

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES BENNETT GABROY,
Appellant,
vs.
PAMELA JEAN GABROY,
Respondent.

No. 87387-COA

FILED

NOV 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE BY

James Bennett Gabroy (James) appeals from a district court divorce decree. Eighth Judicial District Court, Family Division, Clark County; Charles J. Hoskin, Judge.

Following an eighteen-year marriage, respondent Pamela Jean Gabroy filed for divorce in September 2019, alleging incompatibility.¹ Her husband James was an internist who had owned and operated his own medical practice for many years. James sold his practice for \$800,000 in 2016 but continued to work there as an independent contractor for three more years. When his contract expired, the management company chose not to renew the contract, and James decided to begin the process of recredentialing his office so that it could be reopened under his name. On Pamela's recommendation, he hired Queenie Manuel around June 2019 to assist him in this process. Manuel represented herself as an experienced medical credentialist who knew people in the insurance industry and could thus negotiate favorable contracts for James. James agreed to pay Manuel

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

a monthly salary of \$5,000 for her services. During this time, Pamela and James began experiencing marital discord.

Over Labor Day weekend in 2019, Pamela alleged that James displayed a revolver during an argument. She obtained a temporary protection order and filed her complaint for divorce shortly thereafter. Pamela also requested a joint preliminary injunction (JPI) pursuant to former EDCR 5.517, to prevent James from moving any funds out of their shared accounts, but it was not granted.² At a hearing in October, the district court ordered the parties to, among other things, meet and confer to determine a hard figure for what it would cost to reopen James's practice and release community funds for that purpose. The court also ordered James to pay \$2,500 per month in temporary spousal support.

It is undisputed that James wrote a check to Manuel for \$800,000 four days after the October hearing. James testified that the \$800,000 was to go toward required licensing and medical equipment as well as toward opening a dental practice for low-income patients within the office. However, Manuel disappeared with the money, and although James reported her to the police, she has not been located since. James did not report the loss of \$800,000 on his federal tax return, despite reporting other losses related to payments made and gifts to other employees.

James agreed to sell his practice to another doctor in January 2020 for \$180,000, a small fraction of both what he sold the practice for in 2016 and of the lump sum payment he made to Manuel that was supposedly meant to go toward reopening his practice that he had already reopened. In February 2020, James fell down a flight of stairs, fracturing his skull and

²EDCR 5.517 became EDCR 5.518 on January 1, 2020. EDCR 5.518 became EDCR 5.703 on June 10, 2022.

sustaining serious lower back injuries. In March, the district court held a hearing where it suspended James's spousal support obligation due to his health issues. In July, the court entered an order, submitted by James's attorney, reflecting the parties' stipulation that James's temporary spousal support obligation would be suspended. The order also authorized the distribution of funds for "reasonable living expenses" to the parties from their respective attorney trust accounts, "on agreement of the parties." James subsequently spent eighteen months recovering in an assisted living facility.

Pamela filed an amended complaint for divorce in October 2022, this time alleging that James committed marital waste. James denied the waste allegation and alleged that Pamela had committed marital waste herself.

At trial, James's attorney informed the district court that he did not have any proposed exhibits. Pamela and James both testified, as did Halle Lopez, an asset manager James hired to review various financial documents pertaining to the marriage.

Pamela testified that she was not made aware of James's \$800,000 check to Manuel, and that she generally did not involve herself in her husband's business affairs, although she conceded that she had recommended Manuel. She also testified that she received \$14,500 per month in spousal support from James through her lawyer's trust account from August 2020 to June 2022.

James testified that he did not recall receiving a JPI or other instructions restricting his actions with respect to community property. He also testified that Pamela led him to believe that Manuel was a capable businessperson, but did not describe any sort of background investigation

or interview he conducted before hiring her. James first testified that he reported the loss of \$800,000 on his federal tax return, but admitted that he did not do so on cross-examination, even though he wrote off other unrelated losses.

Lopez testified about the document review she had done for James. She testified that she reviewed approximately 60,000 documents stored in the marital residence. James attempted to elicit information from Lopez about specific offshore bank accounts allegedly held by Pamela and her children. However, the asset searches that purportedly led to the discovery of these bank accounts were done by James's previous attorney, so the district court ruled that any testimony by Lopez about these bank accounts would be inadmissible hearsay as it would have come from documents not in evidence.

Following trial, the district court entered its findings of fact, conclusions of law, and divorce decree. It found that James's \$800,000 payment to Manuel constituted waste and ordered him to reimburse Pamela for the community portion of the \$800,000. The court also awarded Pamela \$1,150 per month in alimony for five years, or until Pamela died or remarried, whichever came first.³ This appeal followed.

First, we consider James's argument that the district court abused its discretion by finding the \$800,000 payment constituted marital waste. James argues the payment was consistent with the court's October 2019 order directing the parties to release community funds for the purpose of opening the practice. Pamela responds that the district court acted

³The district court also allowed each party to keep their own separate bank accounts and awarded Pamela the entirety of a cryptocurrency account that she held with James, then valued at \$281,250.

within its discretion because the \$800,000 payment was not consistent with the court's order, and the payment did not benefit the community, especially since James did not report the loss on his taxes.

