IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW COFFIN,
Appellant,
vs.
PENNY (EDWARDS) COFFIN,
Respondent.

No. 74264-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Matthew Coffin appeals from a district court decree of divorce. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

Matthew Coffin married Penny Edwards and later purchased a house with a down payment from Matthew's 401(k).[1] On the date of purchase, the sellers deeded the house to Matthew as his separate property, and Penny deeded her interest in the house to Matthew as his separate property. Years later, Penny filed a complaint for divorce. After trial, the district court entered a decree of divorce that concluded that the down payment made on the house was ninety percent separate property and ten percent community property. Additionally, the district court valued and divided the 401(k) on the date that it entered the decree of divorce.

On appeal, Matthew argues that (1) the district court erred in concluding that the down payment made on the house was ninety percent separate property and ten percent community property, and (2) the district court erred when it divided the 401(k) based on its value on the date of the decree of divorce rather than the date of trial.

[1]We do not recount the facts except as necessary to our disposition.

"This court reviews a district court's decisions made in a divorce decree for an abuse of discretion." *Devries v. Gallio*, 128 Nev. 706, 709, 290 P.3d 260, 263 (2012). "Those decisions supported by substantial evidence will be affirmed." *Id.* Substantial evidence is evidence that "a sensible person may accept as adequate to sustain a judgment." *Id.* (quoting *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004)). But when a district court's decision involves "a purely legal question, such as the application of a presumption," this court reviews it de novo. *Waldman v. Maini*, 124 Nev. 1121, 1128, 195 P.3d 850, 855 (2008) (reversing a district court's judgment distributing property acquired during marriage by gift and devise because it incorrectly presumed the property was community and not separate).

Matthew first argues that because Penny deeded her interest in the house to him, the entire down payment was his separate property. Penny contends that he failed to argue this below and has thus waived the issue. We note that while Matthew failed to make this argument below and did not appear to contest that the house was community property, the parties' opinions on whether property is community or separate property "carries no weight" in the district court's analysis. *Klabacka v. Nelson*, 133 Nev. 164, 174-75, 394 P.3d 940, 949 (2017). Moreover, this court can consider relevant issues even when not properly raised in order to prevent plain error, and "[s]uch is the case where [law] which is clearly controlling was not applied by the trial court." *Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986). Therefore, because we agree with Matthew that the district court failed to apply controlling law, we will reach this issue on appeal to prevent plain error.

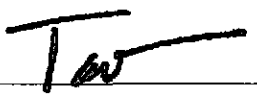
Here, the district court presumed that the house was community property because it was purchased during the marriage and that conflicting evidence supported that presumption remaining intact. However, when a spouse-to-spouse conveyance of real property occurs, the conveyance creates a presumption of a gift that can be rebutted only by clear and convincing evidence. *Kerley v. Kerley*, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996). If the evidence is conflicting, the gift presumption stands. *Todkill v. Todkill*, 88 Nev. 231, 237, 495 P.2d 629, 632 (1972). Because the district court failed to presume that the spouse-to-spouse conveyance from Penny to Matthew was a gift, we conclude that it erred as a matter of law.

Next, we consider whether the district court erred by valuing the 401(k) based on the date of the decree of divorce rather than the date of the trial. Appellate courts generally defer to the district court on decisions related to the distribution of property because that court was best situated to review the evidence when fashioning a distribution. *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996) (citing *Winn v. Winn*, 86 Nev. 18, 20, 467 P.2d 601, 602 (1970)). Generally, property acquired by either spouse during marriage is community property "until the formal dissolution of the marriage." *Forrest v. Forrest*, 99 Nev. 602, 607, 668 P.2d 275, 279 (1983). And formal dissolution of the marriage occurs upon the issuance of a decree of divorce. NRS 125.130(2). Penny and Matthew's marriage was not formally dissolved until the district court issued its decree of divorce. Therefore, the district court properly characterized funds that accumulated in the 401(k) from the trial date up until the decree of divorce as community property. Accordingly, the district court did not abuse its discretion when it valued the property based on the date that it issued its decree of divorce.

Based on 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.
Bulla

cc: Hon. Nancy L. Porter, District Judge
Carolyn Worrell, Settlement Judge
Law Offices of Lisa K. Mendez
Torvinen & Torvinen
Elko County Clerk