IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHANE G. MAMONE,
Appellant,
vs.
CHARISSE J. MAMONE,
Respondent.

No. 83006-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Shane G. Mamone appeals from a district court order in a domestic matter. Eighth Judicial District Court, Family Court Division, Clark County; Soonhee Bailey, Judge.

Facts and procedural history

Shane worked in the construction industry in California for several years where he established positive relationships with several companies, including Redwood Construction.[1] In 2000, Shane moved to Las Vegas, and formed and incorporated his own construction company, SCM Enterprises. Shane put forth significant effort to grow SCM, including making frequent trips to Asia where he was able to obtain project materials at a discounted rate. In 2001, due to the positive business relationship that Shane forged while in California, Redwood awarded SCM one of its first projects. Over the next several years, SCM continued to receive project referrals from Redwood. These projects became progressively larger and more lucrative.

Between 2008 and 2009, Shane met respondent Charisse J. Mamone and the two began a relationship. In 2010, per the advice of his CPA, Shane incorporated SCM in Wyoming under the corporate name SCM

[1]We recount the facts only as necessary for our disposition.

Enterprises of Nevada.[2] On July 17, 2015, Shane and Charisse married. The same year, Shane began making contributions to an SEP IRA. Upon the parties marrying, Shane added Charisse to all his financial accounts, except for one associated with his 200 Citrus LLC rental property that he owned prior to the marriage.[3] Other than a 2010 Range Rover that Charisse owned prior to the parties' marriage, the parties owned several other vehicles, including a 2017 Range Rover, a 2010 Jeep Wrangler, and two Yamaha motorcycles.

In or around 2016, Charisse began working for SCM. Charisse received full-time payment for part-time work, which consisted of performing various administrative duties for the business. During the parties' marriage, Shane continued to develop a positive reputation in the construction industry through his operation of SCM, which continuously produced quality, timely work. SCM's relationship with Redwood continued to bring large, lucrative projects, including several multimillion-dollar contracts in 2017 and 2018. In order to keep up with the increasing demands of these larger contracts, Charisse posted job advertisements and screened candidates for Shane to interview. Additionally, as pertinent to this case, Shane began using SCM funds in 2017 to reimburse his cousin for Shane's share of a one-half interest

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[2]While Shane incorporated SCM in Wyoming, the business was indistinguishable from the entity incorporated in 2000: it retained the same business model, worked with the same clients, and conducted the same operations. The only discernible change regarding the business was the decision to file tax returns under the newly incorporated entity from 2014 forward. For this reason, and to avoid confusion, we refer to the business as "SCM" throughout this order.

[3]We note that Charisse does not challenge the separate property character of the 200 Citrus LLC rental property on appeal.

in the 200 Citrus LLC rental property. Shane continued making these payments, which totaled $37,500, over the following two years.

In July 2018, Charisse stopped working for and receiving paychecks from SCM. By the following month, Charisse and Shane's relationship had deteriorated, causing them to separate. Shane filed a complaint for divorce in August 2018.

Due to the complex nature of conducting a business valuation of SCM, Shane and Charisse each hired an expert forensic accountant to calculate what, if any, community interest the parties had in SCM for distribution upon divorce. Shane engaged Jennifer Allen of Anthem Forensics to conduct this valuation. In her report, which was filed in May 2020, Allen analyzed both the *Van Camp v. Van Camp*, 199 P. 885 (Cal. App. 1921), and *Pereira v. Pereira*, 103 P. 488 (Cal. 1909), apportionment methods.

Allen's Van Camp *Analysis*

As stated in Allen's report:

> Under *Van Camp*, if the in-spouse[4] working for the claimed separate property business during marriage receives compensation that is equal to or greater than what is fair or reasonable for the services provided, then the community may not have an interest in the business at the date of divorce. If the in-spouse working for the separate property business during marriage receives compensation that is less than what is fair or reasonable for the services provided, then the community may have an interest in the business at the date of divorce.

