IN THE SUPREME COURT OF THE STATE OF NEVADA

JACQUELINE B. CARMAN,
Appellant,
vs.
MICHAEL P. CARMAN,
Respondent.

No. 57148

FILED

DEC 21 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
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, Clark County; Cynthia N. Giuliani, Judge.

Appellant Jacqueline Carman, a licensed Nevada attorney who represents herself in this appeal, challenges the district court divorce decree as to alimony, child support, attorney fees, and the distribution of certain assets and debt. For the reasons set forth below, we affirm the divorce decree in part, but reverse and remand the portions of the decree regarding division of respondent Michael Carmen's profit-sharing plan and the community HOA dues. Because the parties are familiar with the facts and procedural history of this case, we do not recount them further except as necessary for our disposition.

The district court acted within its discretion in awarding alimony

In reviewing an alimony award, this court will uphold the district court's award absent an abuse of discretion. Shane v. Shane, 84 Nev. 20, 22, 435 P.2d 753, 755 (1968). NRS 125.150(1)(a) authorizes the district court to award spousal support as "appears just and equitable." In determining whether to award alimony and the amount of such award, the district court must consider (1) each spouse's financial condition, (2) the value of each spouse's property, (3) each spouse's contribution to the other spouse's property, (4) the marriage's duration, (5) each spouse's abilities,

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(6) the standard of living during marriage, (7) the alimony recipient's career before marriage, (8) the existence of specialized training, (9) either spouse's contribution as a homemaker, (10) the distribution of property, and (11) the physical and mental condition of the spouses. NRS 125.150(8).

The divorce decree notes both parties' incomes and the fact that both parties are attorneys. The district court also acknowledged that Jacqueline has an LLM degree, and that taxes, child support, social security, and Medicare deductions significantly reduce Michael's gross monthly income. After examining the NRS 125.150 factors, the district court found that $450 a month for four years was sufficient alimony for Jacqueline given the net incomes of the parties after considering child support.

Jacqueline raises several issues as to the district court's calculation of income relating to taxes, PERS benefits, social security, and Michael's profit-sharing plan.[1] However, the district court did not abuse its discretion in its consideration of these issues and committed no errors in calculation.

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[1]Jacqueline also contends the district court abused its discretion in determining Michael's income because it did not review pay stubs. We disagree.

Jacqueline had the opportunity to cross-examine Michael at trial regarding his income. Furthermore, Michael provided the district court with testimony and financial disclosure forms demonstrating his income. The record also indicates that Michael does not receive pay stubs from his employer. Thus, we conclude that the district court did not abuse its discretion in determining Michael's income.

Given that the district court considered the NRS 125.150 factors, and that both Michael and Jacqueline are attorneys with the ability to support themselves, we conclude that the district court did not abuse its discretion in determining alimony.

The district court acted within its discretion in awarding child support

Child support matters "rest in the sound discretion of the trial court." Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Further, when a district court sits without a jury and "makes a determination predicated upon conflicting evidence, that determination will not be disturbed on appeal where supported by substantial evidence." Hall v. SSF, Inc., 112 Nev. 1384, 1389, 930 P.2d 94, 97 (1996) (citation omitted). When parents equally share custody, the district court must "[c]alculate the appropriate percentage of gross income for each parent; subtract the difference between the two and require the parent with the higher income to pay the parent with the lower income that difference." Wright v. Osburn, 114 Nev. 1367, 1369, 970 P.2d 1071, 1072 (1998). Under NRS 125B.070(1)(b)(2), for two children, each parent must contribute 25 percent of his or her gross monthly income. Jacqueline argues the district court abused its discretion in the amount of child support awarded.

The record shows that at trial, testimony was given that Michael's yearly gross income is $160,000 and that Jacqueline's yearly gross income is $85,000. The record indicates that the district court made the correct calculations when it ordered Michael to pay $1,562.50 per month to Jacqueline in child support, and therefore, the district court did not abuse its discretion.

The district court acted within its discretion in denying Jacqueline's request for attorney fees

This court reviews the district court's award of attorney fees for abuse of discretion. Miller v. Wilfong, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). Under NRS 125.150(3), a district court may award attorney fees to either party in a divorce proceeding. In Wright, this court noted that disparity in income is a factor to consider in awarding attorney fees. 114 Nev. at 1370, 970 P.2d at 1073. Jacqueline claims that the district court abused its discretion by not awarding attorney fees.

Here, the district court's decision not to award attorney fees was not an abuse of discretion because it found little disparity in the incomes of the parties after taxes, Medicare, social security, and child support payments. Further, the court concluded that Jacqueline had the ability to pay her incurred fees.

The district court acted within its discretion in dividing the community assets and debts, except for Michael's profit-sharing plan and the HOA dues

Jacqueline contends that the district court did not properly divide the home and mortgage,[2] the cars and associated loans, the credit card debt, her Public Employee Retirement System (PERS) account, Michael's profit-sharing plan, and the HOA dues.

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[2]Jacqueline argues that the district court erred in failing to offset the mortgage debt with other property. We disagree. Jacqueline requested exclusive possession of the marital home. She contended that she negotiated a reduction in the mortgage payments. Given that Jacqueline received sole possession of the home, assigning the debt associated with the home to Jacqueline did not cause an unequal distribution of debts. Thus, we conclude that the district court did not abuse its discretion in assigning the home and its associated debt to Jacqueline.

