IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LESLIE ORTIZ,
Appellant,
vs.
JOSUE ORTIZ,
Respondent.

No. 89440-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Leslie Ortiz appeals from a district court divorce decree. Eighth Judicial District Court, Family Division, Clark County; Regina M. McConnell, Judge.

Leslie and respondent Josue Ortiz were married in 2016, and Leslie filed a complaint for divorce in August 2023. On a general financial disclosure form, Leslie described business expenses related to her cleaning business and listed a condominium on Cardiff Lane (Cardiff property) as an asset held in Josue's name only.

The case proceeded to trial and both parties testified. Leslie testified that she started a cleaning business in 2023 prior to filing for divorce and that the parties had always maintained separate bank accounts. Leslie explained, at the time the Cardiff property was purchased in December 2018, she signed a document, which she believed was for loan purposes, and identified a grant, bargain, sale deed which stated that she conveyed the Cardiff property to Josue. However, Leslie testified that she did not know she signed a deed, she did not receive money for signing it,

and she did not intend to gift the property to Josue. Further, she stated she was never told the property was solely for Josue. Leslie also identified a deed of trust for the property containing only Josue's name. The parties separated in 2019, but she lived in the Cardiff property until 2020. Since then, the parties have lived separate lives. When Josue eventually refinanced the property in 2023, the deed of trust still reflected only his name. Leslie also testified that she never gave Josue permission to give away her half of the equity of the condo and she requested the district court to award her half the equity.

Josue testified that he was a server and purchased the Cardiff property in 2018 for $110,000 and with a $10,000 down payment. He explained that when deciding whether to purchase the property, he spoke with Leslie about who would own it and informed her that he wanted to purchase the property, and it would be in his name because he "always wanted [his] own house or condo." Josue acknowledged he did not give Leslie money in exchange for signing the grant, bargain, sale deed, and the mortgages were in his name only. He also testified he did not obtain Leslie's consent to give away her half of the equity in the condo. When he refinanced in 2023, he explained that he took money out of the property to make home improvements. The new mortgage was $136,000 and the property was valued at approximately $220,000 at that time.

Josue further testified that Leslie never paid anything toward the Cardiff property. They did not share assets or incomes, and it was "typical" for them to have separate assets. The parties had agreed that Leslie would not pay any bills, she would save money, and when they broke up, she would move out. Leslie lived in the property for a year following

their 2019 "breakup," but they never discussed that she wanted equity in the property. They did not divorce sooner due to the COVID-19 pandemic and ensuing financial issues. Josue also explained he did not attempt to claim an interest in Leslie's cleaning business because it was his understanding that the Cardiff property belonged to him and the cleaning business belonged to her. He acknowledged that the parties had no pre- or postnuptial agreements and, other than the deed, had nothing in writing concerning their agreement regarding the property.

The district court thereafter entered a divorce decree, finding, in relevant part, that the Cardiff property was Josue's sole and separate property and Leslie's business was her sole and separate property. The court also ordered the parties to keep their respective bank accounts, debts, and vehicles, per their testimony. The court made factual findings consistent with the parties' testimony recited above. Additionally, the district court determined the evidence supported a conclusion that the Cardiff property was a gift to Josue based on its finding that Leslie was not credible as to her testimony that she had no knowledge the property was being purchased as Josue's sole and separate property.

Further, the district court found that the parties did not share assets or income during the marriage, and Josue testified that Leslie never contributed money toward the Cardiff property or household bills. The court also found Leslie assured Josue that the Cardiff property was his separate property, and her business was her separate property. The court noted Leslie at no point requested that Josue share the equity in the property prior to initiating the divorce. The court did not find Leslie credible that she had no knowledge that Josue purchased the condo as

separate property. It found Josue's testimony credible that the parties agreed he would acquire the condo as his sole and separate property, that the parties made similar incomes while married, and that Leslie did not financially contribute to the condo. Ultimately, the district court concluded that Josue acquiring the property as his separate property "line[d] up" with how the parties maintained their other assets and debts and was supported by documentary evidence.

However, the decree made no findings as to whether there was a written agreement to keep the Cardiff property equity, or any of the parties' other assets, as separate property. Nor did the decree make findings as to whether Josue's use of his wages, which belonged to the community, to pay the mortgage and improve the property affected the community's interest in the property. This appeal followed.

On appeal, Leslie challenges the district court's award of the Cardiff property to Josue as his sole and separate property. This court reviews a district court's community property determinations for an abuse of discretion. *Eivazi v. Eivazi*, 139 Nev. 408, 411, 537 P.3d 476, 482 (Ct. App. 2023). We will uphold the district court's property characterizations, so long as those characterizations are supported by substantial evidence. *Lopez v. Lopez*, 139 Nev. 533, 541, 541 P.3d 117, 125 (Ct. App. 2023). 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). 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).

NRS 123.220(1) provides that all property, other than separate property outlined in NRS 123.130, acquired after marriage by either or both spouses is community property unless otherwise provided by an agreement in writing between the spouses. There is a presumption that assets acquired during a marriage are community property and that presumption can only be overcome by clear and convincing evidence. *Lopez*, 139 Nev. at 541, 541 P.3d at 125. Typically, real property purchased during a marriage requires sufficient tracing evidence to prove the source of purchasing funds by clear and convincing evidence to rebut the presumption that the real property is community property, and a deed that places title in one spouse, without more, is generally insufficient to rebut the community presumption. *Lopez*, 139 Nev. at 542, 541 P.3d at 125.

