

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHARLENA POLK,
Appellant,
vs.
CHARLES ROWLAND,
Respondent.

No. 86937-COA

FILED

JUL 02 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Sharlena Polk appeals from a district court order denying a post-divorce decree motion concerning community property. Eighth Judicial District Court, Family Division, Clark County; Mary D. Perry, Judge.

Polk and respondent Charles Rowland were married in 2007 and share two children in common. In 2020, Rowland filed a complaint for divorce and requested distribution of the parties' community property. Polk subsequently filed an answer to the complaint. The district court set the matter for an evidentiary hearing concerning the outstanding issues. At the hearing on July 15, 2021, the parties informed the district court that they reached agreements concerning many of the outstanding issues, including many of the child custody and financial issues. However, the parties explained that they had not reached an agreement as to the distribution of the marital residence. Rowland wished to retain ownership of the residence but needed to ascertain whether he could obtain refinancing to purchase Polk's share of the community's interest in the property. As a result, Rowland explained he would later obtain an appraisal and, depending on his ability to refinance the mortgage, he would proceed to

either purchase Polk's share of the property or list the property for sale and split the resulting proceeds with Polk. Polk did not wish to retain ownership of the home after their divorce and agreed to cooperate with Rowland to sign any documentation to allow Rowland to refinance the mortgage or to sell the property, but the parties did not reach an agreement as to the value of the home or the amount each party was entitled to from the resulting equity.

The parties proceeded to place their agreements concerning child custody and additional financial issues on the record. The district court allowed those agreements to be memorialized in the minutes pursuant to EDCR 7.50. The court minutes reflect the parties' agreements concerning the aforementioned issues but noted there were outstanding issues concerning distribution of the marital residence.

In addition, the parties stipulated to become divorced, and Rowland also stated that he wished for the marital community to end that day. The district court orally pronounced the parties to be divorced but explained that their marriage would not actually be concluded until entry of a written decree of divorce. The district court also directed the parties to file briefs concerning the outstanding issues.

On October 6, 2021, the district court issued a minute order concerning its review of the outstanding issues. In the minute order, the court noted it had directed each party to file a brief concerning the outstanding issues, including the equitable distribution of the marital residence. The court stated Polk filed briefing concerning the outstanding issues but Rowland did not. The court further explained the parties' equity in the marital residence should be divided equally between the parties. The

district court also reviewed the additional outstanding issues and directed the parties to submit a proposed final decree of divorce.

The written decree of divorce was filed on December 16, 2021. In the written decree, the district court made findings concerning the child custody matters and the distribution of much of the community's assets and debts. However, in the written decree, the court did not make specific findings as to the value of the marital residence or the distribution of the parties' equity in the marital residence but rather directed Rowland, within 90 days of entry of the decree, to either obtain approval for refinancing of the residence and for the parties to then stipulate to sell the residence or for one party to buy the other party's interest in the equity of the residence.

In July 2022, Polk filed a motion to enforce the decree, contending that Rowland had not yet placed the residence for sale or purchased her interest in the property. Rowland opposed the motion. In his opposition and supporting documents, Rowland explained that he obtained an appraisal of the residence in August 2021 and the home was appraised for \$360,000 at that time. He further explained that he completed a refinance of the mortgage in May 2022, and based on his calculations using the August 2021 appraised value and accounting for child support arrears owed by Polk, he concluded Polk was owed approximately \$56,000 for her interest in the property. The district court subsequently issued an order concerning the motion to enforce, directing Rowland to provide information to Polk concerning the refinancing of the mortgage so that she could ascertain her equity amount.

Polk thereafter filed another motion to enforce the decree, contending that Rowland provided documentation to her demonstrating that the residence had recently been appraised at \$430,000, and that

Rowland therefore improperly utilized the August 2021 appraised value of \$360,000 when calculating the value of her interest in the property. Rowland opposed the motion, contending the parties became divorced when the district court made its oral pronouncement in July 2021 and he therefore properly utilized the August 2021 appraisal to ascertain the value of Polk's interest in the residence.

The district court conducted a hearing concerning the motion to enforce and later entered a written order denying the motion. In its written order, the court found that the marital community ended when it orally pronounced the parties divorced in July 2021. The district court accordingly found that the community's interest in the home should be valued as of the July 2021 oral pronouncement of the divorce.

