

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGEL LEA CHIPMAN F/K/A ANGEL
LEA BURTON,
Appellant,
vs.
WILLIE C. BURTON,
Respondent.

No. 54194

FILED

JAN 18 2011

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court divorce decree. Eighth Judicial District Court, Clark County; Jack B. Ames, Senior Judge.

This court will generally uphold a district court's ruling in a divorce proceeding if it is "supported by substantial evidence and . . . otherwise free of a plainly appearing abuse of discretion." Williams v. Waldman, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992). Moreover, as long as the decision is supported by substantial evidence, this court will not overturn a district court's decision that is based on conflicting evidence. Id.

Initially, the district court did not abuse its discretion by concluding that the real property respondent inherited from his mother was his separate property because there was no evidence that community money was used to reduce the principal on the mortgage that was on the property at the time of the inheritance. See NRS 123.130(2) (explaining that property acquired by a husband by descent is his separate property); see also Verheyden v. Verheyden, 104 Nev. 342, 344, 757 P.2d 1328, 1330 (1988) (holding that where there was no evidence that community funds

were used to reduce a mortgage on separate property, the property maintained its separate nature). Additionally, as to respondent's current home, the district court did not abuse its discretion by ruling that there was no equitable interest to be divided, given that the evidence established that respondent owes more on the property than it is worth.

With regard to the parties' marital home, the evidence showed that the mortgage on the property was paid with community funds. Moreover, the letter from respondent referring to the home as appellant's house was not clear and convincing evidence of the parties' intent to treat the house as appellant's separate property, and thus, the district court did not abuse its discretion by concluding that the marital home was community property. See Forrest v. Forrest, 99 Nev. 602, 604-05, 668 P.2d 275, 277 (1983) (recognizing the presumption that all property acquired after marriage is community property and stating that the presumption may only be overcome by clear and convincing evidence). In light of the fact that none of appellant's trial evidence supported her claim that she paid community expenses with the proceeds of the marital home's sale, the district court did not abuse its discretion by concluding that those proceeds were community property to be split by the parties. See id.

Next, the district court did not abuse its discretion by including the parties' daughter's car in appellant's property because there was testimony that the car was titled in appellant's name and available for her use. Moreover, despite appellant's allegations that respondent was hiding assets by titling them in his current girlfriend's name, appellant did not present evidence of additional assets allegedly held by respondent that were not disclosed in his affidavit of financial condition and at trial.

Accordingly, the district court did not plainly abuse its discretion as to the property distribution. See Williams, 108 Nev. at 471, 836 P.2d at 617.

As to spousal support, the district court specifically considered the relevant factors, including the facts that appellant had sustained an injury that prevented her from returning to her former work, but that she had supported herself during a substantial portion of the marriage, possessed the skills and ability to work in an office environment while she was going to school, and would be able to earn a significant income once she completed school. See Rodriguez v. Rodriguez, 116 Nev. 993, 998-99, 13 P.3d 415, 418-19 (2000) (discussing the factors to be considered when fashioning a spousal support award). In addition, appellant testified that she was registered as a senior and would be able to earn her bachelor's degree by December 2010 if she continued going to school full time. Accordingly, the district court did not abuse its discretion by concluding that \$500 per month was a reasonable award under the circumstances or by declining to provide appellant spousal support beyond December 2010.

Appellant also contends that the district court failed to consider her motion for attorney fees. As she notes, however, the court granted attorney fees to her counsel. To the extent that appellant argues that the court should have awarded attorney fees directly to her for the time that she represented herself, a proper person litigant is not entitled to recover attorney fees. See Settelmeyer & Sons v. Smith & Harmer, 124 Nev. 1206, 1220, 197 P.3d 1051, 1060 (2008) (holding that a proper person litigant may not recover attorney fees).

Appellant next argues that the district court failed to sanction respondent for discovery violations. The only time the issue was raised by appellant's counsel at trial, counsel argued that one of respondent's

exhibits should have been excluded as a sanction for respondent's failure to comply with appellant's discovery requests. The record shows, however, that respondent had produced that exhibit in response to discovery requests. Thus, although the district court never specifically ruled on the request for discovery sanctions,¹ the implicit denial was not an abuse of discretion. See 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); see also Banks v. Sunrise Hospital, 120 Nev. 822, 830, 102 P.3d 52, 58 (2004) (stating that the district court's decisions as to discovery sanctions are reviewed for an abuse of discretion).

As to the argument that respondent failed to answer appellant's counterclaim for divorce, appellant has not explained how she was aggrieved by respondent's failure to file an answer. Given that the district court granted the parties a divorce, rather than the annulment respondent sought in his original claim, appellant was not prejudiced by the lack of an answer. See NRCP 61 (stating that courts must disregard any error that does not affect the parties' substantial rights).

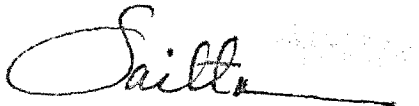
Finally, appellant did not argue at trial that respondent should be required to reimburse her for out-of-pocket medical expenses paid as a result of her removal from respondent's insurance. Accordingly, appellant may not raise this argument on appeal. See Mason v. Cuisenaire, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006) (explaining that

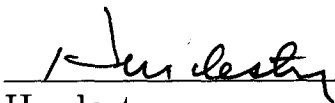
¹The district court allowed the exhibit to be admitted but noted that it would look into appellant's claim that respondent failed to comply with appellant's discovery requests.

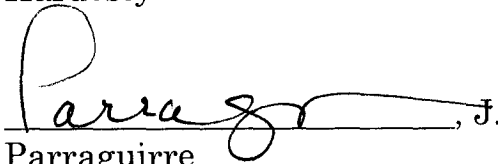
failure to raise an argument in the district court generally precludes a party from raising it on appeal).

For the reasons discussed above, we conclude that the district court did not abuse its discretion in the divorce decree. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Chief Judge, Eighth Judicial District Court
Hon. Jack B. Ames, Senior Judge
Carolyn Worrell, Settlement Judge
Angel Lea Chipman
Kirk-Hughes & Associates
Eighth District Court Clerk