IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IRINA ANSELL,
Appellant,
vs.
DOUGLAS ANSELL,
Respondent.

No. 83916-COA

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

Irina Ansell appeals from a decree of divorce and post-trial order in a divorce matter. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Senior Judge.

In February 2012, Irina and Douglas Ansell entered into a prenuptial agreement in contemplation of their upcoming marriage.[1] Several provisions in the agreement addressed the designation of the parties' assets as separate or community property as well as the distribution of property in the event of divorce. As relevant here, Doug's separate property interests included a number of businesses (the Ansell companies) and real property. Irina and Doug subsequently married, and the parties had one minor child together.[2]

In October 2015, Irina filed for divorce. By this time, the parties were living in separate residences, and in approximately March 2016, the district court ordered Doug to pay Irina interim spousal support of $15,500 per month. That year, the district court bifurcated the proceedings and conducted two separate bench trials: the first trial determined the custody of

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

[2]The district court's custody determinations are not at issue in this appeal.

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the parties' minor child, and the second trial found that the prenuptial agreement was valid and would "govern[ ] the financial issues in the case." The final judgments from the first two trials were both entered in September 2016.

In October 2016, Doug served Irina with an offer of judgment. Pursuant to that offer, Doug proposed that he "would be responsible for all tax liability associated with his personal income for all years of the marriage" and would pay Irina a $600,000 equalization payment. Irina did not accept this offer. Doug made two additional informal settlement offers in August and September of 2017, in which he proposed to pay Irina equalization payments of $2.1 million and up to $2.25 million, respectively. Irina also did not accept these settlement offers.

The third and final bench trial to determine the distribution of the parties' assets began in December 2017 and lasted for three days. During the trial, court-appointed certified public accountant (CPA) Mike Rosten testified that the Ansell companies increased in value by $9,972,132 from December 2012 to September 2017. Rosten also testified that one of Doug's businesses, InCorp Services, Inc. (InCorp), took out a $1.5 million loan in March of 2017 to pay Doug's personal federal income taxes. According to Rosten's testimony and a sworn declaration by InCorp's CFO, $1.2 million of that loan was then paid directly to the IRS to satisfy Doug's federal tax liability for the 2015-2017 tax years. Additionally, Doug presented testimony from Dave Hall, who served as CPA for the Ansell companies, and Clifford Beadle, a CPA with prior experience conducting business valuations. These witnesses offered different valuations for the Ansell companies, and Beadle testified to various deficiencies with Rosten's valuation methods.

The district court did not enter the divorce decree until February 9, 2021, more than three years after the third trial. Upon entry, the decree

was issued *nunc pro tunc* and became effective as of the last day of trial in December 2017. The decree awarded Irina rehabilitative alimony in the amount of $1,500 per month for 15 months and child support in the amount of $1,800 per month beginning June 1, 2018. The decree also awarded Irina a total equalization payment of $972,471. The equalization payment reflected an award for the appreciation of Doug's businesses in the amount of $1,350,000[3] minus several hundred thousand dollars for community property Irina transferred to her parents, as well as for several of Doug's loans and debts that the court charged to the community.

However, because the district court found that that "all of the income" received by Doug during their marriage was "consumed by the lifestyle of the parties," the decree did not award Irina any interest in Doug's income during the marriage. In addition, the court declined to award Irina any interest in the appreciation of Doug's real property holdings because it did not find evidence that she devoted personal time or effort into the investment and management of any of the properties. The decree determined that Doug's federal personal tax liability was a community obligation but that the specific amount of Doug's tax liability was "uncertain." As a result, the court stated that it would "retain jurisdiction" over the tax liability issue.

Following entry of the decree, both Irina and Doug filed competing motions for attorney fees. Doug's attorney fee motion, filed on March 19, 2021, sought fees for work performed between May 27, 2016, and January 31, 2018, thereby including fees that preceded both the September 2016 custody order *and* Doug's October 2016 offer of judgment. Additionally,

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[3]The district court did not accept Rosten's testimony that the Ansell companies increased in value by $9,972,132. Rather, the court found that the appreciation amounted to $2,700,000, and that Irina was entitled to half of this amount as her community share.

on March 26, 2021, Doug filed a timely motion to alter or amend the decree. In his motion, Doug asserted that the personal income tax payments he made from 2015 to 2017 totaled $1,364,128.52.[4] Accordingly, Doug's motion requested a $682,064.26 credit towards the decree's equalization payment that he owed to Irina, which represented his half of the community tax obligation. In response to Doug's motion to alter or amend the decree, on April 23, 2021, Irina filed an opposition and untimely "countermotion" to alter or amend the decree. She argued in her opposition that Doug's income tax debt was his separate obligation because the parties never signed a document agreeing to joint indebtedness as required by the prenuptial agreement. In her countermotion, Irina asserted that the district court erred by failing to award her post-separation income and by failing to use Rosten's valuation of the Ansell businesses, which she claimed was the only valuation that complied with the prenuptial agreement.

