

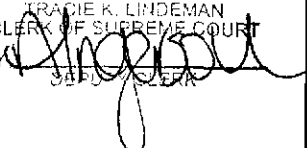
IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES DAVID LANDAN,  
Appellant,  
vs.  
MARIA JARAMILLO LANDAN,  
Respondent.

No. 60788

FILED

DEC 17 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:   
SEED CLERK

*ORDER OF AFFIRMANCE*

This is a proper person appeal from a district court divorce decree. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

On appeal, appellant argues that the district court abused its discretion when dividing the community property by awarding respondent property in Mexico as her separate property; by failing to award appellant a larger interest in the marital home, since he had used his separate property to purchase the home; and by failing to award appellant the funds he had received from his personal injury settlement after he placed the funds in a community bank account. Having reviewed the civil proper person appeal statement and the record on appeal, we conclude that the district court did not abuse its discretion in dividing the community property, *see Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996) (providing that this court reviews a division of community property for an abuse of discretion), and we affirm the divorce decree.

First, as to the Mexico property, the district court ordered both parties to submit a closing brief addressing all issues in the case, and appellant failed to address his claim that the Mexico property was community property. Thus, the record supports the district court's conclusion that appellant abandoned his claim for an interest in the

Mexico property.<sup>1</sup> *See id.* at 1363-64, 929 P.2d at 921 (recognizing that arguments not presented to the district court are waived on appeal (citing *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981))).

Second, as for the marital property, the deed stated that the parties held the asset as community property. Appellant had the burden, by clear and convincing evidence, to show that he did not intend to gift his separate property to the community, and the record supports the district court's conclusion that appellant failed to meet this burden. *See Graham v. Graham*, 104 Nev. 472, 474, 760 P.2d 772, 773 (1988) (explaining that a transfer of separate property to community property creates the presumption of a gift to the community that can only be overcome by clear and convincing evidence). Further, appellant failed to meet his burden of establishing by clear and convincing evidence that he did not intend to gift the funds from his personal injury settlement to the community when he deposited the funds into a community bank account before the divorce proceeding. *See id.*

Third, appellant also argues that the district court abused its discretion in awarding respondent attorney fees when respondent had a higher earning potential than appellant. The record demonstrates, however, that the district court concluded that both parties were selectively unemployed for the purpose of the divorce litigation and that historically appellant had a much higher earning potential than respondent. It also appears that the district court based its attorney fees award on appellant's failure to comply in good faith with discovery requests, which led to the majority of the underlying litigation. As

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<sup>1</sup>The record also demonstrates that appellant abandoned his claim for child support arrears by failing to address it in his closing brief, and as such, he has waived that issue on appeal.

appellant is unable to identify anything in the record that contradicts the district court's conclusions, we conclude that the district court did not abuse its discretion in awarding respondent attorney fees. See NRS 125.150(3); *Sprenger v. Sprenger*, 110 Nev. 855, 861, 878 P.2d 284, 288 (1994) (noting that "[t]he award of attorney's fees in divorce proceedings lies within the sound discretion of the trial judge").

Lastly, appellant argues that the district court was biased in presiding over the underlying case because the district judge went to law school with respondent's counsel. Appellant, however, never properly sought disqualification of the district judge. See NRS 1.235(1) (requiring a party seeking disqualification of a district judge to file an affidavit detailing the facts demonstrating that the disqualification is necessary). Thus, appellant has waived this issue on appeal. See *Brown v. Fed. Sav. & Loan Ins. Corp.*, 105 Nev. 409, 412, 777 P.2d 361, 363 (1989) (explaining that a party waives the issue of disqualification on appeal if that party does not properly request disqualification). For the reasons discussed above, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

Pickering, C.J.  
Pickering

Hardesty, J.  
Hardesty

Cherry, J.  
Cherry

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<sup>2</sup>We further conclude that appellant's additional arguments lack merit.

cc: Hon. Mathew Harter, District Judge  
Charles David Landan  
The Law Offices of Wendy Kazel  
Eighth District Court Clerk