IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY R. SMITH,

Appellant,

vs.

KRISTI SMITH,

Respondent.

No. 35275

FILED

DEC 17 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART AND REMANDING

This is an appeal from a decree of divorce. The parties were married on April 9, 1990. They have one minor child born July 1, 1994 who suffers from significant health problems related to premature birth.

Appellant Timothy R. Smith filed for divorce on August 4, 1997. Timothy's attorney withdrew during the discovery process. Thereafter, on January 13, 1998, respondent Kristi Smith filed a motion for temporary custody, child support and attorney fees. The district court granted her motion, awarding her custody, temporary child support in the amount of $500.00 per month, and temporary spousal support in the amount of $500.00 per month.

In addition, Kristi served requests for admissions on Timothy on January 14, 1998. Kristi mailed a letter to Timothy on March 12, 1998, indicating that she had not received objections to the requests for admissions and that all matters therein would therefore be deemed admitted. Among the requests for admissions were allegations of domestic violence perpetrated by Timothy against Kristi during their marriage.

On January 27, 1999, Timothy (now represented by new counsel) filed a motion for leave to answer the requests for admissions. The district court denied Timothy's motion for leave to answer the requests for admissions. The district court concluded that the delays resulting from the changes in attorneys did not excuse Timothy's failure to timely answer pursuant to NRCP 36(a) and (b).

In the final decree of divorce, the district court awarded Kristi sole legal and physical custody of the child, reduced Timothy's child

support obligation to $375.00 based upon his current earnings and other family obligations, and reduced Timothy's spousal support obligation to $275.00 per month.

Timothy first contends that the district court erred when it denied his motion for leave to reply to the requests for admissions. This court has concluded that when a demand is made on a party for admissions of facts and that party fails to respond to the request, matters contained therein are deemed admitted.[1] The district court has discretion "with respect to accepting as true a request for admission to which a late response is filed."[2] Moreover, the purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications," not crucial facts central to the lawsuit or legal concessions.[3] However, an objectionable request is still deemed admitted "if a party fails to object and fails to respond to the request."[4]

After fully reviewing the record, we conclude that the district court did not abuse its discretion in denying appellant's motion for leave to reply to the requests for admissions. While the end result may seem harsh, NRCP 36 clearly provides that an untimely response results in admissions being deemed admitted. Moreover, the record reflects that the district court independently analyzed each of the issues deemed admitted, including the allegations of domestic violence. Thus, it appears that very little of the district court's decisions stem solely from the actual admissions.

Additionally, Timothy contends that the district court erred in setting child support and spousal support awards. However, Timothy fails to offer any argument or legal authority on these issues. On January 13, 1998, the district court awarded Kristi temporary child support in the amount of $500.00 per month and spousal support in the amount of

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[1]Smith v. Emery, 109 Nev. 737, 742-43, 856 P.2d 1386, 1389 (1993); Woods v. Label Investment Corp., 107 Nev. 419, 425, 812 P.2d 1293, 1297 (1991) (citing Dzack v. Marshall, 80 Nev. 345, 393 P.2d 610 (1964)); see also NRCP 36.

[2]Woods, 107 Nev. at 425, 812 P.2d at 1297.

[3]Smith, 109 Nev. at 742, 856 P.2d at 1389 (citing Morgan v. Demille, 106 Nev. 671, 675-76, 799 P.2d 561, 564 (1990)).

[4]Id.

$500.00 per month. In November 4, 1999, after making specific findings of fact and conclusions of law, the district court reduced Timothy's child support obligation to $375.00 per month and his spousal support obligation to $275.00 per month.

As a general rule, this court need not consider conclusory arguments unsupported by any legal authority.[5] The district court has discretion in setting child support awards, but in doing so, it must act within the confines of the statutory scheme.[6] In particular, NRS 125B.080 allows the district court to deviate from the statutory formula set forth in NRS 125B.070 if it specifically finds facts justifying a deviation.[7] Further, NRS 125.150(1)(a) provides that a district court granting a divorce may award such spousal support as appears just and equitable. Therefore, district courts enjoy wide discretion in determining whether to grant spousal support and, if so, in what amount.[8]

We note that the district court reduced appellant's child support from $500.00 per month to $375.00 per month after making specific findings of fact that Timothy's current income and other familial obligations (i.e., the birth of another child and assuming responsibility for two step-children) warranted a reduction. Further, we note that the district court reduced Timothy's spousal support from $500.00 per month to $275.00 per month after finding that he was receiving reduced wages, disability income due to an automobile accident, and incurring additional family obligations with his new family. In addition to reviewing the statutory formula and making specific findings of fact, the district court also concluded that Timothy was willfully under-employed. We conclude that substantial evidence existed to support these findings and that the district court did not abuse its discretion in this matter.

Timothy next contends that the district court erred in determining that certain cash proceeds received by the Smiths during the marriage were gifts rather than loans. The district court concluded,

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[5]SIIS v. Buckley, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984).

[6]Jackson v. Jackson, 111 Nev. 1551, 1553, 907 P.2d 990, 991 (1995).

