to benefit the community is questionable, and not likely, since the couple had been officially separated for more than a year. In its division of community assets, the district court awarded the car and the outstanding balance of approximately \$12,000 to Robert. As noted in the divorce

decree, there was a difference of approximately \$5,000 in the division of community debts; however, since the district court assigned to Candace a community debt owed to a former attorney, the outcome was equitable. Accordingly, we determine that the district court did not abuse its discretion in awarding the truck and its corresponding automobile loan to Robert. We therefore

ORDER the judgment of the district court AFFIRMED.

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

Cherry

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

Saitta

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

Gibbons

cc: Hon. Richard Wagner, District Judge  
Carolyn Worrell, Settlement Judge  
Clarkson Law Office, Ltd.  
Jack T. Bullock II  
Humboldt County Clerk