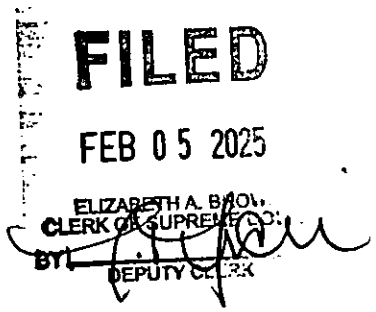
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TSEHAY B. ADMASSU,
Appellant,
vs.
ERMIAS FIKRE,
Respondent.

No. 87490-COA



ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Tsehay B. Admassu appeals from a district court divorce decree. Eighth Judicial District Court, Family Division, Clark County; Mary D. Perry, Judge.

Admassu and respondent Ermias Fikre began cohabitating in 2006 and had their first child in 2007. Following the birth of their child, the couple opened a joint checking account, and both parties deposited their wages into the account. At the evidentiary hearing, Admassu testified that in 2011 she withdrew approximately $8,000 from the joint account to purchase the family's residence. Following questioning by the court, Admassu stated that she picked out the residence, that both parties visited the residence prior to purchase, and that Fikre approved the purchase of the house. However, neither party testified as to any discussions regarding the financing of the purchase or why the home was titled solely in Admassu's name. The couple and their children then moved into the residence. Approximately one year later, on April 26, 2012, Admassu and Fikre married.

In 2014, Fikre relocated to Ethiopia to avoid various creditors. Prior to moving, Fikre withdrew the remaining $1,000 from the joint checking account and closed the account. Admassu then opened her own checking account, deposited her wages into the account, and continued to make the mortgage payments.

Fikre testified that, while in Ethiopia, he lived with his parents, was unemployed, and provided no financial support to the family. Fikre returned to the United States in 2016 and promptly moved back into the residence with Admassu and their children. Upon Fikre's return, he executed a quitclaim deed acknowledging that the residence was Admassu's separate property. Admassu testified Fikre signed the deed so the couple could refinance the mortgage and obtain a lower interest rate. Due to Fikre's poor credit, and unemployment, the couple could not have obtained a lower rate if he was listed on the deed or mortgage. According to Admassu's testimony, the purpose of the quitclaim deed was to obtain a lower interest rate and thus a lower mortgage payment. Following the successful refinancing, both parties remained in the residence and Admassu continued to use her wages to make the mortgage payments.

Admassu filed for divorce on September 16, 2022, and sought an adjudication of the residence as her separate property. Fikre filed an answer and counterclaim requesting the residence be adjudicated as community property. The district court conducted an evidentiary hearing at which both parties testified to the above facts before the court issued various oral findings. At the hearing, the district court initially suggested that Admassu had a "negligible" separate property interest in the residence, but following additional argument by Fikre's counsel regarding the

application of the "community property by analogy" doctrine,[1] the court appeared to be persuaded that the residence was community property from the time of purchase. The district court further acknowledged Fikre voluntarily signed a quitclaim deed, but nonetheless found he had not intended to gift Admassu his community interest in the residence because neither party testified it was a gift but rather to permit refinancing to obtain a lower mortgage payment.

The district court subsequently entered the written divorce decree, which found that the residence was solely community property and ordered the parties to equally divide the equity in the residence. None of the district court's oral findings noted above were included in the written order, which contained only the summary finding that the residence was solely community property. Admassu now appeals.