Under NRS 125.150(1)(b), a district court "[s]hall, to the extent practicable, make an equal disposition of the community property of the parties." However, if the district court finds a compelling reason to make an unequal disposition, it must set "forth in writing the reasons for making the unequal disposition." NRS 125.150(1)(b); see also Shane, 84 Nev. at 22, 435 P.2d at 755 (reviewing the district court's disposition of community property for an abuse of discretion).

Given the record on appeal, we conclude that the district court did not abuse its discretion and to the extent practicable, made equal dispositions in dividing the home and mortgage, the cars and associated loans, the credit card debt, and Jacqueline's PERS account. However, we further conclude that the district court abused its discretion in its disposition of Michael's profit-sharing plan and the HOA dues' debt. We address these two issues in turn.

Michael's profit-sharing plan

Jacqueline argues that the district court failed to divide Michael's profit-sharing plan in accordance with Fondi and Gemma. We agree.

In general, "retirement benefits are divisible as community property to the extent that they are based on services performed during the marriage, whether or not the benefits are presently payable." Forrest v. Forrest, 99 Nev. 602, 607, 668 P.2d 275, 279 (1983). The district court ordered that Jacqueline receive one-half of Michael's profit-sharing plan as of February 4, 2010. Under the time rule, however, the district court should have included a fraction which represents the community interest in Michael's profit-sharing plan. Fondi v. Fondi, 106 Nev. 856, 859, 802 P.2d 1264, 1265-66 (1990) (citing Gemma v. Gemma, 105 Nev. 458, 462-66, 778 P.2d 429, 432 (1989)). The numerator of this fraction is the time the

parties were married, and the denominator is the total time Michael must work before receiving his full profit-sharing benefits. Fondi, 106 Nev. at 859, 802 P.2d at 1265-66 (citing Gemma, 105 Nev. at 461, 778 P.2d at 431). We use the time rule because "the community share is directly proportionate to the amount of 'time' the parties were married." Fondi, 106 Nev. at 859, 802 P.2d at 1266. This calculation is necessary to adequately prepare a qualified domestic relations order (QDRO). Therefore, we conclude the district court abused its discretion in dividing Michael's profit-sharing plan without including the required time-rule calculation pursuant to Fondi and Gemma.[3]

HOA dues

Jacqueline contends that the district court abused its discretion in requiring Michael to pay half of the HOA dues from the date of separation, rather than the date of the divorce decree. We agree.

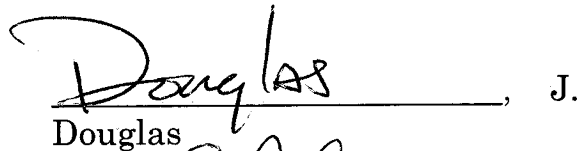
The district court ordered the parties to equally divide the HOA debt incurred prior to April 5, 2009, the date of separation. All property (including debt), however, acquired by the parties during the marriage is community property until the formal dissolution of the marriage. Forrest, 99 Nev. at 607, 668 P.2d at 279. As such, the district court should have ordered the parties to divide the HOA debt incurred

[3]To the extent that the district court did not set forth the factional calculation for the division of Jacqueline's PERS account, it did indicate that the division of her pension would be based on the Fondi and Gemma time rule calculation, and thus, the district court did not abuse its discretion as to the division of Jacqueline's PERS pension. When the parties prepare the QDRO for Jacqueline's PERS pension, we presume that the Fondi and Gemma time rule calculation will be applied. In addition, on remand, either party is free to request that the district court retain jurisdiction over the pensions.

prior to the divorce decree, which was February 4, 2010. Therefore, we conclude the district court abused its discretion in dividing the HOA dues from the date of separation, rather than the date of the formal dissolution of the marriage.

Because the district court abused its discretion as to the division of Michael's profit-sharing plan and the HOA dues' debt, we reverse those portions of the divorce decree and we remand these matters to the district court for the additional proceedings in accordance with this order. We affirm the remaining portions of the divorce decree.[4]

It is so ORDERED.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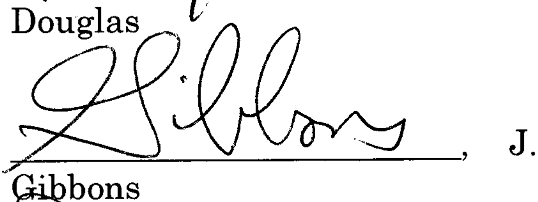
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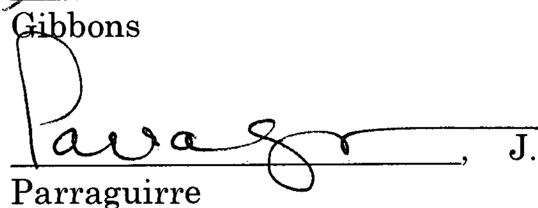
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cc: Hon. Cynthia N. Giuliani, District Judge
Jacqueline Carman
Pecos Law Group
Eighth District Court Clerk

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[4]We have considered Jacqueline's remaining arguments and conclude that they do not warrant reversing the divorce decree.