

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

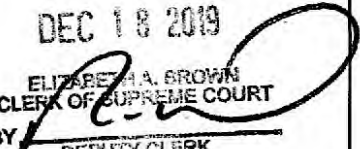
ELI ZOHAR,
Appellant,
vs.
DAFNA K. NOURY,
Respondent.

No. 76000-COA

FILED

DEC 18 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY 
DEPUTY CLERK

ORDER AFFIRMING IN PART AND VACATING IN PART

Eli Zohar appeals from a decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Eli Zohar and Dafna Noury were married in Israel in 2001 and in a civil ceremony in Las Vegas in 2005.¹ The parties began operating a construction and marble floor polishing business, which was still operating at the time of the divorce trial. Noury held the state license that allowed the business to bid on construction jobs, and Zohar handled the day-to-day operations, including purchases. However, the business began having economic problems in 2008 due to the recession and Noury's unavailability after the birth of the couple's quadruplets.

After Noury filed for divorce, Zohar sent text messages to Noury indicating that he would flee to Israel and leave her alone to support herself and the four children. The district court ordered Zohar to provide Noury \$2,500 each month in community funds for spousal and child support during the divorce proceedings. On at least seven occasions, Zohar failed to provide the full \$2,500. Additionally, Zohar sold a family recreational vehicle in

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

violation of the joint preliminary injunction. The district court found him in contempt for each violation of these court orders.

On appeal, Zohar argues the district court abused its discretion by (1) finding Zohar in contempt when Noury did not comply with the statutory formalities for seeking a contempt order, (2) determining Zohar's yearly gross income was \$84,000, (3) awarding lump-sum child support without making best interest findings, (4) assigning the consumer credit card debt to Zohar, (5) valuing the community business at \$220,000, (6) making a property division that punished Zohar, (7) awarding alimony without considering all of the statutory factors, (8) awarding lump-sum alimony, and (9) awarding attorney fees without making explicit *Brunzell*² findings.

The district court abused its discretion by finding Zohar in contempt of seven of the eight counts asserted by Noury

Zohar argues that Noury's motions seeking to hold Zohar in contempt were defective under NRS 22.030(2) and thus the district court abused its discretion when it found him in contempt.³ NRS 22.030(2) states that "[i]f a contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit must be presented to the

²*Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

³Zohar also argues that it was in violation of EDCR 5.509 because Noury did not seek an order to show cause. The rule only requires parties seeking an order to show cause to follow the formalities identified in the rule. Therefore it is inapplicable in this situation. Additionally, Zohar first raises this argument on appeal and has not shown it to be jurisdictional. Thus, we will not consider it further. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

court or judge of the facts constituting the contempt” The affidavit gives the district court jurisdiction over the matter. *Awad v. Wright*, 106 Nev. 407, 409, 794 P.2d 713, 714 (1990), *abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners Ass’n*, 116 Nev. 646, 5 P.3d 569 (2000); *Bohannon v. Eighth Judicial Dist. Court.*, Docket No. 69719 (Order Granting Petition In Part, March 21, 2017) (“A sufficient affidavit provides the jurisdictional basis for a district court to preside over indirect contempt proceedings.”). Where a court exceeds its jurisdictional authority to issue contempt, it is a manifest abuse of discretion. *See Pengilly*, 116 Nev. at 650, 5 P.3d at 571-72.

Here, Noury admits that she only filed a declaration, not the affidavit as described in NRS 22.030(2). She then argues that her declaration, made pursuant to NRS 53.045, fulfills the affidavit requirement.⁴ Her contempt motion is supported by a declaration made under penalty of perjury and thus meets NRS 22.030(2)’s affidavit requirement. *Cf. Buckwalter v. Eighth Judicial Dist. Court*, 126 Nev. 200, 202, 234 P.3d 920, 922 (2010) (holding that NRS 53.045 applies to all affidavit requirements because to reason otherwise would make NRS 53.045 meaningless). The motion, however, only alleges one act of contempt which arises from Zohar’s improper sale of the family recreational vehicle. Therefore, that finding of contempt is proper, but the district court abused its discretion when it found Zohar in contempt of the remaining seven counts which were not supported by affidavit or declaration. Thus, we

⁴NRS 53.045 states that, “[a]ny matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury”

vacate the remaining seven counts because the district court lacked jurisdiction.⁵

The district court did not abuse its discretion in determining Zohar's income

Zohar argues that the district court abused its discretion when it determined that his income was \$84,000 for purposes of calculating his child support payments without making specific factual findings.⁶ We disagree. Child support decisions are reviewed for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 438, 216 P.3d 213, 232 (2009). For a self-employed person, child support is calculated as the amount earned after the deduction of all legitimate business expenses. NRS 125B.070(1)(a).

