IN THE SUPREME COURT OF THE STATE OF NEVADA

REGINALD CYRIL BUCK,
Appellant/Cross-Respondent,
vs.
BILLIE JEAN BUCK,
Respondent/Cross-Appellant.

No. 85283

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a divorce decree and a post-decree order distributing property. Eighth Judicial District Court, Clark County; Rhonda Kay Forsberg, Judge.

Appellant/cross-respondent Reginald Cyril Buck and respondent/cross-appellant Billie Jean Buck were married in 2010. During their marriage, the parties acquired considerable real estate. In 2021, the district court entered a divorce decree establishing that three pieces of real property were community property but held in abeyance the parties' community property interests in the other properties pending further briefing. The district court also declined to award spousal support to either party. In a post-decree order, the district court ordered that: (1) 8708 Tomnitz (Tomnitz), 8799 Roping Rodeo (Roping 1), and 8747 Roping Rodeo (Roping 2) are community property subject to equal division, (2) *Malmquist*[1] proration applies to the inter-spousal quitclaimed properties, and (3) Billie is awarded the entirety of her 401(k).

[1]*Malmquist v. Malmquist*, 106 Nev. 231, 245, 792 P.2d 372, 381 (1990).

We review district court decisions characterizing and disposing of property in divorce proceedings for an abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75, 439 P.3d 397, 406 (2019). "An abuse of discretion occurs when a district court's decision is not supported by substantial evidence or is clearly erroneous." *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). "Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment." *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004).

On appeal, Reginald first argues the district court abused its discretion when it found Tomnitz[2] and Roping 1 belonged to the community and failed to award Reginald a separate interest in those properties and Roping 2 based on separate property contributions made by Reginald. "Property acquired during the marriage is presumed to be community property." *Pascua v. Bayview Loan Servicing, LLC*, 135 Nev. 29, 32, 434 P.3d 287, 289-90 (2019). Clear and convincing evidence is required to rebut the presumption that property acquired during marriage is community property. *Id.* "Once an owner of separate property funds commingles these funds with community funds, the owner assumes the burden of rebutting

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[2]We are not persuaded by Reginald's argument that Billie judicially admitted that Tomnitz was Reginald's separate property in her pre-trial memorandum. "Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 343, 255 P.3d 268, 276 (2011); *see Allen v. Webb*, 87 Nev. 261, 266, 485 P.2d 677, 680 (1971) (holding that plaintiff's counsel's opening statement in a quiet title action that plaintiff was a mere nominal holder was not a judicial admission and not enough to counter plaintiff's presumption of ownership).

the presumption that all the funds in the account are community property." *Malmquist v. Malmquist*, 106 Nev. 231, 245, 792 P.2d 372, 381 (1990).

Here, the record supports the district court's finding that the parties' bank accounts were so commingled as to have lost any purported separate property interest they may have once had. The record further supports the district court's findings that the parties purchased Tomnitz, Roping 1, and Roping 2 during their marriage, the down payments for which were paid from the parties' joint checking accounts. Thus, the community property presumption applies. *Pascua*, 135 Nev. at 32, 434 P.3d at 289-90; *see Lucini v. Lucini*, 97 Nev. 213, 215, 626 P.2d 269, 271 (1981) (holding that the community property presumption "gains strength when any claimed separate property has been extensively intermingled with community property").

We are not persuaded by Reginald's argument that the district court abused its discretion in finding Reginald provided insufficient tracing evidence to support any separate property claims, or in its resulting finding that Tomnitz, Roping 1, and Roping 2 belonged to the community and were subject to equal division without any separate property apportionment. *See Robison v. Robison*, 100 Nev. 668, 670, 691 P.2d 451, 453 (1984) (establishing community interest in real estate after community funds were expended to pay purchase price). In this, the district court considered the parties' banking records that show significantly commingled funds, with the record demonstrating both Reginald and Billie consistently transferring separately titled account funds to the same joint bank account used in purchasing the three properties and transferring funds from the joint bank account into separately titled accounts. Additionally, the record supports that the joint bank account funds also consisted of community credit card

cash advances, direct payroll deposits and paycheck deposits for wages earned during the marriage, and community cash infusions.

Reginald next argues the district court erred in how it apportioned the community and separate property interests in the Ocean Harbor,[3] Horizon, and Durango properties.[4] In *Malmquist*, this court set forth the formula district courts should use to "apportion the community and separate property shares in the appreciation of a separate property residence obtained with a separate property loan prior to marriage." 106 Nev. at 238, 792 P.2d at 376 (emphasis omitted).

As to the Ocean Harbor property, substantial evidence supports that the district court correctly utilized the net sale proceeds and the appropriate number of community payments in calculating the community's interest. As to the Horizon property, we conclude that the district court properly calculated Reginald's separate property interest for improvements made by the community based on evidence and testimony, which the court found credible, demonstrating $33,845.93 in improvement costs, excluding maintenance, tax, interest, insurance payments, and inflation adjustments. As to the Durango property, substantial evidence supports that the second of two installment payments was made from the parties' community funds in their joint bank account, such that the district court properly calculated the community's interest by attributing the second payment to the

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[3]Reginald concedes it was appropriate for the district court to apply the *Malmquist* formula to this property but disputes the computation.