We review a district court's disposition of community property for abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75, 439 P.3d 397, 406 (2019). This court will defer to the district court's factual findings if they are supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). Substantial evidence "is evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

"[A] court must make an equal disposition of community property in a divorce unless there is a 'compelling reason' to make an unequal disposition." *Kogod*, 135 Nev. at 75, 439 P.3d at 406 (quoting NRS 125.150(1)(b)). Dissipation, or waste, may provide a compelling reason for the unequal disposition of community property. *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."). "Generally, the dissipation which a court may consider refers to one spouse's use of marital property for a selfish purpose unrelated to the marriage in contemplation of divorce or at a time when the marriage is in serious jeopardy or is undergoing an irretrievable breakdown." *Kogod*, 135 Nev. at 75-76, 439 P.3d at 406-07 (quoting 24 Am. Jur. 2d *Divorce & Separation* § 524 (2018)); see also *Dissipation*, *Black's Law Dictionary* (12th ed. 2024) (defining "dissipation" as "[t]he use of an asset for an illegal or inequitable

purpose, such as a spouse's use of community property for personal benefit when a divorce is imminent").

The district court found several issues relating to the credibility of James's testimony, especially regarding the \$800,000 payment to Manuel. The court questioned why James would agree to pay Manuel a \$5,000 monthly salary and then write her a check for \$800,000, an amount similar to what he sold his entire practice for just three years earlier. The court was also concerned with the fact that James did not report the loss of \$800,000 on his federal tax return, even though he had reported payments and gifts to other employees as losses. During direct examination, James testified that he reported the \$800,000, but admitted under cross-examination that he did not, offering no explanation for why he failed to do so.

Based on the aforementioned facts, the district court found that James committed waste by paying \$800,000 to Manuel in a manner that did not benefit the marital community. It is the role of the district court to determine witness credibility, and this court "will not reweigh credibility on appeal." *Ellis*, 123 Nev. at 152, 161 P.3d at 244. Thus, this court defers to the district court's finding that James failed to credibly explain the \$800,000 loss to the marital community. Given James's conflicting testimony about whether he wrote off the \$800,000 loss, the lack of rationale for making such a payment in the first place, and no supporting documentation explaining the transfer of the large amount of funds to Manuel, we conclude that substantial evidence supports the district court's

finding that the \$800,000 payment to Manuel constituted waste.⁴ *See, e.g., Covelli v. Covelli*, 718 N.W.2d 260, 268 (Wis. Ct. App. 2006) (recognizing that mismanagement of marital assets can constitute waste, and that the appellant wasted marital assets by failing to pay his business's sales tax obligations); *In re Marriage of Thomas*, 608 N.E.2d 585, 587 (Ill. App. Ct. 1993) (concluding that the district court did not abuse its discretion in finding marital waste where the appellant "cause[d] the corporation to become less profitable," whether through inattention to quality of service, failure to solicit new clients, or redirecting existing clients to his new business).

James also argues that the district court erred by relying on the purported violation of a JPI to support its finding of waste. Since there was no JPI restricting the action he could take with respect to community funds, James argues that there was no way he could have committed waste because he complied with the court's order to release community funds to reopen his practice. Pamela concedes that the court never issued a JPI, but contends that the court's reliance on a JPI was harmless error because there were still compelling reasons to unequally dispose of the community property.

⁴During her deposition and at trial, Pamela also emphasized that she had no knowledge of James's \$800,000 payment to Manuel. While expenditures made without the spouse's knowledge may constitute waste, this may not be the case if the expenditures are "relatively long-standing and regular." *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 487 (Ct. App. 2023) (quoting *Kogod*, 135 Nev. at 77, 439 P.3d at 408). However, a lump sum payment of \$800,000 to an office manager is neither long-standing nor regular, but more consistent with a purpose that does not benefit the community that the supreme court concluded was waste in *Kogod*, 135 Nev. at 75-76, 439 P.3d at 406-07.

A JPI prevents both parties from taking certain actions while a divorce proceeding is pending and stays in effect until a divorce decree or final judgment is entered or until the court dissolves or modifies it. *Nelson v. Nelson*, 136 Nev. 335, 338, 466 P.3d 1249, 1252 (2020). Former EDCR 5.517 (now EDCR 5.703) states that a JPI must be issued upon request of either party. *Id.* The record includes Pamela’s request for a JPI.

However, we must disregard all errors that do not affect a party’s substantial rights. *Cf.* NRCP 61. “To demonstrate that an error is not harmless, a party must show that the error affects the party’s substantial rights so that, but for the alleged error, a different result might reasonably have been reached.” *Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) (internal quotation marks omitted).

