

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY LLOYD HANSEN,  
Appellant/Cross-Respondent,

vs.

LINDA ELIZABETH HANSEN,  
Respondent/Cross-Appellant.

No. 32741

**FILED**

**MAY 09 2002**

JANE FLE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a divorce decree entered by the district court. Linda and Larry Hansen were married for nearly ten years. During that time, they started and both worked for Hansen Electric. Prior to marriage, Linda was in upper-level management for a high-tech firm and Larry was an electrician. Upon separation, the parties resolved the majority of property issues via a marital settlement agreement, which the district court adopted in its divorce decree. The unresolved issues were reserved for litigation and, after a three-day trial, were resolved by the district court.

The district court's divorce decree awarded respondent Linda Hansen temporary rehabilitative alimony and reimbursement for her payment of appellant Larry Hansen's pre-marriage tax liability. The district court denied Linda's request for reimbursement for loans she allegedly made from her separate property to the marital business and her request to equalize attorney fees. On appeal, the parties challenge each of these determinations. We conclude that each is without error.

Rehabilitative Alimony

The district court awarded Linda rehabilitative alimony of \$2,200.00 per month for up to six months based on her "need for retraining and the length of the marriage and her income and expenses." Absent an

abuse of discretion, i.e., so long as the award is supported by substantial evidence, this court will not disturb a district court's decision to grant alimony.<sup>1</sup> Here, the district court's award of temporary rehabilitative alimony to Linda was not an abuse of discretion.

Rehabilitative alimony is specifically authorized by NRS 125.150(8) "for the purpose of obtaining training or education relating to a job, career or profession." This court has held that NRS 125.150(8) authorizes a district court to grant a temporary award of alimony for the purpose of reeducation and retraining to facilitate a spouse's re-entry into the labor market.<sup>2</sup>

When Linda married Larry, she had an upper-level management position with NEC, a high-tech firm, earning \$55,000.00-60,000.00 a year plus benefits. Linda gave up this position in 1991, shortly after her marriage, when she and Larry decided to start Hansen Electric. Linda worked for Hansen Electric throughout the marriage and earned \$48,000.00 per year. At the time of trial, she had surrendered her position at Hansen Electric, was taking computer classes, and was looking for work. She testified that she believed it would take six to eight months to retrain and to find and secure work comparable to her position prior to marriage. She testified that her previous career field was "very high technology" and that she could not go back to it after so many years without retraining. This testimony constituted substantial evidence to

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<sup>1</sup>Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998); Kelly v. Kelly, 86 Nev. 301, 307, 468 P.2d 359, 363 (1970).

<sup>2</sup>Fick v. Fick, 109 Nev. 458, 464, 851 P.2d 445, 450 (1993).

support the district court's award of temporary rehabilitative alimony to Linda for the purpose of retraining and reeducation.

The amount of rehabilitative alimony the district court awarded Linda was likewise supported by substantial evidence. At the time of trial, Larry retained control of the community business and earned a salary of \$1,800.00 per week. Meanwhile, Linda was unemployed and attending computer-training courses. Her only income was the \$1,824.00 per month she receives from the rental value of the Hansen Electric Property, which she retained upon their separation. Linda estimated her monthly expenses to be approximately \$4,250.00 per month, an amount well in excess of her monthly income. The district court's award of \$2,200.00 a month in rehabilitative alimony to Linda was not an abuse of discretion.

Reimbursement for Linda's payment of Larry's pre-marriage tax liability

The district court awarded Linda \$55,089.00 for reimbursement of separate property, plus interest, she allegedly loaned Larry to pay his separate pre-marriage tax liability. On appeal, Larry suggests that the district court's reimbursement was an abuse of discretion because: (1) the money was not derived from her separate property; and (2) even if it were derived from separate funds, it is presumed to be a gift for which reimbursement is not warranted. We disagree.