On appeal, Admassu argues the district court erred by failing to award her the residence as her separate property because she purchased the residence prior to marriage and Fikre signed a quitclaim deed acknowledging the residence as her separate property. Admassu further argues that the signing of the quitclaim deed extinguished any interest Fikre may have had in the residence from the date of signing through the divorce. Alternatively, Admassu argues Fikre's community interest in the residence should be limited to the time between the signing of the quitclaim deed and the date of the divorce because she admittedly used community funds to continue making the mortgage payments following the signing of

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[1]The community property by analogy doctrine allows unmarried parties to agree to acquire and hold property as if the couple is married and the community property laws of this state will apply by analogy to those agreements. *See Hay v. Hay*, 100 Nev. 196, 199, 678 P.2d 672, 674 (1984); *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 937-38, 840 P.2d 1220, 1224 (1991).

the quitclaim deed. Admassu reasons that, because the residence was her separate property, which the community later gained an interest in, the district court erred by failing to conduct a *Malmquist*[2] analysis to determine the value of Fikre's interest in the residence. Finally, Admassu argues that, even assuming the residence was solely community property, she was entitled to an unequal distribution of the equity because Fikre may have engaged in marital waste while living in Ethiopia.

"When reviewing a district court's determination of the character of property, this court will uphold the district court's decision if it was based on substantial evidence. However, we will review a purely legal question, such as the application of a presumption, do novo." *Waldman v. Maini*, 124 Nev. 1121, 1128, 195 P.3d 850, 855 (2008).

NRS 123.130 creates a rebuttable presumption that property purchased prior to marriage is separate property. *See Smith v. Smith*, 94 Nev. 249, 251, 579 P.2d 319, 320 (1978) (holding the appellant must overcome the statutory presumption that premarital property is separate property). This presumption may be overcome through clear and convincing evidence. *See Kerley v. Kerley*, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996) (holding, in the context of a gift, that a litigant must rebut NRS 123.120's separate property presumption by clear and convincing evidence). Based on our review of the district court's order and the record on appeal, it is not clear that the district court applied NRS 123.130's rebuttable presumption or the clear and convincing evidence standard for determining that Fikre overcame the presumption that the residence was purchased as separate property.

The district court's written order, which was prepared and submitted by Fikre's counsel, contains only a single line of analysis

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

concluding, without explanation, that the marital home was community property. *See Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 482 (App. Ct. 2023) (holding that the district courts should scrutinize the contents of proposed orders because they assume responsibility for the findings set forth therein). Notably, the written order does not cite NRS 123.130 or reference the presumption set forth therein, nor does it indicate that the district court found Fikre rebutted that presumption. Thus, there is nothing in the district court's order to demonstrate that it properly applied or considered the presumption, much less that it applied the required clear and convincing evidence standard for rebutting the same. *Cf. Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (providing that deference is not owed to findings "so conclusory they mask legal error"). Further, the hearing transcript provides no illumination as to what evidence the district court relied upon when making its determination that the residence was community property, whether it applied the statutory presumption, or whether it found the presumption was overcome by clear and convincing evidence.

Thus—for the reasons set forth above—we necessarily reverse the district court's determination that the residence was community property. We further remand this matter for the district court to properly apply the separate property presumption and assess whether Fikre rebutted the presumption of separate property by clear and convincing evidence.[3]

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[3]Because we reverse the portion of the district court's order regarding the application of NRS 123.130, we do not address whether Fikre successfully demonstrated that the community property by analogy doctrine applied to the marital home. On remand the district court must determine whether the parties expressly or implicitly agreed to hold the residence as community property and whether this overcame NRS 123.130's

Our analysis does not end here, however, because the parties also called upon the district court to determine whether the signing of a quitclaim deed extinguished any interest the community obtained in the residence. Both before the district court, and on appeal, Admassu argued that Fikre gifted her any community property interest in the residence that arose following the parties' marriage when he signed the 2016 quitclaim deed. Specifically, Admassu argues the quitclaim deed confirmed the residence was her separate property or alternatively extinguished any community interest Fikre may have obtained in the property during the marriage. The conveyance of title to real property creates a presumption that the signing spouse intended to gift their interest in the property, which can only be overcome by clear and convincing evidence. *Graham v. Graham*, 104 Nev. 472, 474, 760 P.2d 772, 773 (1988). In this case, even if the court had found the residence to be Admassu's separate property, Fikre would have acquired a community interest in the property after the parties' marriage based on the community's payment of the mortgage and other expenses for the residence. *See Robison v. Robison*, 100 Nev. 668, 670, 691 P.2d 451, 453 (1984) ("Where payments are made with community funds on

