IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MILTON LEE GREEN,
Appellant,
vs.
LOIS GREEN,
Respondent.

No. 85509-COA

ORDER OF AFFIRMANCE

Milton Lee Green appeals from a post-divorce decree order denying his countermotion to set aside a Qualified Domestic Relations Order (QDRO) in a divorce proceeding. Eighth Judicial District Court, Family Division, Clark County; Dawn Throne, Judge.

Milton and respondent Lois Green were married in Las Vegas in July 2006.[1] At the time, Milton was working for the Clark County Parks and Recreation Department, and Lois was retired. Lois filed for divorce in September 2019. The parties have no children together and were in their mid-70s at the time of the proceedings. The main issues to be decided before the divorce was finalized were the division of the parties' community assets and debts, including Lois's interest in Milton's Public Employees' Retirement System (PERS) benefits.

Milton unilaterally retired during the preliminary stages of the divorce proceedings and began receiving PERS retirement checks in August 2020. Soon after, PERS apparently notified Lois that Milton had selected PERS Retirement "Option 1" (Option 1) as his benefit plan—an option that granted Milton unmodified full benefits each month and left him with no survivor beneficiary. Lois took issue with the fact that (1) she was not currently receiving her community share of Milton's PERS benefits and (2)

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

Milton had selected an option in which she could not be named a survivor beneficiary. Accordingly, Lois filed a motion for orders regarding Milton's PERS benefits and related relief in October 2020.

In her motion, Lois argued that the district court should order Milton to change from Option 1 to PERS Retirement Option 3 (Option 3)—a change that would allow Lois to be named Milton's survivor beneficiary and receive 50 percent of Milton's PERS benefits if he were to predecease her. Option 3, however, would require Milton to pay a "survivor beneficiary premium" each month.[2] Lois argued that the change from Option 1 to Option 3 was necessary to protect her community interest in Milton's retirement and suggested that she and Milton equally split the cost of the premium.[3] In opposition, Milton averred that he earned the majority of his retirement benefits prior to marrying Lois, and that it would be a windfall if Lois were named a survivor beneficiary with a claim to 50 percent of his posthumous benefits.

After a hearing on Lois's motion in October 2020, the district court, through Judge Moss, determined that Lois was entitled to a community share of Milton's retirement benefits, the percentage of which to be formally stated via a QDRO. The court also concluded that a change from Option 1 to Option 3 was necessary to ensure an equitable division of community retirement benefits because, under Option 1, Lois's share of the pension would automatically revert to Milton at no cost should she predecease him, while Lois would receive nothing if the situation were

---

[2]This premium would automatically be deducted from Milton's monthly PERS checks. The record is silent as to the precise amount that would be deducted.

[3]Because the premium would be automatically deducted from Milton's check, to split the premium cost would require Lois to reimburse Milton.

reversed. By ordering the switch from Option 1 to Option 3, the district court reasoned it preserved Lois's community interest to the same extent as Milton's.

Regarding the Option 3 premium, the district court concluded that, presumably, Lois should reimburse Milton for the premium every month because the change from Option 1 to Option 3 was for her benefit. Namely, the court stated, "[I]t's like with military pensions, if you want it, you got to pay for it . . . . You can argue it at trial . . . .I'll have her pay it without prejudice." The court instructed the parties to further research the issue and concluded by stating that Lois would be required to pay the premium only for the next few months. The district court's written order mirrored this reasoning and stated, "Lois shall pay 100% of the premium cost for the PERS Retirement Survivorship Benefit Option 3 for the next few months until trial; this provision is without prejudice and may be modified by the Court at the time of trial."

Shortly after the October 2020 hearing, Judge Moss retired, and the case was reassigned to Judge Bailey. At the May calendar call, Milton represented that the parties had obtained a QDRO and entered a global settlement, with Milton to pay Lois a fixed financial sum of $120,000 within 120 days in exchange for Lois agreeing to refinance the marital residence and convey her interest in the property to Milton via a quitclaim deed. The district court vacated the trial date and ordered Lois to prepare the decree of divorce (the decree).

Milton subsequently reviewed, approved, and signed the decree, and the district court entered the decree in June 2021. The decree fully incorporated the parties' stipulated settlement and contained a provision

related to Milton's PERS benefits.[4] According to that provision—the one at issue on appeal—Lois was awarded as her sole and separate property

> "[h]er [c]ommunity [m]arital share according to the Gemma/Fondi time rule, of benefits and pensions in Defendant's name, including, but not limited to PERS; (See Order from Hearing on 10/26/2020 entered on 11/6/2020 which is hereby incorporated as if set forth fully herein)."

In other words, the order from the October 2020 hearing ordering the change to Option 3 was incorporated into the parties' settlement, which was then merged into the decree of divorce.