[7]NRS 125B.080(9).

[8]See Fick v. Fick, 109 Nev. 458, 464, 851 P.2d 445, 450 (1993).

pursuant to Todkill v. Todkill,[9] that the parties received cash gifts in the amount of $6,000.00 (i.e., $4,000.00 and $2,000.00) rather than personal loans from Timothy's parents.

Timothy and Kristi sold a mobile home that was awarded to Timothy from a prior divorce. Shortly thereafter, in October, 1996, they used the proceeds from that sale to purchase a used mobile home, a 1982 Nashua, that was to be used as the family residence. Timothy's mother wrote a check to the title company in the amount of $4,000.00 as Timothy and Kristi did not have sufficient funds to complete the sale on their own. During trial, both Timothy and Kristi testified that several payments were made to Timothy's mother against the $4,000.00. Timothy testified that on April 27, 1997, he turned the 1982 Nashua mobile home over to his parents to cancel any remaining debt owed to his mother. On August 4, 1997, Timothy filed for divorce. However, it wasn't until November 18, 1997, that Timothy executed issuance of title on the mobile home to his parents.

Timothy also purchased a 1982 30-foot El Dorado motor home for $5,000.00. He obtained some of the down payment from the sale of a 1982 Orion boat purchased and owned by the parties during their marriage. In addition, he testified that he received a loan in the amount of $2,000.00 from his parents to complete the purchase of the El Dorado. The district court concluded that the $2,000.00 constituted a gift to the community but, as the El Dorado had been repossessed, there was nothing to award or divide between the parties.

The district court shall, to the extent practicable, make an equal disposition of the community property of the parties, except that the district court may make an unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition.[10] Disposition of community property is reviewed for an abuse of discretion.[11]

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[9]88 Nev. 231, 495 P.2d 629 (1972).

[10]NRS 125.150(1)(b).

[11]Wolff v. Wolff, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996).

In this case, the district court relied on the wrong standard in concluding that the monies received by the parties were in the nature of gifts instead of loans. The decision in Todkill concerns interspousal transfers and not monies received by a marital community from third parties.[12] Therefore, the district court incorrectly concluded that the monies received by the marital community created the presumption of a gift which appellant had the burden of rebutting. Rather, the district court should have analyzed the facts of this case in accordance with law pertaining to gifts. In determining what constitutes a gift, this court has stated:

> A valid inter vivos gift requires an intention on the part of the donor to make a present transfer, actual or constructive delivery of the gift to the donee, and acceptance by the donee.[13]

This court has no power or jurisdiction to weigh the evidence without regard to the findings of the district court, but may only consider the evidence for the purpose of determining whether substantial evidence supports the lower court's findings and whether the conclusions it reached were clearly wrong.[14] After fully reviewing the record on this issue, we conclude that the district court correctly found that the proceeds from Timothy's previously-owned mobile home constituted a gift to the party's marital community. However, we conclude substantial evidence does not support the district court's finding that the sum of $4,000.00 received by the parties from Vera Smith, Timothy's mother, was a gift. Vera Smith testified that she intended the money to be a loan and that the money was given to and received by the parties. Both Timothy and Kristi testified that they made several payments to Vera Smith against the $4,000.00 sum. We conclude, therefore, that the monies received were in the nature of a loan rather than a gift and, as such, constituted community debt.

However, the district court heard contradictory evidence regarding whether the debt was cancelled by the transfer of the 1982 Nashua. There was substantial evidence to support the district court's finding that the 1982 Nashua was not transferred as cancellation of a

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[12]See Todkill, 88 Nev. at 237-38, 495 P.2d at 632.

[13]Schmanski v. Schmanksi, 115 Nev. 247, 252, 984 P.2d 752, 756 (1999) (quoting 38 Am.Jur.2d Gifts § 17 (1999)).

[14]Sisson v. Sisson, 77 Nev. 478, 481, 367 P.2d 98, 99 (1961).

community debt but, rather, remained community property subject to distribution in the divorce proceedings. As the $4,000.00 sum was community debt, we reverse a portion of the judgment and remand the matter to the district court to redistribute the community debts and assets.

As to the $2,000.00 received from Vera Smith for the purchase of the 1982 El Dorado motor home, we conclude that the district court did not abuse its discretion in determining that the parties received the monies as a gift rather than a loan. No repayments were made on the $2,000.00. Given the testimony, we conclude that substantial evidence supports the district court's finding that the $2,000.00 sum was a gift.

Lastly, Timothy contends that the district court erred in ordering him to pay Kristi's attorney fees. An award of attorney fees in a divorce proceeding is within the sound discretion of the district court.[15] After carefully considering this matter, we conclude that the district court did not abuse its discretion on this issue. Accordingly, we

ORDER the judgment of the district court affirmed in part and reversed in part and remand this matter to the district court for proceedings consistent with this order.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Jerry V. Sullivan, District Judge
Jeffrey Friedman
Jack T. Bullock II
Lander County Clerk

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[15]See NRS 125.040; see also Sargeant v. Sargeant, 88 Nev. 223, 227-28, 495 P.2d 618, 621 (1972).