[4]To the extent the parties request this court re-examine *Kerley v. Kerley*, 111 Nev. 462, 893 P.2d 358 (1995), we decline to do so as its progeny supports apportionment under *Malmquist* with respect to gifted properties acquired during marriage that utilize community contributions. *See Kerley v. Kerley*, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996).

community. Thus, we detect no abuse of discretion in the district court's evaluation of the evidence and its application of *Malmquist* to apportion the community and separate interests in the properties. *See Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010) (observing that appellate courts will not interfere with a disposition of community property or alimony decisions unless it appears on the entire record that the court abused its discretion, and that an appellate court's "rationale for not substituting [its] own judgment for that of the district court, absent an abuse of discretion, is that the district court has a better opportunity to observe parties and evaluate the situation." (quoting *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 96, 919 (1996))).

Reginald next argues the district court erred in awarding Billie her 401(k) in its entirety. A district court must make an equal disposition of community property in a divorce unless there is a "compelling reason" to make an unequal disposition. NRS 125.150(1)(b); *Kogod*, 135 Nev. at 75, 439 P.3d at 406. One such compelling reason is "dissipation" or "waste." *Kogod*, 135 Nev. at 75, 439 P.3d at 406; *Lofgren v. Lofgren*, 112 Nev. 1282, 1283, 926 P.2d 296, 297 (1996) ("[I]f community property is lost, expended or destroyed through the intentional misconduct of one spouse, the court may consider such misconduct as a compelling reason for making an unequal disposition of community property and may appropriately augment the other spouse's share of the remaining community property."). Substantial evidence supports the district court's finding that Reginald's use of community funds and depletion of his own 401(k) to support his new family, before entry of the divorce decree, serves as a compelling reason to permit Billie to keep her own retirement account. As a result, the court did

not abuse its discretion in rendering an unequal disposition of Billie's 401(k). *See Kogod*, 135 Nev. at 77, 439 P.3d at 407.

On cross-appeal, Billie argues the district court erred by presuming that the properties quitclaim deeded to Reginald were gifts of community property to Reginald. A spouse-to-spouse conveyance of title to real property creates the presumption of a gift that can only be overcome by clear and convincing evidence. *Kerley*, 112 Nev. at 37, 910 P.2d at 280. To rebut the gift presumption, the contributing spouse must establish by clear and convincing evidence that a gift was not intended. *Id.* In this case, the district court properly found the quitclaim deeds had rebutted the presumption of community property in favor of gifted separate property interests. *See, e.g., Forrest v. Forrest*, 99 Nev. 602, 605, 668 P.2d 275, 278 (1983) (recognizing that the presumption of community property may be overcome with a valid deed describing a different form of ownership other than community property).[5]

Billie also argues the district court erred in not awarding her spousal support. We disagree. Substantial evidence supports the court's finding that the parties have equal earning capacity, including the parties' roughly equal ages, their occupations, and their income tax records, and evidence that they each independently earn sufficient income to meet their individual needs. Accordingly, the district court's denial of spousal support

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[5]Billie's reliance on *In re Marriage of Haines*, 39 Cal. Rptr. 2d 673, 684, 689 (Ct. App. 1995) is also unavailing. The record contains testimony showing that both parties possessed sophisticated real estate knowledge, and that the parties sometimes used quitclaim deeds to insulate marital assets from potential attachment in civil proceedings. Thus, unlike in *Haines*, there is no evidence that Billie acted under duress when executing the quitclaim deeds.

was not an abuse of discretion. *See Schwartz*, 126 Nev. at 90, 225 P.3d at 1275 (reviewing spousal support decision for an abuse of discretion); *Applebaum v. Applebaum*, 93 Nev. 382, 386, 566 P.2d 85, 88 (1977) (affirming a denial of alimony where the spouse "had adequate resources with which to support herself").

Billie finally argues the district court erred by failing to consider her post-decree property appraisals. In Nevada, a district court's entry of a divorce decree dissolves the marriage and terminates the community. *Kogod*, 135 Nev. at 79, 439 P.3d at 409. As a result, the cut-off date for disposing of community property is the date on which the written divorce decree is issued. *Id.* Unlike the present situation, where the court entered a written decree of divorce, *Kogod* addressed asset appreciation during an intermediary period between the district court's "oral pronouncement of the termination of [the] community property and the actual termination when the written divorce decree was entered." *Id.* Here, the district court locked in each property's characteristic and appraised value when it entered the divorce decree on November 21, 2021. Therefore, we conclude that the district court did not err by declining to consider Billie's post-decree property appraisals. Based on the foregoing, we

ORDER the decree and post-decree order AFFIRMED.

_____, J.
Herndon

_____, J.
Lee

_____, J.
Bell

cc: Hon. Rhonda Kay Forsberg, District Judge
Stephen E. Haberfeld, Settlement Judge
Kelleher & Kelleher, LLC
Pecos Law Group

Nevada Defense Group
Eighth District Court Clerk