"Based upon [her] compensation analysis and [her] discussions with Mike Torre, [SCM]'s controller," Allen opined that $592,250 would reflect the reasonable compensation for Shane's services during the marriage. To

[4]Allen used the term "in-spouse" to refer to the spouse who was involved with the business. Here, the "in-spouse" is Shane.

determine whether Shane received compensation that was equal to or greater than this estimated reasonable compensation for the services he provided, Allen examined Shane's reported W-2 wages during the marriage. Shane's reported wages during the parties' marriage collectively amounted to $1,237,000. From this examination, Allen opined that "the compensation he was paid for the services he rendered was at least reasonable."

Given these findings, Allen stated that if "the community received the benefit of Shane's reasonable compensation/services, then the *Van Camp* method of apportionment would indicate that the community has no interest in the claimed separate property business." To assess the extent to which the community received the benefit of Shane's reasonable compensation during the parties' marriage, Allen reviewed various financial accounts and transactions that occurred during the parties' marriage. Allen conservatively calculated that the parties incurred approximately $847,000 in community-benefitting expenses during their marriage. Based on the foregoing findings, Allen opined that the community received the benefit of Shane's reasonable officer compensation during the marriage and, thus, "there may be no community interest in SCM" as of May 19, 2020, under *Van Camp*.

Allen's Pereira *Analysis*

As stated in Allen's report:

> [U]nder *Pereira* the value of the business at the date of marriage is allowed a reasonable rate of return/appreciation through the date of divorce. The excess, if any, of the business value at the date of divorce over the separate property value[5] represents the potential value of the community interest.

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[5]Allen's report stated that "[t]he separate property value at the date of divorce equals the business value at the date of marriage plus a reasonable rate of return on that value through the date of divorce."

Based on Allen's extensive review of SCM's financials, she estimated that "Shane's 100 percent interest in [SCM] at the time of marriage was $1,320,000." Allen explained in her report that, pursuant to *Pereira*, "the value of the business at the date of marriage is allowed a reasonable rate of return/appreciation through the date of divorce," or in this case, through May 19, 2020, when her report was filed. To calculate Shane's separate property interest in SCM on May 19, 2020, Allen applied Nevada's legal interest rates during the parties' marriage to Shane's $1,320,000 interest at the time of marriage to demonstrate the passive appreciation of SCM throughout the marriage. After applying these legal interest rates, Allen estimated that "Shane [had] a $1,790,000 separate property . . . interest in SCM" as of May 19, 2020.

Allen explained that "[t]he excess, if any, of the business value at the date of divorce over the separate property value represents the potential value of the community interest." Allen utilized an approach similar to that which she used to determine SCM's value at the date of the parties' marriage to calculate the value of SCM as of May 19, 2020. However, Allen was additionally provided with management projections that reflected the impacts of the COVID-19 pandemic on SCM's business. Using this information, Allen estimated that SCM's value as of May 19, 2020, was $2,300,000. Given the foregoing estimations, Allen provided the following regarding the parties' community interest in SCM:

> As previously discussed, the value of Shane's 100 percent controlling, nonmarketable interest in [SCM] as of May 19, 2020 was $2,300,000. Given that the current value of Shane's separate property interest is $1,790,000 . . . it is our opinion that the potential community interest in SCM was $510,000 as of May 19, 2020 [under *Pereira*].

In contrast to Allen's approach to compiling her report, Charisse's expert, Diane Tompkins, did not give significant weight to the COVID-19 pandemic's effect on SCM's business. Instead, Tompkins assumed that because the majority of her construction clients experienced financial success in 2020, SCM would as well. Additionally, instead of gathering financial projections as Allen did, Tompkins merely multiplied SCM's financials from January through April by three to estimate SCM's success for the remainder of 2020.

