


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAWRENCE GEORGE WORTHEN,  
Appellant,  
vs.  
TAMMIE RENEE WORTHEN,  
Respondent.

No. 78006-COA

**FILED**

APR 27 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Lawrence George Worthen appeals from a decree of divorce. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Lawrence and respondent Tammie Worthen were married in 2012 and were subsequently divorced by way of a decree of divorce entered in 2019 after a trial. Pursuant to the terms of the decree, as relevant here, Tammie was awarded the residence as her separate property and Lawrence was awarded \$46,061.43 from Tammie's 401(k) account. Lawrence's portion of the 401(k) account represented his share of the community property portion of the account less the amount required to equalize the distribution of the parties' remaining assets and debts. Additionally, the district court denied Lawrence's request for alimony. This appeal followed.

On appeal, Lawrence challenges the distribution of property and the denial of his request for alimony. 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). And 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.*

First, as to Lawrence's assertion that he should have received 50 percent of the equity in the residence, the district court determined that the residence was Tammie's separate property and therefore awarded the entire residence to her. The parties agree that Tammie purchased the home prior to the marriage. *See* NRS 123.130 (providing that property a spouse owns before marriage is separate property). Additionally, the record demonstrates that in 2016, Lawrence quitclaimed any interest he may have had in the property to Tammie as her sole and separate property. *See Kerley v. Kerley*, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996) (explaining that a spouse to spouse conveyance of real property "creates a presumption of gift that can only be overcome by clear and convincing evidence."); NRS 123.130 (providing that property obtained by gift during the marriage is separate property). And as the district court found, nothing in the record demonstrates that Lawrence submitted any evidence to overcome the presumption that the house was Tammie's separate property. *See id.* Accordingly, we discern no abuse of discretion in the district court's determination that the home was Tammie's separate property. *See Schwartz*, 126 Nev. at 90, 225 P.3d at 1275.

We next address Lawrence's assertion that the remaining assets and debts were not divided fairly and equitably, and that the district court should have divided the parties' remaining assets and debts equally. As an initial matter, we note that the district court is required to make an equal distribution, not a fair and equitable distribution, of the community property, unless it finds that an unequal distribution is warranted. NRS 125.150(1)(b); *Lofgren v. Lofgren*, 112 Nev. 1282, 1283, 926 P.2d 296, 297

(1996) (explaining that the 1993 amendment to NRS 125.150 requires the court to make an equal distribution of community property rather than a “just and equitable” distribution). Accordingly, Lawrence’s position that the division of property was not fair and equitable is without merit. *See id.* And while the district court likewise incorrectly applied this just and equitable standard, rather than the equal distribution standard, that error was harmless because, as set forth below, the district court did, in fact, equally divide the community property. *See* NRCP 61 (requiring the court, at every stage of a proceeding, to disregard errors that do not affect a party’s substantial rights).

As to Lawrence’s argument that the division of property should have been equal, he fails to demonstrate the community assets and debts were not divided equally. Indeed, a review of the record demonstrates that the district court considered the assets and debts awarded to each party and then calculated the amount to be offset in order to equalize the distribution. We note that this equalization resulted in Lawrence receiving a reduced portion of the 401(k) because Tammie was awarded significantly more of the parties’ debts. Contrary to Lawrence’s apparent belief that the community property was not divided equally, this equalization—and the record as a whole—demonstrates that the district court did divide the community assets and debts equally. Thus, we discern no abuse of discretion in the district court’s distribution. *See* NRS 125.150(1)(b); *Schwartz*, 126 Nev. at 90, 225 P.3d at 1275.

As to Lawrence’s challenge to the district court’s denial of alimony, such an award is discretionary. *See* NRS 125.150(1)(a) (indicating that the district court *may* award alimony to either spouse as appears just and equitable). Additionally, when determining whether to award alimony,

the court must consider the factors enumerated in NRS 125.150(9)-(10). Here, the district court determined that Lawrence failed to present any evidence relating to these factors or demonstrating his need for alimony. In particular, Lawrence asserted he needed alimony because he is disabled and can no longer work in the same career field. But the district court found that while Lawrence provided several medical records, none of them demonstrated a documented disability such that Lawrence was unable to work. Based on our review of the record, substantial evidence supports this conclusion. Accordingly, we cannot conclude the district court abused its discretion in denying Lawrence's request for alimony. *See Schwartz*, 126 Nev. at 90, 225 P.3d at 1275.

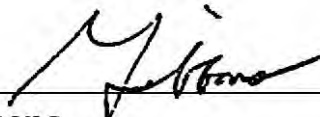
Finally, Lawrence contends the district court committed judicial misconduct. Specifically, Lawrence alleges that the district court had a conflict of interest and engaged in ex parte communications with Tammie and her counsel, and that the court should have recused from the case. This court reviews a district court's decision not to recuse itself for an abuse of discretion. *In re Petition to Recall Dunleavy*, 104 Nev. 784, 788, 769 P.2d 1271, 1274 (1988).

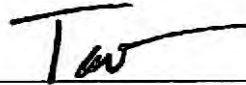
Here, Lawrence summarily asserts that the district court had a conflict of interest because the court knew Tammie's counsel and engaged in ex parte communication, but he fails to point to anything in the record demonstrating the same. Likewise, our review of the record fails to demonstrate the existence of any judicial misconduct. We note that the record indicates Lawrence raised this issue at trial, and the district court acknowledged it knew Tammie's counsel as it knows many members of the bar, but that the court was not partial or biased against Lawrence. And as discussed above, the district court equally divided the parties' community

assets and debts as required. Accordingly, we conclude that no misconduct occurred and the district court did not abuse its discretion in declining to recuse from the case. See *Dunleavy*, 104 Nev. at 788, 769 P.2d at 1274; cf. NCJC Canon 2, Rule 2.2 (“A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”); *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (“A judge is presumed to be unbiased, and the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification.” (internal quotation marks omitted)).

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Mathew Harter, District Judge  
Lawrence George Worthen  
Tammie Renee Worthen  
Eighth District Court Clerk

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<sup>1</sup>Insofar as Lawrence raises 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.