Here, James has not shown that the district court would have made a different finding had it not relied on the belief that there was a JPI. As discussed above, the district court relied on substantial evidence, particularly with respect to James’s lack of credibility, in finding that he committed waste. And although there may not have been a JPI in place, James made the unusually large expenditure shortly after Pamela filed for divorce, at a time when the parties’ marriage was irretrievably broken. *See Kogod*, 135 Nev. at 75-76, 439 P.3d at 406-07. Thus, we conclude that any error was harmless and no relief is warranted.⁵

⁵While the supreme court has held that certain expenditures are not waste if they occurred absent an injunction, that was in reference to gifts to family members that were part of an established pattern or history of giving such gifts to family members during the marriage. *Kogod*, 135 Nev. at 77, 439 P.3d at 407. James’s payment to Manuel was not a gift to a family member, but rather an enormous lump sum payment to an employee for undocumented reasons. As discussed previously, the district court could

Second, James argues that the district court erred in awarding Pamela post-trial alimony because it failed to adequately consider the factors required by NRS 125.150(9). Pamela counters that the court acted within its broad discretion by adequately considering each of the NRS 125.150(9) factors.⁶

District courts are vested with a wide range of discretion when deciding whether and in what amount alimony should be paid. *Buchanan v. Buchanan*, 90 Nev. 209, 215, 523 P.2d 1, 5 (1974). However, the court must form a judgment about what is just and equitable. *Heim v. Heim*, 104 Nev. 605, 609, 763 P.2d 678, 680 (1988), *superseded by statute on other grounds as stated in Rodriguez v. Rodriguez*, 116 Nev. 993, 994-96, 13 P.3d 415, 416-17 (2000). To this end, courts must consider the factors set forth in NRS 125.150(9), which include:

- (a) The financial condition of each spouse;

reasonably conclude that the payment constituted marital waste, and the court did not abuse its discretion by making an unequal distribution of the property. *See Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d at 484-85.

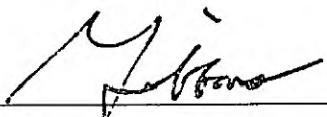
⁶James also appears to argue that the court improperly modified the pretrial support award of \$2,500 per month without issuing any findings or an order. However, James's argument is belied by the record. The July 2020 order submitted by James's attorney and entered by the court reflects that the parties stipulated to suspend the \$2,500 temporary support obligation, and that they mutually agreed that "reasonable living expenses" were to be distributed to the parties from their attorneys' respective trust accounts. Additionally, his two-sentence argument lacks any citation to legal authority supporting his apparent position. Because James failed to provide cogent argument and relevant authority in support of his argument, this court need not consider it. *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).

- (b) The nature and value of the respective property of each spouse;
- (c) The contribution of each spouse to any property held by the spouses pursuant to NRS 123.030;
- (d) The duration of the marriage;
- (e) The income, earning capacity, age and health of each spouse;
- (f) The standard of living during the marriage;
- (g) The career before the marriage of the spouse who would receive the alimony;
- (h) The existence of specialized education or training or the level of marketable skills attained by each spouse during the marriage;
- (i) The contribution of either spouse as homemaker;
- (j) The award of property granted by the court in the divorce, other than child support and alimony, to the spouse who would receive the alimony; and
- (k) The physical and mental condition of each party as it relates to the financial condition, health and ability to work of that spouse.

Here, the record shows that the district court adequately evaluated the factors in NRS 125.150(9). The court considered Pamela's career before the marriage and either party's contributions as a homemaker, but declined to make specific findings as to those factors as neither party presented evidence concerning them. However, the court did consider and make minimally adequate findings as to the other seven factors. It did not, as James argues, merely recite the factors in rote fashion without applying them to the facts. *See Schaefer v. White*, No. 87866-COA, 2024 WL 4249070, *3 (Nev. Ct. App. Sept. 19, 2024) (Order of Affirmance) (concluding that the district court did not abuse its discretion when analyzing the *Arcella* factors governing school choice by focusing on the evidence presented by the parties, and deeming the factors on which neither party provided evidence to be neutral or inapplicable).

After evaluating the relevant factors, the district court awarded Pamela \$1,150 per month in alimony for five years. While many courts would not have ordered alimony considering James's age, health, and current meager financial circumstances compared to his time as a practicing physician, the court's findings are nonetheless supported by substantial evidence and comply with NRS 125.150(9). We conclude that James failed to demonstrate that the court abused its discretion when reaching its decision as to alimony.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

⁷Lastly, James argues that the district court erred in excluding documentary evidence he sought to admit regarding alleged offshore bank accounts held by Pamela and her children, and by declining to permit Lopez to testify about the same. Because James does not cite to any documents in the record, nor provide an adequate explanation, argument, or legal authority to support these allegations of error, we need not consider his arguments further. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

⁸Insofar as James has 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.

cc: Hon. Charles J. Hoskin, District Judge, Family Division
Israel Kunin, Settlement Judge
Calder B. Gabroy, Ltd.
Jones & LoBello
Eighth District Court Clerk