

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILBERT R. HOLMES,
Appellant,
vs.
CAPUCINE Y. HOLMES,
Respondent.

No. 73291

FILED

APR 30 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Wilbert R. Holmes appeals from a decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

The parties were married in July 1999 and were subsequently divorced by way of a decree of divorce entered in June 2017. Following an evidentiary hearing, the district court entered the subject decree dividing the parties' community property pursuant to an antenuptial agreement. Pursuant to the terms of the antenuptial agreement, the parties were to equally divide the increase in equity of the marital residence that accrued from two years after the date of the marriage to the time of divorce. Based on that provision, the district court determined that the increase in equity from July 2001 (two years after the date of marriage) to January 2017 (the date of the evidentiary hearing) totaled \$201,725.46. Accordingly, the district court awarded respondent, Capucine Holmes, one-half of that amount—\$100,862.73—as her community share. This appeal followed.

This court reviews the district court's decisions in divorce proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559,

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566, 97 P.3d 1124, 1129 (2004). This court will not disturb a district court's decision that is supported by substantial evidence. *Id.* Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.*

On appeal, Wilbert argues that the district court erred in determining the value of the marital residence because it relied on an valuation provided by someone who was not a licensed certified appraiser and because the amount provided was incorrect. According to Wilbert, there has been no increase in the equity of the home. Based on our review of the record, it does not appear that the district court abused its discretion in relying on the estimated value of the home provided by the Broker Price Option (BPO).

To the extent Wilbert asserts that the witness did not have any relevant licensures because his broker's license expired in May 2017, the trial was held in January 2017. Thus, it appears that the witness was a licensed broker at the time he prepared the BPO and when it was admitted as evidence. To the extent Wilbert asserts that the witness who offered the BPO was not a licensed certified appraiser, our research has revealed no authority to support the assertion that a licensed certified appraisal, rather than a BPO, is required to establish the value of a marital residence in a divorce proceeding. *Cf. Schwartz v. Schwartz*, 126 Nev. 87, 91, 225 P.3d 1273, 1276 (2010) ("[t]he district court was in the best position to hear and decide the facts of this case, and we will not substitute our judgment for that of the district court"); *Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992) (when the district court makes a determination on conflicting evidence, we will not disturb that decision if it is supported by

substantial evidence); *Sly v. Sly*, 100 Nev. 236, 239-40, 679 P.2d 1260, 1262 (1984) (the district court has broad discretion in dividing community property). Moreover, Wilbert's argument that the evidence provided inaccurate estimates of the home's value goes to the credibility of the witnesses and the weight of the evidence, which this court will not reweigh on appeal. See *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

Wilbert also argues on appeal that the district court's calculation of the increase in equity is incorrect. To determine the increase in the equity of the home, the district court first determined the equity value in July 2001 (two years after the parties married, as required by the antenuptial agreement), hereinafter referred to as the "2001 equity value." To calculate the 2001 equity value, the district court subtracted what it determined should have been the mortgage balance in July 2001 (\$236,418.54) from the estimated value of the residence in July 2001 (\$488,413.00), resulting in a 2001 equity value of \$251,994.46. The district court then calculated the equity value in January 2017 (when the divorce proceedings occurred), hereinafter referred to as the "2017 equity value." To do this, the district court subtracted what it determined should have been the mortgage balance in January 2017 (\$166,280.18) from the estimated value of the residence in January 2017 (\$620,000.00), resulting in a 2017 equity value of \$453,719.92. The district court then subtracted the 2001 equity value (\$251,994.46) from the 2017 equity value (\$453,719.92) to determine that the increase in equity from 2001 to 2017

was \$201,725.46. Finally, the district court awarded half of the increase in equity, \$100,862.73, to Capucine.

We first note that, while the district court's calculation did not include all of the debt encumbering the property, the district court made sufficient findings concluding that Wilbert incurred the additional debt on the property without Capucine's knowledge and therefore Wilbert would be solely responsible for that debt. *See Robison v. Robison*, 100 Nev. 668, 673, 691 P.2d 451, 455 (1984) (the district court's "findings must be sufficient to indicate the factual basis for the court's ultimate conclusions"). However, some of the district court's other findings are inconsistent. The district court first found that the mortgage balance at the time of the divorce proceedings, in January 2017, should have been \$177,124.48, but then in its calculation, the court inexplicably used \$166,280.18 as the mortgage balance in January 2017. Additionally, the district court made no findings to explain its basis for the estimated mortgage balance in 2001. Based on these ambiguities, we cannot determine whether the amount of equity that the district court calculated was supported by the evidence, and we must remand this matter for the district court to recalculate or clarify the amounts used to determine the equity in the marital residence. *See id.*

Finally, as to Wilbert's argument that the district court was biased against him and has inflicted undue punishment against him by entering an unfair judgment, we discern no basis for relief. *See Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) ("A judge is presumed to be unbiased"); *Allum v. Valley Bank of Nev.*, 112 Nev. 591, 594, 915 P.2d 895, 897 (1996) ("[J]udicial rulings alone almost never constitute a valid

basis for a bias or partiality motion.” (quoting *Liteky v. U.S.*, 510 U.S. 540, 555 (1994)).

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.¹



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Rena G. Hughes, District Judge, Family Court Division
Wilbert Roy Holmes
Capucine Y. Holmes
Eighth District Court Clerk

¹We have considered Wilbert’s remaining arguments and requests for relief, and have determined that they are without merit or do not otherwise warrant relief.