The QDRO, which was purportedly drafted in accordance with the decree of divorce by a third party and filed in November 2021, advised that Milton had selected PERS Option 3 with Lois as the named survivor beneficiary. Notably, it also designated Milton as the party responsible for paying the Option 3 premium, stating that Milton was "required to maintain [his] option selection."

In May 2022, almost one year after the decree of divorce was entered, Lois filed a motion for an order to show cause for contempt because Milton had paid only $350 of the roughly $19,000 Lois claims he owed her in unpaid benefits. In opposition, Milton acknowledged that he owed Lois her community share of his PERS retirement but argued that she had miscalculated his arrears. Additionally, for the first time since the QDRO had been entered, Milton took issue with the QDRO making him the party responsible for paying the Option 3 premium and countermoved the district court to set aside the current QDRO pursuant to NRCP 60(b). In support of

---

[4]As to alimony, the parties agreed that "no spousal support shall be awarded in exchange for the unequal division of community property and debts, as well as the Fixed Financial Settlement."

his countermotion, Milton argued that the QDRO was drafted in accordance with the decree, and the decree incorporated the order from the October 2020 hearing that made Lois responsible for the premium payment unless she could successfully persuade the district court to conclude otherwise at trial.

Lois argued in opposition that, procedurally, the time to set aside the QDRO was long past pursuant to NRCP 60(b). On the merits, Lois contends that Milton had ample opportunity to review and seek to amend the decree as he saw fit and could not now argue fraud, coercion, or misrepresentation simply because his examination was not thorough.

The district court, through Judge Throne, held a hearing on Lois's post-judgment motion and Milton's countermotion in August 2022. Regarding the Option 3 premium, the district court denied Milton's countermotion to set aside the QDRO because it was untimely under NRCP 60(b)'s six-month time limit. That being said, the court set a status check for September and left open the opportunity for Milton to challenge the decree and QDRO under NRCP 60(a) if he could prove there was a clerical mistake. In the absence of a clerical mistake, the district court concluded that Milton would be responsible for paying 77 percent of the premium payments—a portion that represented his community share of the retirement benefits.

At the September status check, Milton conceded that he could not prove there was a clerical mistake, and the district court determined it consequently had no basis to set aside the QDRO under NRCP 60(a). Therefore, the district court reasoned that the decree of divorce remained silent as to future premium payments and left in place its prior decision that the parties split the premium cost based on their respective percentage of the community shares (77/23).

The district court entered its order from the August hearing in October 2022. In this order, the court found that the decree of divorce was silent regarding the Option 3 premium payments and reiterated that Milton would be responsible for paying 77 percent. Additionally, the district court noted that, while it was unclear whether the parties discussed the premium payments during settlement negotiations, it was reasonable to assume that Lois waived her right to alimony in exchange for Milton paying a portion of the premium. Milton appealed this order in October 2022.

On appeal, Milton argues that the district court erred when it denied his countermotion to set aside the QDRO.[5] Namely, he contends that the court misinterpreted the decree of divorce when it concluded the decree was silent as to who would pay the Option 3 premium post-trial.[6] Reviewing the decree of divorce de novo, we conclude that Milton has not established a basis for reversal because Lois's obligation to pay the premium ended upon

---

[5]We note that Lois's original motion was for an order to show cause for contempt. However, the record is silent as to whether the district court found Milton in contempt, and Milton neither raises contempt as an issue nor provides a record citation to support the same on appeal. Thus, we conclude that, in the event the district court ruled on the contempt motion, Milton waived the contempt issue on appeal, and we will not address it in our analysis. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues an appellant does not raise on appeal are waived).

[6]Milton also argues that the district court's order obligating him to pay 77 percent of the premium was an abuse of discretion because it resulted in an unequal distribution of community property. However, this is unpersuasive because the parties explicitly agreed to an unequal distribution of community property in the decree of divorce.

entry of the decree, and the record does not support that the parties intended for Lois to bear the premium cost indefinitely.[7]

The district court properly interpreted the decree of divorce

Milton argues that the district court erred when it denied his countermotion to set aside the QDRO because its decision was based on a misinterpretation—namely, that the decree of divorce was silent regarding the Option 3 premium payments. Milton contends that the decree's plain language, coupled with the court's reasoning and obligation to construe any ambiguity in his favor, support that Lois's responsibility to pay the premium continued after the decree was entered. Finally, he argues that the district court should have held an evidentiary hearing regarding the parties'