Polk subsequently filed a motion to reconsider the district court's decision to deny her motion to enforce the decree. In her motion, Polk noted the Nevada Supreme Court explained in *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 79, 439 P.3d 397, 409 (2019), that a marital community is not terminated by a district court's oral pronouncement of divorce and instead continues until entry of the written decree of divorce. Polk also contended that the parties did not stipulate at the July 2021 hearing for the marital community to end on that date and instead had disagreements as to several financial matters. Rowland opposed the motion.

At a hearing concerning Polk's motion to reconsider, the district court reiterated its conclusion that the marital community ended when the court orally pronounced the parties divorced at the July 2021 hearing. The court also found, pursuant to EDCR 5.712(c), that the community ended when it orally pronounced the parties divorced. The district court thereafter

issued a written order denying Polk's motion to reconsider. This appeal followed.

Polk argues the district court abused its discretion by finding that the marital community ended when it orally pronounced the parties divorced and by failing to make appropriate findings concerning the value of the marital residence.

"This court reviews district court decisions concerning divorce proceedings for an abuse of discretion." *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (quotation marks omitted); *see also Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010) (reviewing a district court division of marital property for an abuse of discretion). Moreover, "[t]he district court has inherent authority to interpret and enforce its decrees." *Byrd v. Byrd*, 137 Nev. 587, 590, 501 P.3d 458, 462 (Ct. App. 2021); *see also* NRS 125.240 ("The final judgment and any order made before or after judgment may be enforced by the court by such order as it deems necessary."). We also review a district court's decision to deny a motion for reconsideration for abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). While this court reviews factual findings deferentially, it reviews conclusions of law de novo. *Kilgore v. Kilgore*, 135 Nev. 357, 359-60, 449 P.3d 843, 846 (2019).

An abuse of discretion occurs when the court's decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013). However, "deference is not owed to legal error, or to findings so conclusory they may mask legal error," *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted), and a district court abuses its discretion when it fails to set forth "specific findings of fact sufficient to indicate the basis for its

ultimate conclusions,” *Wilford v. Wilford*, 101 Nev. 212, 215, 699 P.2d 105, 107 (1985).

Under Nevada law, with a few exceptions not applicable here, all property acquired after marriage is community property. NRS 123.220. In granting a divorce, the district court shall “make an equal disposition of the community property.” NRS 125.150(1)(b). Moreover, “[u]nder Nevada law, the district court’s oral pronouncement of divorce [does] not terminate the community” and all property acquired during the marriage is community property “with no exception for an oral pronouncement of divorce.” *Kogod*, 135 Nev. at 79, 439 P.3d at 409. Thus, when determining the value of a community asset or waste of community assets, a district court makes such determinations based on “the actual termination [of the marital community] when the written divorce decree was entered.” *Id.*

Here, the district court concluded that the marital community ended upon its oral pronouncement of divorce. During the hearing concerning Polk’s motion to reconsider, Polk advised the district court of the Nevada Supreme Court’s decision in *Kogod* and its holding that a marital community exists until entry of the written decree of divorce. *See id.* The district court acknowledged the *Kogod* decision but reiterated its belief that a marital community should end when a district court makes an oral pronouncement of divorce and stated its concerns that, under *Kogod*, parties have incentives to delay entry of a written decree of divorce.

However, the district court’s decision that the marital community ended when it orally pronounced the parties divorced was made in contravention of *Kogod* and was thus erroneous. Because the district court erroneously found that the marital community ended upon its oral pronouncement of divorce, we conclude that the district court abused its

discretion in this regard. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142; *Wilford*, 101 Nev. at 215, 699 P.2d at 107.

Turning to the district court's decision to reject Polk's motions to enforce the decree of divorce, in the December 2021 decree the court directed the parties "sign all documentation necessary to refinance" the marital residence and to then either sell the residence "or for the party keeping the residence to pay out the other party's share in the equity of the home." In addition, the decree directed the parties to complete either the refinancing of the mortgage or sale of the home within 90 days. Neither party appealed from entry of the decree.

Here, the record demonstrates that Rowland refinanced the mortgage in May 2022, and the appraised value of the home at that time was \$430,000. Yet, Rowland did not pay Polk the value of the home when he actually refinanced the property but instead sought to pay her a lower amount based on a pre-decree appraisal.