On November 3, 2021, the district court issued a single order containing findings of fact and conclusions of law which resolved the parties' various post-trial motions. The post-trial order granted Doug's motion to alter or amend the decree and awarded him his requested credit for tax payments against the decree's equalization payment,[5] which reduced his

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[4]Doug did not include original tax returns as exhibits to this motion. Instead, he attached "account transcripts" showing payments made to the Internal Revenue Service and a letter from the New York State Department of Taxation and Finance.

[5]The court noted that, including payments made to the IRS for tax years 2015, 2016, and 2017, "the grand total of tax payments made by [Doug] to the IRS for marital tax years, from his separate property, after the conclusion of trial was $1,352,736.00." The court also added to this amount Doug's payments to the state of New York for tax liabilities incurred during the marriage in the amount of $11,392.52, bringing "the total of all community tax obligations paid by [Doug] from his separate property to

equalization payment to $290,407. The post-trial order also granted Doug's request for attorney fees and awarded him $448,321.93 pursuant to NRS 18.010 and NRS 125.141. It credited this award against Doug's remaining equalization payment, thereby completely eliminating Doug's equalization payment obligation as initially set forth under the divorce decree. In connection with its award of fees under NRS 18.010, the court found that Doug was the prevailing party at the 2016 custody trial and was, therefore, entitled to an award of fees. The court also found that Doug prevailed at the financial trial and that Irina's "positions throughout the financial trial, just like her positions at the custody trial, were not reasonable based on facts and law."[6] In awarding fees under NRS 125.141, the court determined that Irina—who was now receiving no equalization payment whatsoever—did not receive a more favorable judgment than the October 2016 offer of $600,000. Lastly, the post-trial order denied Irina's "countermotion" to alter or amend the decree as untimely.

Irina timely appealed. On appeal, she challenges both the February 2021 divorce decree and the November 2021 post-trial order. Regarding the merits of the decree, Irina contends that the decree violated the parties' prenuptial agreement as to the valuation of Doug's business assets and real estate by failing to award Irina her half interest in Doug's income acquired during the marriage and by assigning various debts to the community without a written instrument agreeing to joint indebtedness. As it relates to the post-trial order, Irina challenges the characterization of

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$1,364,128.52." The court determined that Irina was responsible for half of this amount, or $682,064.

[6]Although the decree did not explicitly state that attorney fees were awarded pursuant to NRS 18.010(2)(b), the court made several findings that Irina's claims were unreasonable and intended to harass Doug.

Doug's tax liability as a community obligation and the credit reducing his equalization payment by half of his tax debt. Irina also challenges the attorney fees award to Doug.

However, before we can address the merits of Irina's appeal, we must first examine an alleged procedural defect in the notice of appeal.

Irina's appeal is not jurisdictionally defective

In his answering brief, Doug asks this court to dismiss Irina's appeal as jurisdictionally defective to the extent that she raises issues on appeal arising from the decree of divorce. Doug argues that Irina's notice of appeal only listed the post-trial order, not the divorce decree, and thus "Irina has waived any argument that the decree was an abuse of discretion by failing to include it in her notice of appeal. The decree itself is no longer subject to appeal."

In her reply brief, Irina concedes that her notice of appeal listed only the post-trial order, but contends that doing so reflects counsel's "prior practice" in family law matters when "the final order was on a tolling motion." Irina further argued that the notice of appeal should not be dismissed due to a technical defect where the intent to appeal from a judgment can be reasonably inferred and the respondent is not misled.

Thereafter, Doug filed in this court a separate motion for partial dismissal of Irina's appeal insofar as it attacks the divorce decree. Therein, Doug argues that while he received most of his requested relief in the decree, he was still required to pay Irina alimony, and "while Doug was willing to live with the decree, any signal that Irina was appealing it would have prompted a cross-appeal. But because she did not, and with the divorce itself safely final and unappealable, Doug did not cross-appeal." In her response to Doug's motion for partial dismissal, Irina argues that her intent to appeal the underlying decree was obvious, and that Doug was not misled.