Bench Trial

A bench trial to determine the division of the parties' assets and debts began in January 2021. When asked whether the contracts awarded by Redwood during the marriage were due solely to his business relationship predating the marriage, Shane conceded that they would not have been awarded absent his efforts during the marriage. This was corroborated by Charisse's testimony. Upon being questioned as to the value of his SEP IRA at the time of trial, Shane confirmed that the balance was roughly $186,000. Shane additionally testified that he made his first contribution to the SEP IRA in January of 2015 and that he contributed roughly $25,000 total in that year. When asked what vehicles were purchased by the parties during the marriage, Charisse testified that they had purchased a 2015 F-350 and a 2018 Tesla. On the final day of the bench trial, Allen testified regarding the report generated by Charisse's expert. When asked what, if any, disagreements she had with the report of Charisse's expert, Allen testified that Charisse's expert failed to consider the impacts of the COVID-19 pandemic on SCM's projected income through the year 2020.

The district court entered its order on April 12, 2021. The district court found that the 200 Citrus LLC rental property was Shane's separate property, as it was obtained prior to the parties' marriage. The district court found that the increase in SCM's value during the marriage "was due largely,

if not entirely, to [Shane's] business acumen, time, talents, and labor. Independent of his efforts, any increase in value would be mere speculation." The district court used this to support its finding that the *Van Camp* apportionment method is inapplicable here, stating that "[u]nlike the facts in Van Camp, Shane's role in the business is significant." Accordingly, the district court used the *Pereira* apportionment method to determine the parties' community interest in SCM upon divorce. The district court found Allen's analysis regarding the value of SCM to be more credible than Tompkins' because, among other things, Tompkins disregarded the effect of the COVID-19 pandemic on SCM's business.

Further, the district court found that Shane made payments totaling $37,500 from SCM to his separate property, 200 Citrus LLC, and was persuaded that these payments reduced Shane's community interest in SCM pursuant to *Hybarger v. Hybarger*, 103 Nev. 255, 737 P.2d 889 (1987). Additionally, the district court found that, according to Allen's report, the community interest in SCM as of May 19, 2020, was $510,000. The district court also found that it was "undisputed that Shane funded his Cambridge SEP IRA during the marriage," and that the balance of the account was approximately $186,000. Further, the district court found that it was undisputed that "Shane purchased a 2017 Range Rover valued at $36,300.00, a 2010 Jeep Wrangler valued at $14,800.00, a 2005 Yamaha valued at $3,060.00 and a 2007 Yamaha valued at $3,200.00 during the marriage." The district court additionally found that the parties filed a joint tax return in 2019 that resulted in a refund of $206,625.

The district court ordered that Shane retain his SEP IRA account with an equalization payment to Charisse for one-half of the account's value ($93,000). The district court further ordered that "Shane shall retain the 2017 Range Rover, 2010 Jeep Wrangler, 2005 Yamaha and 2007 Yamaha

subject to Charisse's equalization payment of $28,680.00 for her half interest in the vehicles . . . ." Additionally, the district court ordered that Charisse's share of the community interest in SCM was $292,500, and that Shane's share of the community interest was $217,500.[6] Based on the disparity in the parties' incomes, the district court concluded that it was just and equitable to require Shane to pay 64 percent, or $74,705 of Charisse's attorney fees, subject to "Charisse's counsel providing a memorandum of fees and costs and an affidavit establishing the Brunzell factors with an opportunity for Shane to object to any fees or costs." Finally, the district court ordered that "the parties shall file a joint tax return for the 2020 tax year by May 17, 2021, and equally divide any refund or liability. The $206,625 overpayment from the 2019 tax year applied to the 2020 tax year shall be included when calculating the refund or liability."

Subsequently, Shane filed his notice of appeal from the district court's order. Shortly after, Charisse filed a memorandum of attorney fees and costs, including an analysis of the *Brunzell* factors, and requested an award of $74,705. The district court entered an order awarding attorney fees and costs in the amount requested by Charisse. In its order, the district court stated that "Shane did not object or otherwise respond to Charisse's *Memorandum of Attorney's Fees and Costs*." Further, Shane did not appeal the district court's order awarding Charisse attorney fees and costs.

