IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD MICHAEL CASTILLO,
Appellant,
vs.
DENISE CHRISTINE CASTILLO,
Respondent.

No. 69691

FILED

SEP 06 2016

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order declaring a marriage void, dividing assets, and determining child custody and support. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

The parties were married in 1998 and appellant filed a complaint for divorce in March 2015, which sought, among other things, joint legal and physical custody of the parties' children. Respondent countersued for an annulment and a division of assets, stating that appellant was married at the time of their 1998 wedding, making the parties' marriage void. Respondent also sought primary physical custody of the children and child support. After a trial, the district court found that the marriage was void ab initio due to appellant already being married at the time he married respondent. The court then awarded respondent, as is pertinent on appeal, her community property interest in appellant's public employee's pension under a quasi-community property

theory and primary physical custody of the children.[1] This appeal followed.

Appellant first challenges the district court's award of part of his pension to respondent, arguing that, because the parties were never married and because respondent knew the marriage was not valid, there could be no community property or quasi-community property. Respondent contends that the district court made the correct decision in awarding respondent a community property share of appellant's pension under *Western States Construction, Inc. v. Michoff*, 108 Nev. 931, 840 P.2d 1220 (1992).

Western States provides that "community property law can apply by analogy" such that "unmarried cohabitating adults may agree to hold property that they acquire as though it were community property." *Id.* at 938, 840 P.2d at 1224. Here, the district court found that the parties obtained and recorded a marriage license and held a wedding even though they both were aware their marriage was invalid because appellant was still married at the time of the wedding.[2] Further, the court found that the parties held themselves out as a married couple throughout the time they were "married," both before and after appellant's 2000 divorce from the woman he was married to at the time of the parties' wedding, and that this conduct continued after the parties' separation in November 2013. The district court relied on these findings in making its

---

[1]The court's awards of joint legal custody and child support arrears are not challenged on appeal.

[2]Respondent admits, in her answering brief, that she knew appellant was already married at the time of their marriage.

ultimate determination to divide appellant's pension, and while appellant challenges these findings, to some degree, he failed to provide this court with a transcript of the trial.[3] As a result, we must presume that the missing transcript supports the district court's factual findings. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (providing that when an appellant fails to provide necessary documentation from the record, the appellate court "necessarily presume[s] that the missing portion [of the record] supports the district court's decision").

Accepting the district court's findings as correct, as we must, we conclude that, under *Western States*, the district court properly viewed the parties' actions as creating an implicit agreement to hold all property obtained during the "marriage" as community property and divide it as such upon the end of their "marriage."[4] 108 Nev. at 938-39, 840 P.2d at 1224-25 (concluding that cohabitating parties, who never married or attempted to marry, implicitly agreed to hold their property as community

---

[3]Appellant requested a copy of the trial transcript and it appears that a transcript was prepared and provided to appellant. When appellant failed to provide this court with a copy of the transcript, this court entered an order directing him to do so on July 27, 2016. Per this order, appellant was required to provide the transcript on or before August 8, but appellant failed to provide the transcript or otherwise respond to this court's order.

[4]Appellant also argues that respondent's entitlement to his pension, if any was found to exist, should have ended when the parties separated in 2013. But, because we must accept as true the district court's finding that the parties continued to hold themselves out as a married couple after the separation, then it follows that respondent's entitlement to appellant's pension did not end until the parties officially ended their "marriage" via the district court's order declaring it void ab initio. *See W. States*, 108 Nev. at 938, 840 P.2d at 1224.

property by living together and holding themselves out as a married couple, amongst other factors, and that division of the couple's property under a quasi-community property theory was therefore proper). Further, nothing in *Western States* suggests that the fact that the parties' marriage was void has any bearing on the application of that case to this appeal. Under *Western States*, the pertinent inquiry merely involves whether the parties held themselves out as a married couple. *See id.* We therefore conclude that the district court did not abuse its discretion in awarding respondent a quasi-community property share of appellant's pension, and we affirm that decision.[5] *See Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010) (refusing to overturn a district court's disposition of property absent an abuse of discretion).

Appellant next argues that the district court abused its discretion in not awarding joint physical custody of the parties' children as that decision improperly favored respondent. Respondent disagrees.

---

[5]On appeal, appellant also asserts that Nevada law bars payment of his pension to respondent. Although a person who has obtained a quasi-community property interest by court order is not included in the definition of an alternate payee set forth in NRS 286.6703(4), the district court specifically found that the parties implicitly agreed to hold their assets as community property. Consequently, respondent is entitled to a quasi-community property share of appellant's pension. *See W. States*, 108 Nev. at 938, 840 P.2d at 1224; *cf. Wolff v. Wolff*, 112 Nev. 1355, 1362, 929 P.2d 916, 920 (1996) (concluding that, although a former spouse's estate was not included in NRS 286.6703(4)'s definition of an alternate payee, because the estate was the recipient of the former spouse's community property, the pension could properly be paid to the estate).

We have also considered appellant's remaining argument that respondent waived her right to appellant's pension and find it to be without merit.

Custody orders are within the district court's discretion and are generally reviewed deferentially. *Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1142 (2015). No deference is owed, however, to a legal error "or to findings so conclusory they may mask legal error." *Id.* In making a custody determination, the district court "must tie the child's best interest, as informed by specific, relevant findings respecting the [statutory] and any other relevant factors, to the custody determination made." *Id.* at ___, 352 P.3d at 1143. "Specific findings and an adequate explanation of the reasons for the custody determination are crucial to enforce or modify a custody order and for appellate review." *Id.* (internal quotation marks omitted).

Here, the district court's order discussed its findings resulting from the testimony and other evidence presented at the hearing and made general findings, such as that appellant had deferred primary physical custody to respondent during the parties' separation and that such deference was not due to any interference by respondent. It also addressed some, but not all, of the relevant statutory best interest factors by addressing the parties' relationship with the children and willingness to support the children's relationship with the other party. The court did not, however, tie its factual findings regarding the evidence presented to the best interest factors to show why respondent having primary physical custody was in the best interest of the children. Rather, the district court merely stated that the schedule the parties used during their separation met the needs of the children.

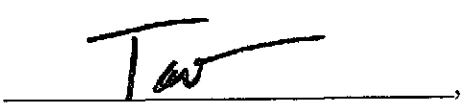
In the absence of the necessary findings, we cannot conclude that the district court properly exercised its discretion in determining child custody in this case. *See id.* at ___, 352 P.3d at 1142. Accordingly,

we reverse the district court's order granting respondent primary physical custody, and we remand this matter to the district court for a new custody determination based on specific findings relating to the child's best interest. Because we reverse the custody order, we necessarily also reverse the child support award, which was based on the physical custody arrangement.

In light of the foregoing, 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.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. William S. Potter, District Judge, Family Court Division
Edward Michael Castillo
Roberts Stoffel Family Law Group
Eighth District Court Clerk