Pursuant to NRAP 3(c)(1)(B), the notice of appeal must "designate the judgment, order or part thereof being appealed." In general, an order that is not identified in the notice of appeal is not considered by the appellate court. *Collins v. Union Fed. Sav. & Loan Ass'n*, 97 Nev. 88, 89-90, 624 P.2d 496, 497 (1981). The notice of appeal is a jurisdictional requirement, and generally an appeal from any orders not properly noticed on appeal must be dismissed as jurisdictionally defective. *See Forman v. Eagle Thrifty Drugs & Markets, Inc.*, 89 Nev. 533, 535-36, 516 P.2d 1234, 1235-36 (1973), *overruled on other grounds by Garvin v. Ninth Jud. Dist. Ct. ex rel. Cnty. of Douglas*, 118 Nev. 749, 59 P.3d 1180 (2002).

However, "[t]his general rule is not inflexible." *Abdullah v. State*, 129 Nev. 86, 90, 294 P.3d 419, 421 (2013). "The notice of appeal is not . . . intended to be a technical trap for the unwary draftsman." *Lemmond v. State*, 114 Nev. 219, 220, 954 P.2d 1179, 1179 (1998). "Where . . . the intent to appeal from a final judgment can be reasonably inferred *and* the respondent is not misled, we will not dismiss an appeal due to technical defects in the notice of appeal." *Id.* (emphasis added). We may look "beyond the face of the notice to determine the order it intends to appeal." *Abdullah*, 129 Nev. at 91, 294 P.3d at 421.

Even when a notice of appeal is defective, appellate courts have generally declined to dismiss an appeal when the notice mistakenly lists an unappealable order or determination. In those circumstances, courts can reasonably infer that the appellant intended to appeal a legally appealable decision of the lower court. "[A] notice of appeal directed at a non-appealable order can serve as a notice of appeal directed at a subsequently entered, appealable final decision." *Martinez v. Barr*, 941 F.3d 907, 915-16 (9th Cir. 2019). In *Jones v. Chaney & James Construction Co.*, the United States Court of Appeals for the Fifth Circuit declined to dismiss when a notice of

appeal listed six interlocutory orders, none of which were independently appealable. 399 F.2d 84, 85 (5th Cir. 1968). The court concluded that there was no reason to believe the appellants intended to "predicate their appeal on the clearly interlocutory, unappealable trial rulings . . . . Quite the contrary, appellants' intention to seek review of only the final judgment in the cause seems clear." *Id.* at 86.

Similarly, Nevada courts have held that a notice of appeal from a notice of entry of a final order can be inferred as appealing from the underlying order because notices of entry are not independently appealable. Indeed, in *Lemmon* the Nevada Supreme Court stated that "[a] notice of entry is not itself an appealable determination. Where, as here, the intent to appeal from a final judgment can be reasonably inferred and the respondent is not misled, we will not dismiss an appeal . . . ." 114 Nev. at 220, 954 P.2d at 1179. The same rationale has been applied to an order denying a post-judgment motion that is not independently appealable: "[A] district court's order denying judgment notwithstanding the verdict is not appealable. We may construe, however, the appellant's notice of appeal from an order denying judgment notwithstanding the verdict as an intent to appeal from the underlying judgment." *Krause, Inc. v. Little*, 117 Nev. 929, 933, 34 P.3d 566, 569 (2001); *see also Casino Operations, Inc. v. Graham*, 86 Nev. 764, 765-67, 476 P.2d 953, 954-55 (1970) ("An order denying a motion to amend findings of fact, conclusions of law and a judgment is not an appealable order . . . . [T]he federal courts have held that an appeal from an order denying a new trial amounted to an appeal from the judgment if it could be inferred from the notice of appeal . . . ."); *Donovan v. Esso Shipping Co.*, 259 F.2d 65, 68 (3d Cir. 1958) ("[A]n appeal from the denial of a new trial may under exceptional circumstances be treated as an inept attempt to appeal from the judgment which preceded that denial.").

However, the corollary is also true–when the appellant's notice of appeal refers to an order that *is independently appealable*, courts will generally infer an intent to appeal that order only, rather than an intent to appeal from a different appealable order. *Welch v. State ex rel. Hwy. Dep't*, 80 Nev. 128, 129-30, 390 P.2d 35, 35-36 (1964) ("Where several defendants are joined and separate judgments are entered, a notice of appeal specifically designating one of these cannot be interpreted to include any other not mentioned."); *Abdullah*, 129 Nev. at 90, 294 P.3d at 422 (declining to infer an intent to appeal from a judgment of conviction when the notice of appeal listed a petition for writ of habeas corpus because doing so would go "beyond our prior decisions and would undermine the general rule that an appealable judgment or order that is not designated in the notice cannot be considered on appeal").