---

[7]Before we begin our substantive analysis, we note that we could affirm this case on solely procedural grounds. Namely, in his countermotion, Milton challenged the QDRO as a relief from final judgment pursuant to NRCP 60(b). Although he did not cite a specific subsection, his arguments imply that his challenge was based on NRCP 60(b)(1) and (3). The district court determined that NRCP 60(b) was not an appropriate avenue for relief because the QDRO was entered in November 2021, and Milton filed his opposition and countermotion in June 2022, which far surpassed NRCP 60(b)'s six-month time limit. *See* NRCP 60(b)(c). On appeal, Milton does not take issue with the court's finding that his countermotion was untimely under NRCP 60(b), nor does he argue that his countermotion would have been successful on any of NRCP 60(b)'s substantive grounds had the court considered them. Thus, an affirmance on solely procedural grounds is warranted. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3 (providing that issues an appellant does not raise on appeal are waived); *see also 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 either not cogently argued or lacks the support of relevant authority); *Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1285, 1289 (Ct. App. 2022) (holding that, when a district court provides independent and alternative grounds to support its ruling, the appellant must properly challenge all of the grounds, or the ruling will be affirmed). Nevertheless, we choose to address this case on the merits.

negotiation process in reaching their stipulated settlement, as their communications reflected an intention that Lois would bear the premium cost indefinitely.

Lois responds that the decree of divorce presents no genuine ambiguity, as the PERS provision's plain language makes clear that Lois's obligation to pay the premium had a fixed, though non-specific, term that ended once the decree was signed and filed. In response to Milton's statement that the district court should have held an evidentiary hearing regarding settlement negotiations, Lois is adamant that neither the record nor counsels' communications during the negotiation process support Milton's claim, and that she should not be penalized for Milton's failure to diligently read, revise, and review the decree before signing it. Further, Lois notes that, during the proceedings, Milton did not make an offer of proof or attempt to admit parol evidence regarding settlement negotiations, nor did he request the evidentiary hearing he now solicits on appeal.

In reply, Milton contends that Lois was aware of the district court's intention to have her bear the premium cost indefinitely absent compelling authority to support otherwise. He also argues that Lois's obligation to pay the premium "until trial" never lapsed because, technically, there was no trial, and Lois's obligation to pay the premium was always anticipated to extend beyond trial or settlement.

Upon reviewing the incorporated order's plain language, interpreting that language in light of the surrounding circumstances, and contextualizing that language within the decree of divorce as a whole, we conclude that the district court did not misinterpret the decree when it found that it was silent regarding the Option 3 premium payments, and that it therefore did not err when it denied Milton's countermotion to set aside the QDRO.

Standard of review

Generally, when the district court approves and adopts a stipulated agreement into a decree of divorce, the agreement merges into the decree unless both the decree and agreement contain a clear and direct expression that the agreement will survive the decree. *See Day v. Day*, 80 Nev. 386, 389-90, 395 P.2d 321, 322-23 (1964). Post-merger, the agreement loses its independent character, and the parties' rights rest solely upon the decree. *Id.* at 389, 395 P.3d at 322. In practical terms, this means that the settlement agreement's merger into the decree of divorce destroys the agreement's independent contractual nature, and the parties may no longer seek to enforce the agreement under contract principles. *Id.* at 389-90, 395 P.2d at 322-23.

Nonetheless, as in contract interpretation cases, we review the district court's construction and interpretation of a decree of divorce de novo. *Henson v. Henson*, 130 Nev. 814, 818, 334 P.3d 933, 936 (2014); *see also Ormachea v. Ormachea*, 67 Nev. 273, 291, 217 P.2d 355, 364 (1950) (providing that a district court's construction and interpretation of one of its divorce decrees presents a question of law); *Carlson v. Carlson*, No. 85643-COA, 2024 WL 1876430, at *2 (Nev. Ct. App., Apr. 29, 2024) (Order of Affirmance) (noting that "the interpretation of an agreement-based divorce decree presents a question of law" subject to de novo review).

Here, neither party disputes that the stipulated settlement agreement containing the disputed PERS provision was merged into the decree of divorce. Thus, de novo review is appropriate. Pursuant to that standard, we conclude that the district court did not err when it made Milton partially responsible for paying the Option 3 premium because (1) Lois's obligation to pay 100 percent of the premium unambiguously ended upon

entry of the decree of divorce, and (2) once Lois's obligation ended, the decree was silent as to who would pay the premium moving forward.

Lois's obligation to pay the entire premium unambiguously ended upon entry of the decree of divorce

A district court has the "inherent power to construe its judgments and decrees for the purpose of resolving any ambiguity." *Kishner v. Kishner*, 93 Nev. 220, 225, 562 P.2d 493, 496 (1977). A provision is ambiguous "if it is capable of more than one reasonable interpretation." *In re Candelaria*, 126 Nev. 408, 411, 245 P.3d 518, 520 (2010) (discussing ambiguity with respect to statutory language); *see also Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (providing that "[a] contract is ambiguous if its terms may reasonably be interpreted in more than one way").