In a post-trial disclosure, Shane revealed that his SEP IRA was valued in excess of $500,000 at the date the divorce decree was entered, and not the $186,000 he alluded to in his testimony at trial. This prompted Charisse to file a motion for limited remand, wherein she requested to have

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[6]The discrepancy in the parties' shares in SCM reflected Shane's use of SCM funds to make payments totaling $37,500 to reimburse his cousin for his one-half interest in the 200 Citrus LLC property.

the divorce decree modified to reflect this discrepancy. However, Shane had already filed his notice of appeal in this matter prior to Charisse filing the motion for limited remand, and the supreme court thus entered an order denying Charisse's motion for limited remand in October 2022.[7]

Standard of review

"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). Further, the district court's determinations will be upheld so long as they are supported by substantial evidence. *Id.*

The district court's calculation of the parties' community interest in SCM

Shane argues that contrary to the Nevada Supreme Court's opinion in *Cord v. Neuhoff*, 94 Nev. 21, 573 P.2d 1170 (1978), the apportionment method under *Pereira* is not the preferred method in Nevada, and a court may apply either *Pereira* or *Van Camp* to achieve substantial justice between the parties. Shane argues that because his premarital efforts resulted in SCM's increase in value during the marriage, and that he put forth no extraordinary efforts into its operation during the marriage, the district court abused its discretion in applying the *Pereira* apportionment method to determine the parties' community interest in SCM. Shane further argues that the parties' community expenses exceeded the reasonable income

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[7]Although Charisse argues that this court should remand this matter to the district court to recalculate her community interest in Shane's SEP IRA in light of his post-trial disclosure, we decline to do so. Charisse acknowledged that Shane's proposed Findings of Fact, Conclusions of Law, and Decree of Divorce, which was submitted before the entry of the district court's order, disclosed that the balance of the SEP IRA was in excess of $186,000. Because Charisse did not file a cross-appeal, this issue is not properly before us. *See Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) (noting that "a respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal"). However, we offer no opinion as to the availability of any other remedy.

of his position at SCM. Shane also argues that like the business-owning spouse in *Van Camp*, he began operating his business prior to marriage, he entered his marriage with several years of business experience, and he had a separate property capital investment in his business. Finally, Shane argues that the district court made a mathematical error by increasing Charisse's community interest in SCM by $37,500.

Conversely, Charisse asserts that, unlike Shane—whose role in SCM's operation was significant—the business-owning spouse's earnings in *Van Camp* resulted primarily from the premarital capital he invested in the company. Additionally, Charisse argues that the district court correctly applied the *Pereira* apportionment method because the increase in SCM's value during the parties' marriage was attributable to Shane's efforts during the marriage, and that this is the only method that achieves substantial justice under the circumstances of this case.

Application of the apportionment method under Pereira

Under Nevada law, the "rents and profits from a spouse's separate property is separate property. However, it also is true that the earnings of either spouse during coverture are allocable to the community." *Neuhoff*, 94 Nev. at 25-26, 573 P.2d at 1173. Where a spouse devotes their time, labor, and skill to the increase in value of separate property, or to the production of income from such separate property, these principles come into conflict. *See id.* at 26, 573 P.2d 1173. In such instances, our jurisprudence has applied either the method laid out in *Pereira* or *Van Camp* to determine to what extent such an increase in value should be apportioned between the asset-owning spouse's separate estate and the community property of the spouses. *Johnson v. Johnson*, 89 Nev. 244, 246, 510 P.2d 625, 626 (1973).