The instant case presents unique circumstances because the notice of appeal was taken from a district court order that contains *both* appealable and non-appealable aspects. Specifically, the district court's post-trial order granted Doug's motions for attorney fees and to amend the decree and denied Irina's countermotion to amend the decree as untimely. Post-judgment orders granting attorney fees are independently appealable. *See generally Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). Similarly, an order *granting* a motion to alter or amend a judgment is likewise independently appealable. NRAP 4(a)(5). However, an order *denying* a motion to alter or amend a judgment is not independently appealable. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010); *Klein v. Warden*, 118 Nev. 305, 311 n.6, 43 P.3d 1029, 1033 n.6 (2002).

Nevada has not yet determined whether a notice of appeal referencing an order containing both appealable and non-appealable

determinations can be inferred to refer to a different appealable order. However, Nevada has adopted an explicit policy in favor of adjudicating appeals on the merits. "The tendency of the court . . . is to construe notices of appeal liberally, and hold them sufficient if, by fair construction of reasonable intendment, the court can say that the appeal is taken from the judgment in a particular case." *Theiss v. Rapaport*, 57 Nev. 434, 66 P.2d 1000, 1002-03 (1937) (quoting *Bliss v. Grayson*, 24 Nev. 422, 434, 56 P.231, 232 (1899)) (further internal quotation marks omitted); *see also Forman*, 89 Nev. at 536, 516 P.2d at 1236 (declining to grant dismissal based on a "procedural technicality" with the notice of appeal); NRAP 1(c) ("These rules shall be liberally construed to . . . promote and facilitate the administration of justice by the courts."). Given Nevada's strong preference for adjudicating appeals on the merits, we conclude that, in this case, the post-trial order's non-appealable determination permits this court to reasonably infer Irina's intent to appeal from the underlying divorce decree.[7]

Further, Irina's opposition and untimely countermotion to alter or amend challenged the district court's findings at the heart of the underlying decree, including the tax liability, income distribution, and valuation of the Ansell businesses. Irina's challenges to the substance of the decree indicated that she was dissatisfied with the result of the underlying proceedings, and when the district court granted Doug's motion to alter or amend in the post-trial order, including his request for attorney fees, the

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[7]We acknowledge Doug's position that Irina did not expressly reference an intent to appeal the divorce decree until the briefing despite multiple opportunities to do so, including in the notice of appeal, case appeal statement, and docketing statement, and we remind counsel to comply with the rules of appellate procedure in the future. NRAP 3(c)(1)(B). Counsel should directly reference any and all orders they intend to appeal in the notice of appeal to avoid a potential dismissal due to a jurisdictional defect.

court effectively reduced Irina's award to zero. Under the facts and circumstances of this case, Irina's intent to appeal the decree is apparent, and we are not persuaded by Doug's position that he was unaware that Irina intended to appeal from the underlying judgment.

Nor are we persuaded by Doug's assertion that he was misled or prejudiced. Though Doug argues that he would have filed a cross-appeal challenging the $22,500 alimony award had Irina expressly appealed the divorce decree, the decree found that Doug's obligation to pay such alimony had already been satisfied. In addition, Doug could have appealed any unfavorable provisions of the divorce decree–regardless of whether Irina filed a notice of appeal–without disturbing the other provisions where the district court found in his favor. *See Jones*, 399 F.2d at 86 ("Appellants' notice of appeal expressly sought review of only those rulings adverse to their position on the contested claims, and thus that portion of the judgment favoring them on the uncontested claim would not be jeopardized by appeal.").

Therefore, because this court can reasonably infer Irina's intent to appeal from the underlying divorce decree and Doug was not misled, we decline to dismiss Irina's appeal as jurisdictionally defective.[8] We now turn to the merits of her claims.

