

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD PATRICK JOHNSON,
Appellant,
vs.
SHANNON MARIE JOHNSON,
Respondent.

No. 74190

FILED

AUG 02 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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

Donald Patrick Johnson appeals a district court decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; Bryce C. Duckworth, Judge.

In the proceedings below, the parties were divorced by way of entry of a decree of divorce following a bench trial. Following the trial, the district court concluded that Donald could not adequately account for numerous amounts of money withdrawn from various community bank accounts and that he wasted at least \$83,000 of community assets due to gambling. Therefore, the district court concluded that respondent Shannon Johnson was entitled to an unequal distribution of the community assets. Accordingly, the district court awarded Shannon the parties' community residence, with approximately \$54,000 in equity, as her sole and separate property. Additionally, the district court awarded Shannon \$20,000, representing one half of a \$40,000 personal loan that Donald obtained after the complaint was filed in this case, but required Donald to take on the remaining debt from the \$40,000 personal loan. The district court also awarded the parties joint legal and joint physical custody of their two minor children, whereby Donald exercised his parenting time every Monday and

every other weekend (defined as Friday-Saturday), which the district court described as a 60/40 timeshare. This appeal followed.

On appeal, Donald first argues that the district court abused its discretion in concluding that he wasted community assets and in awarding Shannon an unequal share of the parties' community property. This court reviews the district court's division of community property for an abuse of discretion. *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996); *see also Devries v. Gallio*, 128 Nev. 706, 709, 290 P.3d 260, 263 (2012). Although the district court must equally distribute community property, to the extent practicable, the district court "may make an unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition." NRS 125.150(1)(b); *Schmanski v. Schmanski*, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999). 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); *Doan v. Wilkerson*, 130 Nev. 449, 453, 327 P.3d 498, 501 (2014).

Here, the district court made numerous factual findings as to Donald's waste of community property to support the unequal distribution of the community property, all of which are supported by evidence in the record. For example, the district court found that Donald acknowledged during his trial testimony that his gambling was wasteful; that Donald submitted a chart delineating his expenditures for gambling, acknowledging over \$83,000 in withdrawals for gambling purposes; that bank and credit card records admitted into evidence showed Donald withdrew funds from multiple community sources; and that Donald

acknowledged during his testimony that he withdrew funds from the children's savings accounts and by taking cash advances on credit cards. Further, the district court found that Donald could not adequately account for the disposition of large sums of community funds. The district court also found that although Shannon incurred significant credit card debt that Donald testified was incurred without his knowledge, based on a review of the credit card statements all of the purchases benefited the community and, thus, constituted community debt.

Based on our review of the record, the district court's findings are supported by substantial evidence and we, therefore, cannot conclude that the district court abused its discretion in making an unequal disposition of the community property. *See Wolff*, 112 Nev. at 1359, 929 P.2d at 918-19; *Doan*, 130 Nev. at 453, 327 P.3d at 501. As to Donald's challenge to the portion of the unequal distribution awarding Shannon the marital residence, arguing that the property was his pre-marital asset, the record demonstrates that Donald admitted at trial that the residence was a community asset; thus, as discussed above, the district court did not abuse its discretion in awarding that asset to Shannon. To the extent Donald challenges the sufficiency of the evidence that the district court relied on in making its determination, this court does not reweigh the evidence or witness credibility on appeal. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to make credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). Accordingly, we affirm the district court's unequal disposition of the parties' community assets and debts.


Donald also appeals the district court's child custody order arguing that the district court failed to make sufficient findings supporting the 60/40 timeshare. This court reviews a child custody decision for an abuse of discretion. *Ellis*, 123 Nev. at 149, 161 P.3d at 241. When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Moreover, the district court's order "must tie the child's best interest, as informed by specific, relevant findings respecting the [best interest factors] and any other relevant factors, to the custody determination made." *Davis*, 131 Nev. at 451, 352 P.3d at 1143. Without specific findings and an adequate explanation for the custody determination, this court cannot determine with assurance whether the custody determination was appropriate. *Id.* at 452, 352 P.3d at 1143.

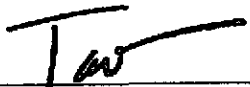
Here, the district court's order fails to make any findings at all. Indeed, the order does not even conclude that the timeshare is in the children's best interest, much less make any findings to support such a conclusion. The order simply states that the parties will share joint legal and joint physical custody and sets out a timeshare arrangement.¹ Based

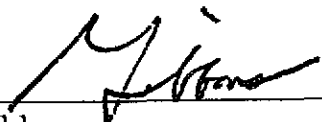
¹Although Donald's appellate arguments focus on the absence of any findings to support the timeshare, as opposed to the specific timeshare itself, we nonetheless note that the court's description of the parties' timeshare in its written order is internally inconsistent. While the order indicates that Donald will have the child 6 out of every 14 days, under the actual timeshare set out in the order, Donald has parenting time on 5 of every 14 days. Although the minutes regarding the timeshare include additional parenting time for Donald on Tuesdays when he did not have the children on the weekend, which would have given him parenting time on 6 of every 14 days, this Tuesday parenting time was not included in the written order.

on the lack of findings, this court is unable to determine whether the custody determination was appropriate and this matter must be reversed as to the child custody award and remanded for the district court to make specific findings that are tied to the best interest factors. *See id.*

It is so ORDERED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division
Donald Patrick Johnson
Gregory G. Gordon
Eighth District Court Clerk

²Pending further proceedings on remand consistent with this order, we leave in place the custody arrangement set forth in the underlying order, subject to modification by the district court to comport with the current circumstances. *See id.* at 455, 352 P.3d at 1146 (leaving certain provisions of a custody order in place pending further proceedings on remand).