IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CALVI MORALES-PABON,
Appellant,
vs.
ERIC NIGHTINGALE,
Respondent.

No. 68501

ORDER OF AFFIRMANCE

This is an appeal from a district court post-judgment order denying attorney fees and costs in a family law matter. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Pursuant to the parties' stipulation, the district court entered a divorce decree that contained a provision allowing the parties to seek attorney fees and costs accrued during the divorce proceedings. Each party filed such a motion, and the district court denied both parties' requests. Appellant now appeals that decision.[1]

On appeal, appellant asserts that the district court improperly failed to award attorney fees under three different theories. Having considered the parties' arguments and the record on appeal, and for the reasons discussed below, we conclude that the district court did not abuse its discretion in declining to award attorney fees and costs. *See Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005) (holding that appellate courts should not overturn a decision regarding attorney fees in divorce proceedings absent an abuse of discretion by the district court).

Appellant first asserts that the district court abused its discretion in declining to award fees and costs under the Nevada Supreme

[1]Respondent did not cross-appeal the denial of his motion.

Court's holding in *Sargeant v. Sargeant*, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972) (upholding an award of attorney fees in a divorce case under the premise that "[t]he wife must be afforded her day in court without destroying her financial position"). Specifically, appellant asserts that because she would purportedly have to liquidate most of her assets to pay attorney fees and because respondent purportedly had significantly more assets to pay his fees, she is entitled to an award of fees under *Sargeant*. The portions of the record appellant cites as support for this argument, however, fail to show a disparity in assets on the scale of the one at issue in *Sargeant*. *See id.* at 226, 495 P.2d at 620 (awarding fees based on the disparity between the husband's $3,000,000 in assets as compared to the wife's less than $50,000). Indeed, contrary to appellant's assertion that she only has $40,000 in community assets available to pay fees,[2] the parties' proposed community property division spreadsheet, which appellant relies on to assert that respondent's separate property has a net equity of $630,000 with which to pay attorney fees, shows appellant to have separate property with a net equity of more than $300,000. That spreadsheet further indicates that each party has additional net equity in the parties' community property of more than $216,000. On these facts, we cannot conclude that the district court abused its discretion in declining to award attorney fees under *Sargeant*. *See Miller*, 121 Nev. at 622, 119 P.3d at 729.

Appellant next argues that the district court abused its discretion in failing to award fees under NRS 18.010(2)(b) (allowing an award of attorney fees to a prevailing party when the opposing party

---

[2]This $40,000 represents only the amount of money the court ordered respondent to pay appellant in order to equalize the division of certain community assets and to satisfy appellant's alimony request.

maintains an action without reasonable grounds or to harass) and EDCR 7.60(b)(1) and (3) (giving district courts the discretion to sanction parties by awarding attorney fees for frivolous motion practice and unreasonably increasing the costs of a case) because respondent acted vexatiously throughout the divorce proceedings. The record demonstrates, however, that respondent filed minimal motions over the one-and-a-half years of litigation, some of which appellant did not oppose; that appellant was sanctioned for abusive discovery practices; and that the district court never found any of respondent's actions to be vexatious or harassing in nature while finding at least one of appellant's filings to be "venomous." Under these circumstances, we discern no abuse of discretion in the district court's refusal to make an award of fees to appellant pursuant to NRS 18.010 or EDCR 7.60.[3] *See Miller*, 121 Nev. at 622, 119 P.3d at 729.

Because the district court did not abuse its discretion in refusing to award attorney fees and costs, we necessarily

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

[3]Because we conclude the district court did not abuse its discretion in finding that respondent did not litigate in a vexatious manner, we need not address appellant's argument that she was the prevailing party for purposes of NRS 18.010(2)(b).

cc: Hon. Mathew Harter, District Judge
Carolyn Worrell, Settlement Judge
Black & LoBello
McFarling Law Group
Eighth District Court Clerk