Irina did not establish the district court erred in valuing Doug's business appreciation

Irina argues that the district court abused its discretion and violated the prenuptial agreement by failing to accept Rosten's testimony that Doug's companies appreciated in value by $9,972,132. We review determinations made in a divorce decree for an abuse of discretion. *Devries*

[8]Given our conclusion that Irina's appeal is not jurisdictionally defective, we also necessarily deny Doug's motion for partial dismissal of appeal.

v. Gallio, 128 Nev. 706, 709, 290 P.3d 260, 263 (2012). However, we need not consider arguments that lack the support of relevant authority and cogent argument. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 337, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

Here, Section 13 of the parties' prenuptial agreement gave Irina "a community property interest in the increase in the value of the separate property of [Doug] during the marriage." It provided that a "baseline value" of Doug's property was to be made as of December 31, 2012, and that any valuation to determine Irina's interest, in the event of divorce, was to be "calculated on the same basis as the original valuation."

Irina contends that the district court's valuation did not comport with this provision because the court did not use the "same method" to value the businesses in December 2012 and at the time of trial. Rather, she asserts that the district court was contractually bound to accept Rosten's significantly higher valuation, which Irina claims was the only valuation that used the "same method" to determine the value of the businesses in 2012 and at the time of trial.

At the outset, Irina has not established that this argument was properly preserved for appellate review. The record on appeal indicates that Irina raised this issue for the first time in her untimely post-trial countermotion to alter or amend the decree, and the district court did not address it on the merits.[9] *See Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) (declining to consider an argument made for the first time in a motion for reconsideration after the final judgment was entered); *see also Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th

[9]We note that the Supplemental Authority Irina submitted after the oral argument does not support her assertion that this argument was raised at any point prior to her untimely motion to alter or amend.

Cir. 2000) ("A Rule 59(e) motion may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation."); *cf. Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007) (stating that appellate courts may consider arguments asserted in post-judgment motions for reconsideration only "if the reconsideration order and motion are properly part of the record on appeal from the final judgment, *and if the district court elected to entertain the motion on its merits*" (emphasis added)).

Further, Irina did not provide any citations to the record to support her contention that *only* Rosten used the "same method" to value the businesses. Instead, Irina asserts, in a conclusory manner, that other valuations offered by Doug were "simply made up" and did not employ the "same method" for their valuations at the starting and ending dates.[10]

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[10]During oral argument, Irina could not provide specific references to the record to support these assertions, but represented that appropriate supporting references were contained in her appellate briefs. However, Irina's only record citation in her brief to support that Doug's other valuations were "made up" is a reference to counsel's own district court briefs, which in turn did not cite evidence in the record. Irina's briefs contain many assertions without supporting citations to the record, and several citations are simply statements that the documentation supporting Irina's claims "could be filed in a supplement" or provided to this court upon request.

We remind counsel that the appellant has the responsibility to appropriately cite to the record where the matters relied on can be found and to ensure that the record on appeal is adequate for this court's review. *Cf.* NRAP 28(a)(10) (providing that an appellant's opening brief must contain "contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies"); NRAP 30(b)(3) (stating that the appellant's appendix must contain the documents listed in NRAP 30(b)(2) as well as "any other portions of the record essential to the determination of issues raised in appellant's appeal"). Further, as Irina acknowledged during oral argument, the record in this case is "vast" and comprised of 48 appendix volumes, each submitted in hard copy under seal,

Further, Irina does not cogently argue why the district court was required to adopt Rosten's valuation. *See Barrett v. Baird*, 111 Nev. 1496, 1503, 908 P.2d 689, 694 (1995) (recognizing that it is the purview of the finder of fact to accept or reject expert testimony), *overruled on other grounds by Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008). Because Irina neither directs this court to any authority that supports these bald assertions, nor cogently argues the issue, we decline to consider her challenge to the district court's valuation of Doug's businesses. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

The district court violated the prenuptial agreement by failing to award Irina any interest in the appreciation of Doug's real property

Next, Irina argues that the district court abused its discretion in failing to award her any interest in the increase in value of Doug's real estate holdings. Doug responds that the court did not err because Irina failed to present any evidence at trial that either party had contributed time, skill, services, industry or effort to the management of Doug's real property.

Generally, "when a spouse devotes [their] time, labor, and skill to the production of income from separate property, the court may apportion any increase in value of the separate property business between the separate property and community property estates." *Devries*, 128 Nev. 710, 290 P.3d 263. However, parties to a premarital agreement may contract with respect to their rights and obligations in property in a manner that obviates community property law. NRS 123A.050 (discussing contents of premarital agreements).

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exacerbating Irina's failure to provide appropriate citations to the record. It is not this court's responsibility to locate the relevant portions of the record on an appellant's behalf. *See Albrechtsen v. Bd. of Regents of Univ. of Wis. Sys.*, 309 F.3d 433, 436 (7th Cir. 2002).