Where the increase in value of separate property during marriage was primarily due to external factors or the character of the

separate property itself, and not through the marital efforts of the spouse(s), our jurisprudence has applied the apportionment method under *Van Camp*. *See, e.g., Schulman v. Schulman*, 92 Nev. 707, 715, 558 P.2d 525, 530 (1976) (applying the *Van Camp* apportionment method where the increase in value of a spouse's business was attributable to the increase in the population of Las Vegas). The *Van Camp* method allocates to the community an annual sum equivalent to the compensation which an employee rendering services proportionate to the property-owning spouse would receive and allocates the remaining balance to the property-owning spouse as his or her separate property. *See Neuhoff*, 94 Nev. at 26, 573 P.2d at 1173 ("The Van Camp method allocates to the community an annual sum equal to the salary which would have to be paid an employee rendering services proportionate to the [property-owning spouse's], and treats the balance as separate property attributable to the normal earnings of the separate estate.").

Conversely, where the increase in value of separate property during marriage was primarily due to the skill and effort of one or both spouses, our jurisprudence has applied the apportionment method under *Pereira*. *See, e.g., Neuhoff*, 94 Nev. at 26, 573 P.2d at 1173 (applying the *Pereira* apportionment method where the increase in value of spouse's estate was due to his devoting great time and energy to the management of his wealth). The *Pereira* method allocates a fair return on the property-owning spouse's initial investment to his or her separate property and, if the value of the separate property at divorce exceeds this initial investment and fair rate of return, such excess is allocated to the community. *Id.*; *see also In re Marriage of Dekker*, 21 Cal. Rptr. 2d 642, 649 (Ct. App. 1993) ("Here, the trial court accorded [one of the spouses] her original $1,000, plus a 10 percent annual return, for a total of $1,934 in separate property. That figure was then subtracted from the increased value of [a business] ($927,000), leaving

a balance of $925,066 which was apportioned to the community."). "The preferred method appears to be that suggested in Pereira unless the owner of the separate estate can establish that a different method of allocation is more likely to accomplish justice." *Neuhoff*, 94 Nev. at 26, 573 P.2d at 1173; *see Johnson*, 89 Nev. at 247, 510 P.2d at 626-27 (noting that "[c]ourts of this state are not bound by either the Pereira or the Van Camp approach, but may select whichever will achieve substantial justice between the parties").

Here, it is undisputed that Shane began operating SCM prior to his marriage with Charisse. At SCM's inception, Shane put forth significant effort to grow his business, including regularly travelling overseas to Asia to obtain project materials at a discounted rate. One of SCM's first projects came from Redwood, a business with which Shane formed a positive relationship prior to his marriage. After marrying Charisse, Shane continued contributing his skill and effort to ensure SCM's success, and he maintained a positive reputation in the construction industry. Shane also worked to maintain the positive business relationships he had formed with overseas suppliers by frequently making trips to Asia. Shane's efforts continued to result in larger and more lucrative projects. Shane conceded that Redwood would not have awarded SCM with these projects absent his efforts, testifying:

> [T]hey're not going to give me a contract of that size unless I'm able to perform that kind of work. And I have an ongoing relationship and track record with them to where like the work that I perform and the timelines I'm able to perform the work in. I would say that they are, you know, very pleased with the kind of work that I do. I have a very good reputation in the industry, so.

This was further supported by Charisse's testimony. The district court was ultimately persuaded that SCM "would not have succeeded without Shane's

labor, skill and business relationship."[8] Based on the foregoing, there is substantial evidence in the record to support the district court's conclusion that SCM's increase in value during the parties' marriage was due primarily to Shane's effort, skill, and labor during the marriage. For these reasons, we conclude that the district court acted within its discretion in utilizing the *Pereira* apportionment method to determine the parties' community interest in SCM.