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separate property presumption. In so doing, the district court should evaluate the parties' intent, as manifested by their conduct, to determine whether an agreement to hold the residence as community property can be inferred. The district court should further set forth written findings identifying the evidence and grounds relied upon to reach its conclusion. *See Hay*, 100 Nev. at 198-200, 678 P.2d at 673-75 (applying the community property by analogy doctrine where unmarried parties held themselves out as husband and wife, "purchased assets and incurred liabilities as though they were a marital community or general partnership" and demonstrated a "conscious intent to identify the property so acquired as that of a marital community"); *W. States Constr., Inc.*, 108 Nev. at 937-39, 840 P.2d at 1224-25 (applying the community property by analogy doctrine where unmarried parties held themselves out as a married couple, designated certain property as community property, and filed federal tax returns together).

real property which was owned by one spouse before marriage, the community is entitled to a *pro tanto* interest in such property[.]"). But Fikre's signing of the quitclaim deed created a rebuttable presumption that he intended to gift his interest in the residence to Admassu.

We conclude that the district court's oral findings, as supported by Admassu's own testimony, demonstrate that Fikre rebutted the presumption that the quitclaim deed was executed for the purpose of gifting the community's interest in the residence to Admassu. Unlike the testimony regarding the initial purchase of the residence, both parties provided ample testimony regarding the refinance process and why Fikre signed the quitclaim deed. Neither Admassu nor Fikre testified that he intended to gift Admassu his interest in the residence nor was there any indication Fikre understood signing the quitclaim deed would extinguish his community interest in the residence. Instead, Admassu's testimony supports a conclusion that Fikre rebutted the presumption because she testified Fikre signed the quitclaim deed to ensure they obtained a lower interest rate during the refinancing process and thus a lower mortgage payment.

Therefore, to the extent Admassu argues the signing of the quitclaim deed was intended as an acknowledgement that the home was intended to be a gift and therefore solely her separate property, that argument is belied by her own testimony which makes clear that the purpose of executing the quitclaim deed was to facilitate refinancing the residence and obtaining a lower mortgage payment. Given this uncontroverted testimony, we cannot conclude that the district court erred by finding that Fikre did not intend to make the residence Admassu's sole and separate property by executing the quitclaim deed. Thus, we affirm the district court's conclusion that the quitclaim deed did not extinguish any community interest Fikre may have in the residence. *Kerley*, 112 Nev. at

37, 910 P.2d at 280 (holding a litigant must demonstrate by clear and convincing evidence that a gift was not intended).

Accordingly, for the reasons set forth above, we affirm in part, reverse in part, and remand this matter to the district court for further proceedings consistent with this order.[4] On remand, the district court must determine whether Fikre rebutted NRS 123.130's separate property presumption. In doing so, the court must consider whether Fikre demonstrated that the residence was community property by analogy. If the district court concludes Fikre successfully rebutted the presumption that the residence when purchased was separate property, it may reenter its prior order with the appropriate findings. However, should the district court conclude Fikre did not rebut the presumption, it must conduct a *Malmquist* analysis. Specifically, the district court must determine the value of the separate and community property interests in the residence, as well as apportion any appreciation in the home's value due to community efforts when determining the distribution of the residence.

It is so ORDERED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[4]To the extent Admassu argues Fikre allegedly committed marital waste when he abandoned the family for two years, this argument was raised for the first time on appeal, and thus, we decline to consider it in the first instance on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). And given our resolution of this matter, we do not consider the parties remaining arguments.

cc: Hon. Mary D. Perry, District Judge, Family Division
Cuthbert Mack Chtd.
Law Office of Shelley Lubritz, PLLC
Eighth District Court Clerk