In determining whether an ambiguity exists, this court may not either "disregard words used by the parties" or "insert words which the parties have not [used]." *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 518, 286 P.3d 249, 258 (2012) (internal quotation marks omitted). In a decree of divorce, we may examine the record and surrounding circumstances as a whole in order to determine the district court's intent in resolving any ambiguity. *Aseltine v. Second Jud. Dist. Ct.*, 57 Nev. 269, 273, 62 P.2d 701, 702 (1936); *Mizrachi v. Mizrachi*, 132 Nev. 666, 677, 385 P.3d 982, 989 (Ct. App. 2016). Further, where an ambiguity exists in an agreement-based decree, we must also consider the parties' intent when entering the underlying agreement. *Mizrachi*, 132 Nev. at 677, 385 P.3d at 989; *see also Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003) (explaining that, where ambiguity exists, this court should go beyond the express terms of an agreement and examine the surrounding circumstances to determine the parties' intentions).

Here, we conclude that "until trial" is not ambiguous because it is subject to only one reasonable interpretation. Milton contends that "until trial" should be construed literally, such that the provision requiring Lois to pay the premium "until trial" never lapsed because the parties settled, and the district court vacated the trial date. Lois counters that this court should interpret "until trial" to mean the time until the decree of divorce was "signed and filed." Lois's interpretation is the only reasonable one.

Neither party disputes that the main issues to be adjudicated pending final entry of the decree of divorce were the distribution of the parties' community assets and debts, as well as Milton's retirement benefits—all of which were, in fact, accounted for in the merged settlement agreement. The district court's stated reasoning for making Lois responsible for the premium payments pending trial reflect only the court's anticipation that this case would necessitate a trial on the merits; they do not suggest that, in the absence of an actual trial, Lois's obligation to continue paying the premium would survive on a technicality.

Quite the opposite, the district court indicated it was amenable to argument and clearly stated Lois would pay the premium, without prejudice, only until the parties had a chance to further research the premium payment issue. The district court's inclusion of the phrase "for the next few months" immediately preceding "until trial" further underscores that, regardless of whether the case went to trial, Lois's obligation to pay the premium was time-limited and not meant to extend beyond entry of the decree unless the court ordered otherwise.

Accordingly, we conclude that "until trial" has only one reasonable interpretation and was intended to mean the time until the district court signed and filed the decree of divorce. Thus, Lois's obligation to pay the premium was not indefinite.

The decree of divorce was silent regarding future premium payments

In contrast to ambiguity—where an express term or provision has more than one reasonable interpretation—silence is the absence of any term or provision at all. *See Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001). Silence cannot create ambiguity, *id.* at 283, 21 P.3d at 22, but a party may seek to establish the existence of an otherwise silent provision through parol evidence, *Crow-Spieker No. 23 v. Robinson*, 97 Nev. 302, 305, 629 P.2d 1198, 1199 (1981) ("[T]he existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proven by parol [evidence.]" (internal quotation marks omitted)). Where there is no argument that a separate oral agreement exists, or that there is parol evidence available to clarify an ambiguous or omitted term, the district court has broad authority to interpret its own decree. *Mizrachi*, 132 Nev. at 673, 385 P.3d at 987.

Here, as established above, Lois's obligation to pay 100 percent of the premium ended upon entry of the decree of divorce. By extension, the district court was correct to conclude that, once Lois's obligation ended, the decree was silent as to who would pay the premium moving forward. Milton contends that the parties agreed during settlement negotiations that Lois would pay the premium indefinitely, and that the district court should have held an evidentiary hearing to establish intent. Yet, this statement is belied by the record, which contains no information regarding settlement negotiations. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (noting that this court "cannot consider matters not properly appearing in the record on appeal" and that "[i]t is the responsibility of appellant to make an adequate appellate record").

Finally, as Milton neither argued that the future premium payments constituted an omitted term, nor made an offer of proof to suggest the same, the district court's conclusion that the decree was silent as to future premium payments, and decision to split the future premium payments between the parties in accordance with their community share of the benefits, was a proper exercise of its authority. *See Mizrachi*, 132 Nev. at 673, 385 P.3d at 987.

Consequently, we conclude that the district court did not misinterpret the decree of divorce when it determined the decree was silent regarding the Option 3 premium payments because Lois's obligation to pay the premium ended upon entry of the decree of divorce. By extension, the district court's decision to deny Milton's countermotion to set aside the QDRO—which reflected and enforced the decree—was not in error.

Accordingly, we

ORDER the district court judgment AFFIRMED.[8]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Dawn Throne, District Judge, Family Division
Larry Cohen, Settlement Judge
Law Offices of Ernest A. Buche, Jr.
Michael S. Strange & Associates, LLC
Theodore M. Medlyn
Eighth District Court Clerk

[8]Insofar as Milton raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.