The district court's refusal to deduct community expenses incurred by the parties during their marriage from their community interest in SCM

There is a rebuttable presumption that all property acquired by either spouse after marriage is community property. *Kelly v. Kelly*, 86 Nev. 301, 309, 468 P.2d 359, 364 (1970). Further, there is a presumption that community expenses are paid from community, not separate property. *Beam v. Bank of Am.*, 490 P.2d 257, 263 (Cal. 1971). Pursuant to *Cord v. Cord*, 98 Nev. 210, 214, 644 P.2d 1026, 1029 (1982), if separate property is used to pay community expenses "*when community assets are exhausted*," a spouse's separate estate is entitled to reimbursement from the community. (Emphasis added.) Conversely, "where a spouse makes a conscious choice to use his or her separate property, rather than available community property, to pay community expenses, the use of the separate property constitutes a gift to the community." *Robison v. Robison*, 100 Nev. 668, 671, 691 P.2d 451, 454 (1984).

Here, Shane's expert estimated that the parties incurred $847,000 in community-benefitting expenses during their marriage. His

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[8]This court does not reweigh the credibility of witnesses on appeal. *Castle v. Simmons*, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004) (noting that this court "will not reweigh the credibility of witnesses on appeal; that duty rests within the trier of fact's sound discretion").

expert observed that community expenses were paid from a variety of sources, including his separate property. Though Shane argues that the community interest in SCM must be reduced by the community expenses incurred during the parties' marriage, he overlooks the difference between this case and *Cord*. In *Cord*, the husband's separate estate paid for community expenses during times where all community assets were exhausted, which entitled the husband's separate estate to reimbursement. 98 Nev. at 214, 644 P.2d at 1029. Here, the evidence at trial did not indicate that there was any point where the parties' community assets were exhausted. Rather, the portion of Allen's report that illustrates Shane's W-2 wages during the parties' marriage suggests that the parties could satisfy these community expenses with community assets. Specifically, Shane reported $1,237,000 in W-2 wages during the parties' marriage, the entirety of which was considered the community property of the parties. *See Forrest v. Forrest*, 99 Nev. 602, 604, 668 P.2d 275, 277 (1983) ("All property acquired after marriage is presumed to be community property."). These reported wages alone would satisfy their community expenses.

Because the record does not demonstrate that the parties' community assets were exhausted, any community expenses paid with Shane's separate property are presumed to be a gift to the community. *Robison*, 100 Nev. at 671, 691 P.2 at 454. Therefore, unlike *Cord*, Shane is not entitled to reimbursement from the community for such expenses. *See Cord*, 98 Nev. at 214, 644 P.2d at 1029 (concluding that "[i]f [one of the spouses] had made a conscious choice to use his separate property, rather than available community property, to pay community expenses, such use of his separate property would have constituted a gift to the community for which reimbursement could not be claimed"). For the foregoing reasons, we conclude that the district court acted within its discretion in refusing to

deduct community expenses incurred by the parties during their marriage from their community interest in SCM.

The district court's failure to deduct Shane's $37,500 payment to his separate property with community equity from his separate property interest in SCM before calculating the parties' community interest in SCM

Pursuant to NRS 125.150(1)(b), the district court "[s]hall, to the extent practicable, make an equal disposition of the community property of the parties" when granting a divorce. In *Hybarger*, the husband owned a separate property business and operated it throughout his marriage. 103 Nev. at 257, 737 P.2d at 890. During the marriage, the husband withdrew funds from the business to purchase a separate property ranch. *See id.* at 258, 737 P.2d at 891. Upon the parties' divorce, the district court failed to consider these withdrawn funds in determining the parties' respective interests in the business when it applied the *Pereira* apportionment method. *See id.* The supreme court held that the district court erred "in failing to reduce the amount of [the husband's] remaining separate property interest in the business by the amount withdrawn as separate funds," and remanded the case to the district court to recalculate the husband's separate property interest in the business to reflect this withdrawn amount, and to recalculate the parties' community interest in the business. *Id.*

