

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEOCADIO DIOSO,
Appellant,
vs.
EDELVINA DIOSO,
Respondent.

No. 75946-COA

FILED

AUG 29 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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

Leocadio Dioso appeals from a decree of divorce and post-decree order denying a motion for a new trial and to set aside the decree. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

In the proceedings below, the parties were divorced by way of a decree of divorce entered after trial. Pursuant to the terms of the decree, Edelvina was awarded the marital residence as her sole and separate property, while Leocadio was awarded the parties' vehicle and land located in Pandan, Antique, Philippines. Regarding the investment accounts, real property in New York, and real property in the Philippines that Edelvina allegedly owned, the district court found that Edelvina did not own those assets. Following trial, Leocadio filed a motion seeking, among other things, a new trial and to set aside the final judgment, which the district court denied. This appeal followed.

This court reviews the district court's division of property and alimony awards for an abuse of discretion. *Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010). This court will not disturb a district court's decision that is supported by substantial evidence. *Williams v.*

Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.*

On appeal, Leocadio challenges the award of the marital residence to Edelvina. First, Leocadio argues that the district court did not award Edelvina spousal support in the written decree of divorce; thus, awarding her the marital residence constitutes an unequal division of community property. Somewhat inconsistently, Leocadio next argues that the district court abused its discretion in awarding Edelvina spousal support, seemingly recognizing that the marital residence was awarded in lieu of spousal support. In the context of these arguments, Leocadio challenges the district court's conclusions regarding the investment accounts, the New York property, and the properties in the Philippines that he contends Edelvina owned.

First, as to Leocadio's arguments that Edelvina owns the investment accounts and the properties in the Philippines, and has access to the New York property, substantial evidence in the record supports the district court's conclusion that Edelvina did not own those assets. Moreover, Leocadio's arguments on these points are effectively a challenge to the sufficiency of the evidence as to that determination. But this court will not reweigh witness credibility or the weight of the evidence on appeal, and we therefore discern no abuse of discretion in the district court's conclusions. *See Williams*, 120 Nev. at 566, 97 P.3d at 1129; *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). Thus, because Edelvina did not own those assets, the district court could not

consider them in its division of the community property or its determination of spousal support. See NRS 125.150(1)(b) (providing that the district court shall divide community property); NRS 125.150(9) (enumerating the factors the district court should consider in determining whether to award spousal support).

Next, Leocadio contends that the district court abused its discretion in awarding Edelvina the marital residence, rather than dividing this asset equally. Pursuant to NRS 125.150(1)(b), the district court “[s]hall, to the extent practicable, make an equal disposition of the community property.” However, the district court may divide the community property unequally “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.” *Id.* Here, the decree of divorce does not make findings as to the value of the community property it divided; thus, it is impossible for this court to determine whether the decree divides the community property equally. Based on this court’s review of the record, it appears that the district court intended to divide the community property equally and award Leocadio’s one-half interest in the marital residence to Edelvina in lieu of spousal support, but because there are no findings as to the value of the community property, we must necessarily reverse and remand this matter to the district court for findings as to the same.¹ *Id.*; *Putterman v. Putterman*, 113 Nev. 606, 607, 939 P.2d 1047, 1047 (1997).

¹With regard to the land and library building in the Philippines that Leocadio asserts is his separate property, the district court’s oral ruling concludes that the land was his separate property from prior to the marriage, while the building on the land was intended to be held in joint tenancy, and then goes on to award the building to Leocadio. But the written decree concludes both the land and the building were intended to

To the extent the district court may have awarded Edelvina the entire marital residence in lieu of spousal support, the district court is permitted to set aside one spouse's separate property for the other spouse's support. NRS 125.150(5). As noted above, the record on appeal supports the conclusion that this is what the district court intended as the district court stated on the record following trial that it found "it fair and equitable to award [Edelvina] the community property located in Las Vegas as her sole and separate property as and for spousal support." But despite these oral findings, the decree does not specifically award Edelvina spousal support. Thus, on remand, in addition to making findings as to the value of the division of the community property, the district court should also make findings as to the award of spousal support and, to the extent the entirety of the marital residence was to be awarded to Edelvina in lieu of spousal support, the district court shall set forth this determination in its order. See *Putterman*, 113 Nev. at 607, 939 P.2d at 1047.

As mentioned above, although the decree does not specifically make a spousal support award, Leocadio also contends that the district court abused its discretion in awarding Edelvina spousal support. The district court may award either party spousal support. NRS 125.150(1)(a). When determining whether to award spousal support, the district court should consider a variety of factors as enumerated in NRS 125.150(9). Here, the district court made a number of findings as to the relevant factors, all of which are supported by substantial evidence in the record. See *Williams*,

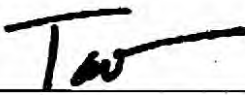
be held in joint tenancy. The written decree then goes on to award Leocadio the land, but does not award the building. Thus, on remand, the district court should also clarify its award and division of the community property as to this land and building.

120 Nev. at 566, 97 P.3d at 1129. But it is unclear whether the district court actually awarded Edelvina spousal support in the decree of divorce because, despite the findings, it does not expressly award spousal support and it does not clearly state what it intended in dividing the community property. Thus, we necessarily remand this matter for the district court to clarify its order as to these issues.²

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.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²To the extent Leocadio contends that Edelvina allegedly owned significant assets such that she did not need spousal support, as discussed above, the district court properly found that Edelvina did not own those assets.

³Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

Additionally, in light of our disposition, we deny Edelvina's request for costs in this matter.

cc: Hon. Linda Marquis, District Judge, Family Court Division
Robert W. Lueck, Ltd.
Rosenblum Law Offices
Eighth District Court Clerk