Valid premarital agreements are enforceable as contracts. *Buettner v. Buettner*, 89 Nev. 39, 44, 505 P.2d 600, 603 (1973). Interpretation and construction of contract terms is a question of law subject to de novo review. *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007) ("Construction of a contractual term is a question of law, which we review de novo."). "[W]hen a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written." *Ringle v. Burton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004).

In this case, Section 13 of the parties' prenuptial agreement provided that "an . . . increase in the value of the separate property of [Irina] during the marriage shall be and remain entirely [Irina's] separate property" even though the expenditure of her personal time and skill into the maintenance of that separate property would otherwise create a community property interest. However, as set forth above, Section 13 also gave Irina a community property interest in the increase in value of Doug's separate property during the marriage. Indeed, Section 13 expressly provided that Irina "*shall have* a community property interest" in the increase in value. (Emphasis added.) *See, e.g., Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 740-41, 359 P.3d 105, 107-08 (2015) (distinguishing between mandatory and permissive language in contracts, and recognizing that "shall" is mandatory language). Accordingly, under the plain language of the agreement, Irina was entitled to an automatic, mandatory community property interest in Doug's separate property, regardless of whether either

party expended any personal time, skill, service, industry, or effort on those properties during the marriage.[11]

In the divorce decree, the district court directly contravened these provisions by concluding that "no claim to appreciation of real property will be considered" because "there was insufficient evidence presented at trial that either party devoted considerable personal time, skill, service, industry and effort to the investment and management of their real property separate property." The court abused its discretion in failing to apply Section 13 of the agreement, which gave Irina a community property interest in Doug's separate property regardless of whether the community expended efforts to improve or manage that property. We therefore reverse this portion of the divorce decree. On remand, the district court must determine the appreciation of Doug's real estate holdings and award Irina her interest therein.

The district court erred in imposing liability on the community for several debts incurred by Doug in violation of the parties' prenuptial agreement

Irina also contests the district court's decision to assign as community debt several loans that Doug took out during the marriage. She claims that these could not be community debts because she never signed a writing agreeing to joint responsibility, as required by Section 21 of the

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[11]During oral argument, Doug asserted that the prenuptial agreement's use of the phrase "community property" expressly referred to a 50/50 share, but that a "community property interest" referred to Irina's interest as defined under Nevada law. We are not persuaded by this argument; the divorce decree expressly found that the terms "50/50 distribution," "one-half-distribution," and "community property interest" were used interchangeably. Further, a spouse's community property interest is defined under Nevada law an equal share. *See* NRS 123.225(1) ("The respective interests of each spouse in community property during the continuance of the marriage relation are present, existing and *equal interests* . . . ." (emphasis added)).

prenuptial agreement. In response, Doug argues that these debts were taken out to fund the parties' divorce litigation, and previous court orders from this case provided that litigation costs were to be borne by the community.

Generally, debts incurred by either spouse during marriage are the responsibility of the community. NRS 123.220 (providing that, generally, all property or debt acquired after marriage is community property); *Randano v. Turk*, 86 Nev. 123, 131-32, 466 P.2d 218, 223-24 (1970) (holding that community property was properly made liable for debt incurred by one spouse during marriage). However, through a contractual agreement, spouses may assign as separate property any debts that would otherwise be charged to the community. NRS 123.220(1).

Here, Section 21 of the prenuptial agreement governing unsecured debt responsibility provided that "[a]ll unsecured obligations of either party, no matter when incurred, shall remain the sole and separate obligation of each such party, who shall indemnify and hold the other harmless from liability [thereof]." Similarly, Section 20, which addressed debt obligations on separate property interests, stated, "[a]ll obligations . . . incurred due to or as a consequence of the purchase, encumbrance, or hypothecation of the separate property of either party . . . shall be the sole obligation of the party who incurred the same." The agreement provided that each spouse would be "responsible for [half] of [joint] debt in the event of a divorce," but also noted that "[f]or purposes of this provision debt shall be considered to be acquired jointly only in the event that both parties sign a document agreeing to become indebted."

The divorce decree listed several itemized debts, totaling several hundred thousand dollars, for loans taken out against Doug's real property as well as expert witness fees. There is no dispute that these itemized debts were either loans taken out by Doug or fees that Doug had previously been

ordered to pay. And, without a writing signed by both Doug and Irina agreeing to joint indebtedness, these debts should have been assigned to Doug as separate debt pursuant to Sections 20 and 21 of the prenuptial agreement. Accordingly, the district court abused its discretion in assigning these debts to the community as that violated the parties' valid prenuptial agreement. *See Devries*, 128 Nev. at 709, 290 P.3d at 263.