Here, it is undisputed that 200 Citrus LLC is Shane's separate property. During the parties' marriage, Shane withdrew $37,500 from SCM to repay his cousin for his one-half interest in the 200 Citrus LLC property. These facts are analogous to *Hybarger*, in that Shane withdrew funds from his separate property business to make a payment towards other separate property. Thus, this amount should have been deducted from the value of Shane's separate property interest in SCM before calculating the community property interest in the business pursuant to *Pereira*. *See id.* The district

court instead increased Charisse's community interest in SCM by $37,500 and decreased Shane's community interest in SCM by this amount. Because the *Pereira* method uses the difference between the value of the business at the date of divorce—or in this case, May 19, 2020, when Allen filed her report—and the business-owning spouse's separate property interest in the business to calculate the community property interest in the business, this error resulted in a miscalculation as to the community property interest in SCM.[9] *See Neuhoff*, 94 Nev. at 26, 573 P.2d at 1173 (stating that "[t]he Pereira method of apportionment is to allocate a fair return on the investment to the separate property and to allocate any excess to the community property as arising from the husband's efforts"). Using Shane's adjusted separate property interest in SCM of $1,752,500, the community interest in SCM should have been $547,500 ($2,300,000 - $1,752,500), and not $510,000 as the district court concluded. For the foregoing reasons, we necessarily reverse this portion of the decree.

The district court acted within its discretion in determining that Shane's SEP IRA was subject to division as community property

Our jurisprudence has long held that a spouse's retirement benefits earned during the marriage are community property which is subject to equal division upon divorce. *See Walsh v. Walsh*, 103 Nev. 287, 288, 738 P.2d 117, 118 (1987) (concluding that a spouse was entitled to one-half of her husband's pension benefits earned during their marriage).

Here, Shane began contributing to his SEP IRA in 2015, the year that he married Charisse. Shane continued to contribute to this retirement account throughout the marriage. Therefore, Shane's argument that the

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[9]Had the district court made the appropriate calculation, Shane's separate property interest in SCM of $1,790,000 would have been reduced to $1,752,500 ($1,790,000 - $37,500). *See Hybarger*, 103 Nev. at 258, 737 P.2d at 891.

entirety of his SEP IRA should have been deemed his separate property lacks merit. *See id.*; *see also Kilgore v. Kilgore*, 135 Nev. 357, 360, 449 P.3d 843, 846 (2019) (stating that "[w]e have long held that retirement benefits earned during the marriage are community property" (internal quotation marks omitted)). This leaves Shane's argument that part of the contributions he made to his SEP IRA in 2015 should be considered his separate property. In its order, the district court stated that "[i]t is undisputed that Shane funded his Cambridge SEP IRA during the marriage. The balance of the account is approximately $186,000." The only cited evidence in the record regarding Shane's 2015 contributions to his SEP IRA is his trial testimony. At trial, Shane testified that he contributed $25,000 to his SEP IRA in 2015, with his first contribution being made in January of that year, and that he estimated the account's balance at the time of trial to be $186,000. However, Shane provided no further testimony or evidence to indicate precisely when such contributions were made and in what amount. As such, Shane failed to overcome the presumption that all property acquired by either spouse after marriage is community property. Therefore, we conclude that the district court did not abuse its discretion in awarding Charisse half ($93,000) of the SEP IRA's value. *See Kelly*, 86 Nev. at 309, 468 P.2d at 364.

Shane's remaining arguments on appeal

Shane asserts several more arguments on appeal. For the reasons discussed below, we find these arguments unpersuasive.

Shane's obligation to pay 64 percent of Charisse's attorney fees

An order awarding attorney fees is appealable as a special order made after final judgment. *Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006). "Like an appeal from a final judgment, an appeal from an order awarding attorney fees and costs must be filed no more than 30 days from the date that notice of the order's entry is served." *Id.* Because

Shane failed to appeal from the district court's July 8, 2021, order granting Charisse attorney fees and costs within 30 days despite being expressly permitted to contest her memorandum requesting the award, we decline to consider Shane's argument that he should not have been obligated to pay 64 percent of Charisse's attorney fees. Further, he fails to provide any legal authority or cogent argument to support that the district court abused its discretion in its fees award. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

Shane's equalization payment to Charisse for the vehicles he was allowed to retain

As noted, under Nevada law, there is a rebuttable presumption that all property acquired by either spouse after marriage is community property. *Kelly*, 86 Nev. at 309, 468 P.2d at 364. Where there is insufficient evidence to determine whether property is separate or community, our jurisprudence has presumed that such property is community in nature. *See Forrest*, 99 Nev. at 605, 668 P.2d at 278 (noting that where the record contained no evidence "beyond a few conclusory statements by the parties as to the character of the real property . . . the real property must be presumed to belong to the community").