At trial, Noury presented Zohar's 2015 and 2016 business tax returns showing that Zohar's income was approximately \$60,000 per year. She also testified that Zohar had been taking an illegitimate rent deduction of \$24,000 for each of those years. Thus, based on NRS 125B.070(1)(a), his income would total approximately \$84,000. Zohar testified that his 2017

⁵Noury argues that the other counts should be maintained based on the doctrine of substantial compliance and public policy. However, the authority cited for substantial compliance is inapposite. We therefore decline to extend substantial compliance to this particular situation. Moreover, regarding public policy, she cites to *McCormick v. Sixth Judicial Dist. Court*, 67 Nev. 318, 218 P.2d 939 (1950). However, that case did not resolve the affidavit issue but upheld the contempt jurisdiction based on its facts. We decline to do the same here.

⁶Zohar argues that the court found him willfully underemployed, however, upon our review of the order, the district court did not find him willfully underemployed but calculated his income based on NRS 125B.070(1). See NRS 125B.080(8) ("If a parent who has an obligation for support is willfully underemployed or unemployed to avoid an obligation for support of a child, that obligation must be based upon the parent's true potential earning capacity.").

gross income was only \$49,000 but failed to produce any documentary evidence in support of that claim. See NRS 125B.080(3) (stating the court shall determine the amount of gross income and may order the production of financial records, including tax returns). We decline to judge the credibility of the parties on appeal or reweigh the evidence. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (stating that the district court has discretion to judge witness credibility and the weight of testimony).

Furthermore, Zohar cites no authority for the proposition that the district court must make explicit factual findings when determining income under NRS 125B.070. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that arguments not cogently argued or supported with relevant authority need not be considered). Further, NRS 125B.080(6) specifically requires the district court to make specific findings when the district court deviates from the child support formula, but the district court did not deviate. Thus, the district court did not abuse its discretion when determining Zohar's income to be \$84,000 per year.⁷

The district court did not abuse its discretion in awarding lump-sum child support

Zohar next argues that the district court did not make a finding that the lump-sum child support award was in the best interest of the children and thus it could not be awarded. We disagree. We review child support determinations for an abuse of discretion. *Rivero*, 125 Nev. at 438,

⁷We note that our disposition does not prevent Zohar from filing a future motion under NRS 125B.145(4) if changed circumstances warrant a modification of the child support award.

216 P.3d at 232. There is a presumption that the district court acts in the best interest of the child. *Cf. Howe v. Howe*, 87 Nev. 595, 597, 491 P.2d 38, 40 (1971) (stating that a district court is presumed to act in the best interest of the child in the child custody context); *see also* NRS 125B.080(5) (“It is presumed that the basic needs of a child are met by the formulas set forth in NRS 125B.070.”). “In the best interest of the child, a lump-sum payment . . . may be ordered in lieu of periodic payments of support.” NRS 125B.090.

Here, the district court recognized that financial positions can change and thus made a partial lump-sum award covering only the period of May to December 2018, with periodic payments beginning in 2019. The district court stated that it made the award to ensure the support was paid. The district court’s concern was warranted because Zohar (1) failed to pay the full amount of previously ordered support⁸ and (2) threatened to desert Noury and the children by absconding to Israel. Therefore, the district court did not abuse its discretion in awarding partial lump-sum child support.⁹

The district court did not abuse its discretion in assigning credit card debt

Zohar argues that the district court abused its discretion when it assigned him the parties’ credit card debt. We disagree. “An appellate court reviews a district court’s disposition of community property deferentially, for an abuse of discretion.” *Kogod v. Cioffi-Kogod*, 135 Nev.,

⁸While the seven contempt findings and resulting fines for the non-payment of the support are being vacated, Zohar does not argue that he actually paid the full amount of required support, nor does he challenge the order to pay the balance owed in an equalization payment.

⁹Also, this issue appears to be moot as the time for payment has already passed and Zohar does not seek a refund. *See generally Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010).

Adv. Op. 9, 439 P.3d 397, 406 (2019). A court may make an unequal distribution of community property “if the court finds a compelling reason” and sets forth the reasoning in writing. NRS 125.150(1)(b). The district court determined that Zohar controlled the use of the unsecured consumer debt. Zohar also stated that Noury was not authorized to use the credit cards. Furthermore, Zohar stated that the personal credit cards were used for business purchases.