However, if a spouse conveys title of real property to another spouse, that conveyance creates a presumption of a gift, and therefore separate property under NRS 123.130, and that presumption can likewise only be overcome by clear and convincing evidence. *Kerley v. Kerley*, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996); NRS 123.130 ("All property of a spouse owned by him or her before marriage, and that was acquired by him or her afterwards by gift . . . is his or her separate property."). Once the presumption is established, the burden of proof shifts to the spouse who transferred their interest to prove by clear and convincing evidence that the property is community property, and the common law presumption of a gift remains even if there is conflicting evidence. *Todkill v. Todkill*, 88 Nev. 231, 237-38, 495 P.2d 629, 632 (1972).

Here, the Cardiff property was purchased during the parties' marriage for $110,000 with a $10,000 down payment. In this case, there was no evidence presented regarding the source of the down payment funds and whether those funds were acquired before marriage and, thus, separate property. However, because evidence was presented at the hearing that Leslie conveyed the property to Josue at the date of purchase, that created a presumption of a gift that she had the burden to rebut. *See Kerley*, 112 Nev. at 37, 910 P.2d at 280.

While Leslie testified that she was unaware she conveyed the property to Josue and did not intend to gift the property to him, Josue provided conflicting testimony that the parties discussed the purchase and agreed he would purchase the Cardiff property as his separate property. The district court resolved the conflicting evidence in favor of Josue, finding Josue's testimony credible and that the conveyance was a gift, thereby implicitly finding that Leslie failed to rebut the gift presumption. This court does not reweigh the evidence or reevaluate witness credibility on appeal. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009) (refusing to reweigh evidence and credibility determinations on appeal). As such, we conclude the district court did not abuse its discretion by determining that Leslie gifted title to the Cardiff property to Josue, including the $10,000 down payment, because Leslie signed the grant, bargain, sale deed to Josue at the time of purchase, and because the court resolved the conflicting testimony in Josue's favor. Thus, we affirm the court's order in this respect.

However, this does not end our analysis, as Leslie argues that Josue paid the mortgage with community funds and, therefore, the

increased equity and appreciation in value constitute community property. Our supreme court has explained that the community is entitled to a pro rata ownership share in property which community funds have helped to acquire. *Malmquist v. Malmquist*, 106 Nev. 231, 238, 792 P.2d 372, 376 (1990); *cf. Robison v. Robison*, 100 Nev. 668, 670, 691 P.2d 451, 453 (1984) ("Where payments are made with community funds on real property which was owned by one spouse before marriage, the community is entitled to a pro tanto interest in such property[.]").

Here, Josue testified that he paid the mortgage on the Cardiff property, but he did not testify as to what funds were used to pay the mortgage, and there was no evidence presented that either party had funds that would constitute separate property. *See* NRS 123.130. Thus, the evidence supports an inference that Josue paid the mortgage—thereby increasing the equity in the property—with his income, which constituted community property. *See Robinson*, 100 Nev. at 670, 691 P.2d at 453 (explaining that the earnings of either spouse during the marriage are considered to be community funds). And, the fact that the parties maintained separate bank accounts, without more, does not transmute Josue's income and, therefore, the equity in the Cardiff property, into separate property. *See* NRS 123.220(1); *see also Peters v. Peters*, 92 Nev. 687, 692, 557 P.2d 713, 716 (1976) ("The opinion of either spouse as to whether property is separate or community is of no weight.").

Additionally, Josue refinanced the property in 2023 and took money out of the equity to make home improvements, and the property's value increased to $220,000. Therefore, while Leslie gifted the down payment and title to the Cardiff property to Josue, the use of community

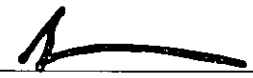
funds created a community interest in the increased equity and appreciation of the Cardiff property, and that interest is a community asset subject to division. *See* NRS 123.220 (property acquired during marriage is presumed to be community property); NRS 125.150(1)(b) (providing that, generally, the district court must equally divide community property).

In addressing the Cardiff property below, the district court did not make findings concerning Josue's use of community funds to pay the mortgage or to make home improvements, and the court did not otherwise indicate that it considered how Josue's use of community funds for those activities bore upon the community's assets. *See Lopez*, 139 Nev. at 541, 541 P.3d at 125. Instead, the court simply determined the Cardiff property was separate property in its entirety without providing sufficient factual findings in support of that determination. In light of the district court's incomplete findings as to the aforementioned issues, we conclude the court's decision as to the distribution of the Cardiff property is not supported by substantial evidence. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142; *Wilford*, 101 Nev. at 215, 699 P.2d at 107.

Under these circumstances, while we affirm the district court's conclusion that Leslie gifted the down payment and title to the Cardiff property to Josue, we conclude the court abused its discretion by awarding Josue the property as his sole and separate property without determining the community's interest in the increase in equity and appreciation and dividing such interest between the parties. *See Eivazi*, 139 Nev. at 411, 537 P.3d at 482. Accordingly, we reverse the district court's order in that respect and remand this matter for the court to conduct a *Malmquist*, 106 Nev. 231, 792 P.2d 372, analysis to determine the value of the separate and

community property interests in the Cardiff property, as well as apportion any appreciation in the property's value due to community efforts when determining the distribution.

It is so ORDERED.[1]



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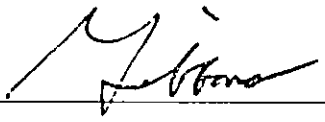

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Regina M. McConnell, District Judge, Family Division
Page Law Firm
Josue Ortiz
Eighth District Court Clerk

[1]Insofar as Leslie raises 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.