Here, neither Shane nor Charisse provided any testimony regarding the vehicles that Shane was allowed to retain pursuant to the court's order. While Charisse did testify that the parties purchased an F-350 and a Tesla during their marriage, she provided no testimony to suggest that these were the only vehicles purchased during marriage. Further, Shane did not claim these vehicles as his separate property despite the opportunity to do so in his general financial disclosure form submitted to the district court. Due to the lack of evidence presented regarding the character of these

vehicles, the district court necessarily presumed that the vehicles were community property and ordered Shane to make an equalization payment to Charisse for half of their collective value as a condition to him retaining the vehicles. *See* NRS 125.150(1)(b); *see also Forrest*, 99 Nev. at 605, 668 P.2d at 278. Because Shane failed to rebut the presumption that these vehicles were community property, we conclude that the district court did not abuse its discretion in classifying the vehicles as such.

The parties' joint tax return overpayment

Although our jurisprudence has not specifically determined whether a tax overpayment from a jointly-filed tax return is to be divided equally between the parties as community property, the United States Court of Appeals for the Ninth Circuit was faced with this issue in *United States v. Elam*, 112 F.3d 1036 (9th Cir. 1997). In *Elam*, the married parties filed a joint tax return for 1988, which resulted in an overpayment, half of which was distributed to the wife as a refund. *Id.* at 1037. However, the government sought to recover this refund, claiming that the overpayment was her then-husband's separate property. *See id.* Applying California law, the court stated, "[i]f the [g]overnment fails to rebut the presumption the Elams' property is community property, then the district court is correct that each spouse is entitled to claim one-half of the 1988 overpayment credit." *Id.* at 1038.[10]

[10]We note that other jurisdictions have likewise held that an income tax refund is marital property to be divided upon divorce. *See Phillips v. Phillips*, 351 S.E.2d 178, 180 (S.C. Ct. App. 1986) ("An income tax refund is nothing more than a return of income. The returned income here is clearly marital property and the wife should have been awarded her equitable portion thereof."); *Reyes v. Reyes*, 458 S.W.3d 613, 619 (Tex. App. 2014) (concluding that an income tax refund was community property and subject to division).

Here, the parties filed a joint tax return that resulted in an overpayment of $206,625. Under Nevada law, such a refund was presumed to be the parties' community property, of which they were each entitled to a one-half interest. *See Forrest*, 99 Nev. at 605, 668 P.2d at 278. Shane asserts that the district court abused its discretion in dividing this overpayment as the parties' community property. However, Shane did not present sufficient evidence to overcome the presumption that this overpayment was property of the community, nor does he provide a cogent argument as to why this court should not affirm the district court's decision regarding this issue. As such, we conclude that the district court did not abuse its discretion in ordering the parties' tax overpayment to be divided between them equally.[11]

In light of the foregoing, we affirm the district court's judgment as to the application of *Pereira*, and as to the characterization of the parties' vehicles, tax overpayment, and Shane's SEP IRA as community property. However, we reverse the calculation of the parties' community property interest in SCM and remand for entry of an amended decree of divorce in accordance with this order.

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[11]Insofar as the parties have raised 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.

cc: Hon. Soonhee Bailey, District Judge, Family Court Division
Larry J. Cohen, Settlement Judge
Hutchison & Steffen, LLC/Las Vegas
The Abrams & Mayo Law Firm
Eighth District Court Clerk