The district court erred in declining to award Irina any value for Doug's income without considering whether she received the benefit of that income after separation

Irina next argues that the district court erred in failing to award her any value for Doug's income, particularly income he earned after Irina filed for divorce. In Nevada, all income earned by a spouse during marriage is presumed to be community property. NRS 123.220 (providing that, generally, all property acquired after marriage by either spouse is community property).[12] This remains true even after spouses are separated but before the marital community is formally dissolved via a decree of divorce. *Forrest v. Forrest*, 99 Nev. 602, 607, 668 P.2d 275, 279 (holding that property acquired by one spouse after separation was community property).

The divorce decree did not award Irina any value for her interest in Doug's income, finding that "all of the income received by [Doug] was consumed by the lifestyle of the parties, and there was no credible evidence presented regarding how much of this income supported the community and/or benefited either party individually." This finding, however, only concerns the spending of the parties prior to separation; the court failed to consider whether Irina received the benefit of Doug's income or expenditures

[12]The prenuptial agreement did not alter the treatment of income earned during marriage under Nevada community property law.

after Irina filed her divorce complaint in October 2015 and the parties separated.

Doug was court-ordered to pay Irina interim spousal support of $15,500 per month beginning in March of 2016. According to the decree, Doug continued to owe Irina $44,000 in unpaid support as of December 2017. The district court found Doug's income at the time the decree was issued to be $42,000 per month but did not consider that amount in its distribution of the parties' assets and liabilities. Thus, we conclude that the district court abused its discretion when it failed to consider whether Irina received her community interest in Doug's income between the time Irina filed for divorce and the issuance of the decree nunc pro tunc. *See Forrest*, 99 Nev. at 607, 668 P.2d at 279. We therefore reverse this portion of the divorce decree and remand for further findings.

The district court abused its discretion in finding that Irina was liable for Doug's tax debt

In its post-trial order, the district court found that the marital community was responsible for Doug's personal tax debt and awarded Doug a credit of $682,064 towards his equalization payment, which represented half of the tax payments previously made from his separate property. Irina argues this was an abuse of discretion because she did not sign a writing agreeing to joint indebtedness as required by their prenuptial agreement. In addition, she argues that the court abused its discretion in imposing community liability for Doug's taxes without considering whether she received any benefit from that income.

As set forth above, valid premarital agreements are enforceable as contracts. *Buettner*, 89 Nev. at 44, 505 P.2d at 603. As with any contract, interpretation and construction of terms is a question of law subject to de novo review, but the interpretation of an ambiguous contract presents a question of fact involving the parties' intent. *Id.* at 215-16, 163 P.3d at 407.

Under community property law, income taxes and debts incurred by one spouse during marriage are community obligations. *Rodgers v. Rodgers*, 110 Nev. 1370, 1375, 887 P.2d 269, 273 (1994) (recognizing that "[f]ederal income tax law requires spouses who are domiciled in a community property state to 'split' community income, each reporting and paying tax for one-half of it"); *see also Randano*, 86 Nev. at 131-32, 466 P.2d at 223-24. "A nonearning spouse in a community property state who files a separate return is liable for the tax on one-half of the community income earned by the other spouse." *Rodgers*, 110 Nev. at 1375, 887 P.2d at 273. Nevertheless, spouses can contractually shift the obligation to pay income tax liability among themselves. *See, e.g.*, NRS 123.220 (providing that spouses may agree in writing to modify the general rule that property acquired after marriage is community property).

Irina's argument primarily relies on Section 21 of the prenuptial agreement addressing unsecured debt responsibility. This section explicitly addresses Irina's responsibility for Doug's tax debt incurred *prior* to the marriage, stating that "any IRS debts [incurred by Doug] prior to the marriage, together with any interest or penalties thereon shall be [Doug's] sole debt and responsibility, and [Irina] shall have no financial obligation therein." Although Section 21 does not contain any explicit language addressing Irina's liability for Doug's IRS debts incurred *after* the marriage, it states, as set forth above, that the parties may only incur joint debt during the marriage by signing a document agreeing to such joint indebtedness. Irina argues that because she did not sign a document agreeing to joint indebtedness, Doug's tax liability during the marital years could not be imposed on the community.

