

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERESA KIDDER-MOORE,
Appellant,
vs.
ROBERT E. MOORE, JR.,
Respondent.

No. 66564

FILED

MAR 24 2016

TRACIE K. UNDEMAN
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 order granting a motion to divide community debt and awarding attorney fees in a post-judgment family law matter. Eighth Judicial District Court, Family Court Division, Clark County; Bill Henderson, Judge.

Appellant Teresa Kidder-Moore raises two issues on appeal. First, Teresa argues that the district court abused its discretion in granting respondent Robert Moore's motion to divide community debt because Robert failed to satisfy a "best efforts" provision in the parties' divorce decree. Second, Teresa argues the district court abused its discretion in awarding Robert \$6,200.00 in attorney fees.

The issues in this appeal arise from the parties' divorce decree, filed on July 8, 2011. In the decree, the parties stipulated that the foreclosure on the parties' marital residence by the bank was inevitable. The decree further provided that Robert would use his "best efforts" to mitigate the parties' liability to the bank upon foreclosure. The court expressly retained jurisdiction over the marital residence. The debt

related to the marital residence is the only provision subject to this dispute.

In 2013, Wells Fargo Bank foreclosed on the second mortgage on the marital residence and obtained a judgment in the amount of \$52,355.00 against the Moores. In November 2013, Wells Fargo began garnishing Robert's wages to satisfy the judgment. Robert communicated to Teresa that Wells Fargo began garnishing his wages and that he hired a bankruptcy attorney to negotiate a settlement with the bank. He also invited her to participate in the settlement negotiations. Teresa failed to participate. Instead, she requested proof that Robert had used his best efforts to avoid community responsibility for the debt before Wells Fargo began garnishing his wages.

Robert's bankruptcy attorney successfully procured a settlement agreement reducing the debt to \$21,696.83 (\$6,696.83 in wage garnishments and a lump sum payment of \$15,000.00—all paid by Robert). The bankruptcy attorney waived his fees for the time spent in the settlement negotiations. After several failed attempts to collect Teresa's alleged portion of the community debt, Robert's family law attorney filed a motion to divide community deficiency debt and for attorney fees for having to prosecute the motion. Teresa opposed the motion and filed a countermotion for attorney fees. The district court conducted a hearing and found Robert used his best efforts in protecting the parties from full liability resulting from the marital residence foreclosure and thus ordered the debt be equally divided. It further

awarded Robert \$6,200.00 in attorney fees for prosecuting and defending the motions.

Teresa argues that Robert failed to use his best efforts, as required by the divorce decree, to mitigate any deficiency judgment to Wells Fargo because Robert failed to provide evidence or information that he took any action from July 2011 to November 2013 before the deficiency judgment was obtained. Importantly, Teresa does not argue that she is not responsible for one-half of the community debt, only that it is unfair to impose it upon her since Robert failed to submit proof of his efforts to avoid the imposition of the community debt by way of the deficiency judgment. We note Teresa failed to cite authority supporting her position and we could disregard her argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). Robert claims he satisfied the "best efforts" provision by hiring an attorney to assist in negotiating the settlement, obtaining a satisfaction of approximately 60% less than the amount of the judgment, and by communicating to Teresa settlement offers and inviting her to participate in the negotiations.

This court reviews a district court's factual findings for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). "Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion." *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Dev., LLC*, 130 Nev. ___, ___, 335 P.3d 211, 214 (2014) (internal quotation

marks and citations omitted). Here, the district court found that Robert satisfied the "best efforts" provision because Robert hired an attorney to attempt to negotiate a settlement with Wells Fargo, and succeeded in reducing the judgment by 60%.

The parties explicitly stipulated in the divorce decree that foreclosure was inevitable. As the district court accurately noted, any attempts by Robert to resolve the foreclosure before it happened would have been futile. Once Wells Fargo obtained a judgment, Robert hired a bankruptcy attorney who succeeded in reducing the obligation from \$52,355.00 to \$21,696.83. Further, in an affidavit in support of Robert's motion, the bankruptcy attorney stated he advises clients to "wait and see" before negotiating a settlement on a post-foreclosure second mortgages due to the reduced time in which banks may pursue foreclosure judgments, a strategy Robert followed. During the negotiations, Robert invited Teresa to participate; however, she steadfastly refused, instead requesting proof that Robert put forth his best efforts before Wells Fargo obtained judgment and began garnishing Robert's wages.

Teresa, however, provides no evidence supporting her assertion that Robert should have, or could have, obtained a better result by exercising diligence before Wells Fargo obtained the judgment. Thus, we conclude substantial evidence supports the court's findings that Robert satisfied his obligation under the "best efforts" provision. Therefore, we conclude the district court did not contravene the terms of the divorce decree or abuse its discretion in granting Robert's motion to equally divide community debt.

Teresa next argues that the district court abused its discretion in awarding Robert \$6,200.00 in attorney fees because fees should not have been awarded and the amount is excessive. This court reviews a district court's award of attorney fees for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. ___, ___, 319 P.3d 606, 615 (2014). Here, the district court found that Robert's attorney was a very skilled and experienced family law attorney, the outcome was favorable to Robert, and the charges incurred reasonably and fairly reflected the work required to defend the motion. *See Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Further, the court found that Teresa failed to mitigate the charges by not taking responsibility for her portion of the community debt on any of the several opportunities Robert gave Teresa, including during a recess of the hearing before the court announced its decision.

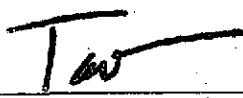
Robert's initial memorandum of fees, however, contained a clerical error omitting the description for each itemized attorney activity. Teresa thus asserts that the district court should not have included charges incurred for correcting the memorandum of fees and costs to comply with NRS 18.110, an amount totaling \$200.¹ We agree, but overall, we conclude the district court acted within its allowed discretion


¹Teresa cites to NRS 18.110 to support her assertion that a memorandum of attorney fees and costs must accompany a request for the same; however, this statute only applies to costs, not attorney fees. *But see* NRCPC 54(d)(2)(B) (requiring documentation concerning the amount of fees claimed). Nonetheless, the charges incurred to fix a deficiency should not have been attributed to Teresa.

in awarding attorney fees, and in the full amount, regardless of whether we agree with the amount. *See Leavitt v. Simms*, 130 Nev. ___, ___, 330 P.3d 1, 5 (2014) (stating an abuse of discretion only occurs “when no reasonable judge could reach a similar conclusion under the same circumstances.”); *Applebaum v. Applebaum*, 93 Nev. 382, 387, 566 P.2d 85, 89 (1977) (stating a district court has a broad range of discretion when deciding attorney fees). Based on the foregoing we direct the district court to reduce the award by \$200, for a revised order of \$6,000.00 in attorney fees. We therefore

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.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Bill Henderson, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Canon Law Services, LLC
Fine Law Group
Eighth District Court Clerk