Because the district court erroneously found that the marital community ended upon its oral pronouncement of divorce, it failed to make findings concerning the value of the marital residence when Rowland actually refinanced the property, which is when the court previously determined in its divorce decree the value should be distributed among the parties, or make findings as to the payment Rowland should have made to Polk to purchase her share in the equity of the home. We conclude that the district court abused its discretion in this regard. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142; *Wilford*, 101 Nev. at 215, 699 P.2d at 107.

Polk also argues that the district court erroneously relied upon EDCR 5.712(c) when finding that the marital community ended upon its oral pronouncement of divorce. As stated previously, we review district

court decisions made during divorce proceedings for an abuse of discretion. *Williams*, 120 Nev. at 566, 97 P.3d at 1129. EDCR 5.712(c) provides,

If the court determines that information or events before entry of the written decree of divorce, final judgment, or permanent orders indicate that the interests of justice would be served by valuing community and other joint property using a valuation date other than the date that submission of evidence was closed, the court can use any date between the close of evidence and entry of the written decree, final judgment, or permanent orders.

However, the district court did not rely upon EDCR 5.712(c) to make findings as to the value of community property; rather it applied EDCR 5.712(c) to support its decision that the marital community ended when it orally pronounced the parties divorced on July 15, 2021. The district court's application of EDCR 5.712(c) to support its determination that the marital community ended upon its oral pronouncement was thus erroneous. Accordingly, we conclude the district court abused its discretion in this regard. *See Williams*, 120 Nev. at 566, 97 P.3d at 1129; *see also Davis*, 131 Nev. at 450, 352 P.3d at 1142 (stating "deference is not owed to legal error").

Rowland urges this court, however, to affirm the district court's decision on an alternative basis. Rowland contends the district court addressed the distribution of the marital residence in the July 15, 2021, and October 6, 2021, minute orders such that the distribution of the marital residence should be binding pursuant to EDCR 7.50. However, Rowland's argument is misplaced.

EDCR 7.50 states, in relevant part, that agreements between parties will be effective if both parties consent to the agreement's entry "in the minutes in the form of an order." A settlement agreement is a contract, "subject to general principles of contract law," which includes the principle

that “[a] valid contract cannot exist when material terms are lacking”. *Grisham v. Grisham*, 128 Nev. 679, 685, 289 P.3d 230, 234-35 (2012) (quotation marks omitted).

As explained previously, the parties reached agreements concerning child custody matters and other financial issues at the July 15, 2021, hearing, but they did not reach an agreement concerning the value and distribution of the marital residence at that hearing. *See id.* Moreover, the July 15 and October 6 court minutes did not contain any agreement concerning the value of the property or the date upon which the property should be valued. Thus, Rowland fails to demonstrate the parties reached an agreement at the July 15, 2021, hearing, or at any other point prior to entry of the decree of divorce, concerning the value of the marital residence or the amount Rowland was required to pay Polk to purchase her share of the marital residence. *Cf.* EDCR 7.50. Moreover, in light of the language in the decree directing the parties to either sell the residence or refinance the mortgage and for the party retaining the property to buy the other party’s share of the residence within 90 days of entry of the decree, Rowland’s contention that the distribution of the value of the residence was settled prior to entry of the decree through minute orders contradicts the decree and thus lacks merit. *See Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (stating “[t]he district court’s oral pronouncement from the bench, the clerk’s minute order, and even an unfiled written order are ineffective for any purpose”). Accordingly, Rowland is not entitled to relief based on this contention.

In consideration of the foregoing, we reverse the district court’s decisions rejecting Polk’s motions to enforce the decree of divorce by seeking a proper valuation and equitable distribution of the marital residence.

Accordingly, we remand for further proceedings to make specific findings as to the value of the marital residence, utilizing the appraised value of the home when Rowland completed the refinance of the mortgage, and direct an equitable division of the value of the residence between the parties in accordance with the decree of divorce.

It is so ORDERED.¹


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Mary D. Perry, District Judge, Family Division
Ford & Friedman, LLC
Nevada Defense Group
Eighth District Court Clerk

¹Insofar as the parties raise 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.