Irina's interpretation is certainly reasonable. However, this is not the only reasonable interpretation of Section 21. Section 21 explicitly

states that Doug is solely liable *only* for IRS debts incurred prior to marriage but does not provide that Doug is solely liable for IRS debt incurred during the marriage. The omission of any reference to tax debt during the marriage could be interpreted as an intent not to alter the default community treatment of marital tax liability under Nevada law.

Because the prenuptial agreement is subject to more than one reasonable interpretation, it is ambiguous as to whether Irina could be liable for community tax debt incurred in the absence of a document signed by both parties agreeing to the joint indebtedness. *See Am. First Fed. Credit Union*, 131 Nev. at 739, 359 P.3d at 106 (stating that "[a]n ambiguous contract is susceptible to more than one reasonable interpretation"). Yet, the district court made no findings regarding the intent of the parties as to the ambiguous language in Section 21 with regard to tax liability. *See Anvui, LLC*, 123 Nev. at 216, 163 P.3d at 407. And this court "do[es] not resolve matters of fact for the first time on appeal." *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 156, 321 P.3d 875, 881 (2014); *see also Anuvi, LLC*, 123 Nev. at 216, 163 P.3d at 407.

Moreover, the district court ordered that Irina was responsible for half of Doug's tax obligation, including for tax years 2015, 2016, and 2017, based on his entire income earned. However, as set forth above, it is unclear whether Irina received her community interest in Doug's income during this time.

Because the district court failed to make findings supporting its conclusion that Irina had liability for half of Doug's tax debt, particularly his tax debt after Irina filed for divorce without finding that she received any of Doug's income during that timeframe, the district court abused its discretion. *Devries*, 128 Nev. at 709, 290 P.3d at 263. We therefore reverse the post-trial

order's tax characterization and liability determination and remand for further findings. *Id.*

The district court's award of attorney fees is vacated

Lastly, Irina contends the district court abused its discretion by awarding Doug attorney fees under NRS 18.010 and NRS 125.141. Irina argues that under NRCP 54, the only proper attorney fees that could be awarded were those relating to the financial trial, and because Irina was the prevailing party at the financial trial, Doug is not entitled to any fees.

"An award of attorney fees and costs is appropriately vacated when a portion of the underlying order is reversed." *Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 293 (Ct. App. 2023). Because we reverse a portion of the divorce decree in this case, the district court's characterization of Doug as the "prevailing party" for purposes of NRS 18.010 might change on remand. *See Iliescu v. Reg'l Transp. Comm'n of Washoe Cnty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 462 (Ct. App. 2022) (vacating an award of attorney fees because the underlying judgment was reversed in part such that it was unclear if the party awarded fees was still the prevailing party). Likewise, it is no longer clear that Doug beat the offer of judgment entitling him to fees under NRS 125.141. *See* NRS 125.141(4) (providing for attorney fees where "the party who rejected the offer fails to obtain a more favorable judgment concerning the property rights that would have been resolved by the offer if it had been accepted"). We therefore vacate the award of attorney fees in this case.[13]

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[13]To the extent the district court determines that attorney fees are warranted under NRS 125.141, we remind the court that an award of fees in connection with Doug's October 2016 offer of judgment is limited to "reasonable attorney's fees incurred . . . *after* the date of the offer that relate to the adjudication of [the] property rights" that would have been resolved had the offer been accepted. NRS 125.141(4)(b) (emphasis added).

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART, AND REMAND for proceedings consistent with this Order.[14]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

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[14]We decline to consider Irina's wholly unsupported claim that the decree should be overturned because she believes Senior Judge Saitta signed and entered Doug's proposed decree without modification in retaliation against her for filing a judicial ethics complaint. Irina failed to support this argument with any record citations or include anything in the appendix that would otherwise substantiate this claim. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; *see also Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993) ("This court need not consider the contentions of an appellant where the appellant's opening brief fails to cite to the record on appeal."); *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 482 (2023) (holding that it is not reversible error for a district court to enter a litigant-drafted decree without modification).

We also decline Irina's request to reassign this case to Judge Duckworth and note that the Nevada Supreme Court already rejected a petition for writ of mandamus challenging his recusal order in this case. *See Sanson v. Eighth Jud. Dist. Ct.*, No. 77363, 2019 WL 292981 (Nev. Jan. 18, 2019) (Order Denying Petition).

Insofar 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.

cc: Chief Judge, Eighth Judicial District Court
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