Substantial evidence was presented at trial to indicate that the tax liability payment was derived from Linda's separate funds. The check, submitted into evidence at trial, was written to the IRS from Linda's super saver account. Linda testified at trial that she had approximately \$30,000.00 in a super saver account when she married

Larry. All pre-marital property is separate property.<sup>3</sup> Although Linda added Larry's name to the account after they married, that did not alter the character of the property as separate, because Larry was not a signatory on the account and the money in the account remained traceable to Linda's pre-marriage monies.<sup>4</sup> The district court's finding that Linda paid Larry's pre-marriage tax liability from her separate funds was, therefore, supported by substantial evidence.

Also, the district court's determination that Linda's payment was a loan, rather than a gift, to the community was supported by substantial evidence. Although the transfer of property from one spouse to another creates a presumption of a gift, that presumption was overcome here by clear and convincing evidence to the contrary.<sup>5</sup> Linda testified at trial that she and Larry agreed that she would write a check to the IRS from her super saver account to cover Larry's tax liability for \$28,689.00 and that Larry would pay her back. Linda's testimony was supported by the ledger she maintained and submitted to the district court, called "Larry's Fund," which, an accountant retained by her testified, showed

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<sup>3</sup>NRS 123.130(1).

<sup>4</sup>See Lucini v. Lucini, 97 Nev. 213, 215, 626 P.2d 269, 271 (1981); Todkill v. Todkill, 88 Nev. 231, 236, 495 P.2d 629, 632 (1972).

<sup>5</sup>See, e.g., Kerley v. Kerley, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996); Graham v. Graham, 104 Nev. 472, 474, 760 P.2d 772, 773 (1988); Todkill, 88 Nev. at 237-38, 495 P.2d at 632. Although these cases involve the transfer of title of real property, the same rule, contrary to Linda's suggestion, governs the transfer of personal property. See Peardon v. Peardon, 65 Nev. 717, 749, 201 P. 309, 325 (1948) (applying the presumption of a gift standard to the spouse-to-spouse transfer of a business interest/stock).

signs of repayment. This evidence was sufficient to overcome the presumption of a gift.

Reimbursement for Linda's separate property payment to Hansen Electric

The district court denied Linda's claim for reimbursement for several loans totaling \$45,000.00 that she allegedly made from her separate property to Hansen Electric. The proper standard for determining whether or not a transfer of separate property to the community is subject to reimbursement is, again, the presumption of the gift standard.<sup>6</sup> Although Linda claimed the payments to Hansen Electric were loans, testimony and evidence presented at trial indicated that: (1) there were no notes evidencing the payments were loans; and (2) the loans were recorded in Hansen Electric's books as capital contributions, not loans. Because Linda did not present clear and convincing evidence at trial to overcome the presumption of a gift to the community, the district court properly concluded that these payments were capital contributions, not loans, and were not, therefore, subject to reimbursement.

Equalization of attorney fees

On cross-appeal, Linda argued that the marital settlement agreement entered into by the parties provides for equalization of attorney fees and that the district court, therefore, abused its discretion by refusing to equalize attorney fees. The marital settlement agreement does not, however, clearly provide for the equalization of attorney fees. At trial, the district court expressed confusion as to the intent of the attorney fees provision and asked both parties to present and explain their interpretation. Because the district court considered the interpretations of

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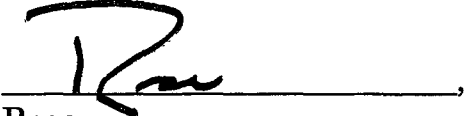
<sup>6</sup>Cf. Gorden v. Gorden, 93 Nev 494, 497, 569 P.2d 397, 398 (1977).

both parties and because the language of the marital settlement agreement regarding attorney fees is ambiguous, the district court's failure to equalize attorney fees was not an abuse of discretion.

We, therefore, AFFIRM the district court's divorce decree awarding Linda temporary rehabilitative alimony and reimbursement for her payment of Larry's pre-marriage tax liability, and denying reimbursement for loans Linda allegedly made to the community business and for equalization of attorney fees.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Scott Jordan, District Judge, Family Court Division  
Larry Lloyd Hansen  
Silverman & Decaria  
Washoe District Court Clerk