The district court concluded that since Zohar was receiving the company, he should take the company subject to any consumer debt it had incurred. Zohar does not point to any documents in the record that itemize his credit card expenditures as community or business expenses. Thus, we cannot conclude the district court abused its discretion, in this case, when Zohar—the person with control of the accounts—did not provide the necessary documents for the court to divide the debts with exacting precision.

The district court did not abuse its discretion when it valued the business

Zohar next argues that the district court abused its discretion when it valued the business. We disagree. “An appellate court reviews a district court’s disposition of community property deferentially, for an abuse of discretion.” *Kogod*, 135 Nev., Adv. Op. 9, 439 P.3d at 406. The district court considered the testimony of the parties and valuation of the assets as provided by Zohar. Our review of the record reveals the district court’s decision was based on substantial evidence. Therefore, the district court did not abuse its discretion.¹⁰

¹⁰Zohar also argues that the division of all the community property was done to punish him. However, because the record supports the district

The district court erred by not considering all factors for alimony, but this error was harmless

Zohar argues that the district court abused its discretion when it awarded alimony without considering all of the statutory factors listed in NRS 125.150(9). “The decision of whether to award alimony is within the discretion of the district court.” *Kogod*, 135 Nev., Adv. Op. 9, 439 P.3d at 400. “When determining if alimony is just and equitable, a district court must consider the eleven factors listed in NRS 125.150(9).” *Id.* at 400-01 (footnote omitted).

Here, the district court erred by not expressly considering the NRS 125.150(9) factors, but this error was harmless. The district court should have used NRS 125.150(9) to evaluate the alimony request. Instead, the court made detailed findings using the *Buchanan* factors. See *Buchanan v. Buchanan*, 90 Nev. 209, 215, 523 P.2d 1, 5 (1974). However, Zohar fails to argue, and thus show, that the district court’s failure to consider each factor in NRS 125.150(9) prejudiced his substantial rights. Cf. NRCP 61 (“At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party’s substantial rights.”); see also *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (noting that an error is not harmless if the movant shows “that the error affects the party’s substantial rights so that, but for the alleged error, a different result might reasonably have been reached”). Specifically, Zohar did not argue that the result would have been different had all of the factors been applied. Thus, in this case, the district court’s failure to consider all of the statutory factors is not grounds for reversal.

court’s division of property, the district court did not punish Zohar but made decisions supported by the evidence.

The district court did not abuse its discretion by awarding partial lump-sum alimony

Zohar argues the lump-sum alimony payment was an abuse of discretion. A court may award alimony as a lump sum “as appears just and equitable.” NRS 125.150(1)(a). “The decision of whether to award alimony is within the discretion of the district court.” *Kogod*, 135 Nev., Adv. Op. 9, 439 P.3d at 400. Because Zohar failed to provide the court-ordered support during the pendency of proceedings and threatened to flee to Israel in order to avoid his financial obligations, the district court did not abuse its discretion when it awarded lump-sum alimony for the period of May 2018 to December 2018.¹¹

The district court did not abuse its discretion in awarding attorney fees


Zohar argues that the district court abused its discretion when it awarded \$40,000 in attorney fees to Noury. We disagree. When reviewing attorney fees on appeal, it must be demonstrated that the district court considered the required factors, and the award is based on substantial evidence. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). “[A]ttorney fees may not be awarded absent a statute, rule, or contract authorizing such.” *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006). A court may award reasonable attorney fees in a divorce proceeding. NRS 125.150(4). The district court must consider various factors, including the qualities of the advocate, the character and difficulty of the work, the work actually performed by the lawyer, and the result obtained. *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455


¹¹In addition, this issue appears to be moot as the time for payment has already passed. See generally *Personhood Nev.*, 126 Nev. at 602, 245 P.3d at 574.


P.2d 31, 33 (1969). Furthermore, it must consider the disparity in income between the parties. *Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005).

Here, the district court did not award the fees as a contempt sanction. Instead, it identified the *Brunzell* factors and made general findings related to them. The district court does not need to make explicit findings for each *Brunzell* factor. *Logan*, 131 Nev. at 266, 350 P.3d at 1143. The district court's order also reflects that the district court generally considered the disparity in the parties' incomes. Therefore, we conclude that there is substantial evidence, looking at the record as a whole, to support the district court's award.¹² Accordingly, we

ORDER the district court's judgment AFFIRMED IN PART and VACATED IN PART.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Pecos Law Group
Candelaria Law Group
Eighth District Court Clerk

¹²Noury sought a total of \$65,000 in fees and her attorney also filed an attorney lien motion supported by substantial documentation that the district court considered.