

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PAULINA SOTELO A/K/A PAULINA
KLEIPS-SOTELO,
Appellant,
vs.
RANDY SOTELO,
Respondent.

No. 88638-COA

FILED

SEP 30 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Eliz Brown*
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Paulina Sotelo appeals from a district court decree of divorce and a post-decree order resolving a motion to reconsider the decree. Eighth Judicial District Court, Family Division, Clark County; Bryce C. Duckworth, Judge.

Paulina and respondent Randy Sotelo married in October 1997, and they had three children together: S.S., E.S., and G.S., the latter two of whom were still minors at the time of trial. Paulina and Randy were both employed during the marriage, and each was a breadwinner for the family at certain points over the first two decades of their marriage. But in 2018, Paulina developed chronic diastolic heart failure, preventing her from working, and she received permanent disability benefits.

In 2005, the couple purchased a house with community funds for \$350,000, but the grant, bargain, and sale deed and the deed of trust only named Paulina as the owner of the property. Those documents further stated that the house would be her “sole and separate property.” Additionally, Randy quitclaimed his interest in the house to Paulina at the

time of the original purchase. However, both parties agreed that they used community funds to pay the mortgage during the marriage.

Randy filed a complaint for divorce in February 2023. The parties had disagreements as to the custodial arrangement for the two children, but, after consideration of the information presented by the parties at trial, the district court awarded Randy primary physical custody of G.S., then age 14, and awarded joint physical custody to the parties of E.S., then age 13.

Parallel to that issue, Paulina argued at various points in the litigation that the marital home was her sole and separate property, while Randy argued it was community property. Paulina produced the grant, bargain, and sale deed; deed of trust; and quitclaim deed in her NRCP 16.2(d)(1) pretrial disclosures and in other pretrial pleadings. However, Paulina also represented in her pretrial briefing that the title of the home was in her name because, “at the time the parties purchased the home [Randy] was financially unstable and indeed had been sued by Koster Finance.” Randy argued that the marital home was community property because it was purchased with community funds and the mortgage was in both parties’ names and paid for with community funds. Paulina countered that the earnest money for the home came from her separate funds and that she made payments on the mortgage from her separate bank account from 2012 to 2016. But at the case management conference, Paulina ultimately agreed with the district court that all the payments she made were with community funds.

During trial, Paulina, as a pro se litigant, suggested that the district court should award her the home, and she would forgo Randy’s potential retirement benefits and lessen Randy’s alimony obligations. She

also asked that the alimony be awarded in one lump sum. Conversely Randy asked the court to direct the parties to sell the home to pay off the community debt, and then to distribute the remaining funds equally to the parties. Most of the trial was devoted to custody and alimony issues, and the community or separate property nature of the home was not litigated. Further, Paulina did not offer the grant, bargain and sale deed, deed of trust, or quitclaim deed as evidence nor was there any testimony suggesting Randy gifted his interest in the home to Paulina. Indeed, when questioned by the district court, Paulina agreed the home was a community asset.

After the trial, the district court issued a decree of divorce in which it characterized the marital residence as community property. The court ordered the home sold to pay off community debt, with the remaining funds distributed equally between Randy and Paulina. The district court then analyzed the statutory alimony factors, and it awarded Paulina periodic alimony of \$750 per month for 11 years to commence after the home sale was completed and declined to order lump-sum alimony.

Paulina moved for reconsideration of the divorce decree, challenging the alimony award and the prioritization of the payment of debt over retaining the home, but not the characterization of the home as community property. The district court denied relief except that it extended the alimony award indefinitely as permanent alimony but rejected the argument for a lump-sum payment. This appeal followed.

Characterization of the marital residence as community property

Paulina argues that the district court abused its discretion and made an error of law when it concluded that the marital residence was community property. Paulina contends that evidence she presented to the district court throughout the proceedings showed that Randy gifted the

marital residence to her when he quitclaimed his interest in the home to her, which shifted the burden to Randy to show that the home was actually community property. Conversely, Randy argues that the district court properly concluded that the marital residence was community property because the residence was purchased during the marriage, paid for with community funds, and Paulina did not rebut the presumption that the residence was community property. We agree with Randy.

This court reviews a district court's alimony and community property determinations for an abuse of discretion. *Eivazi v. Eivazi*, 139 Nev. 408, 411, 537 P.3d 476, 482 (Ct. App. 2023). Regarding the distribution of real property upon divorce, 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).

"Properties acquired during marriage are presumed to be community property, and this presumption can be overcome only by clear and convincing evidence." *Lopez*, 139 at 542, 541 P.3d at 125; *see also* NRS 123.220. "Regarding real property [purchased during a marriage], sufficient tracing evidence requires a party to prove the source of purchasing funds by clear and convincing evidence" to rebut the presumption that the real property is community property. *Lopez*, 139 Nev. at 542, 541 P.3d at 125. "To that end, even a deed that places title in one

spouse as that spouse's separate property is insufficient to overcome the community presumption if the party cannot also show that the home was purchased with separate funds." *Id.*

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 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, Paulina argues that the residence is her sole and separate property and presented three pieces of evidence to the court in her initial disclosures and later pleadings, which included (1) the grant, bargain, and sale deed to the property listing the property as Paulina's "sole and separate property"; (2) the deed of trust listing the property as her "sole and separate property"; and (3) Randy quitclaiming his interest in the marital residence to Paulina. However, Paulina failed to offer any documentary evidence at trial including the deeds, so the district court could only consider in its order the fact that the house was purchased during the marriage. And that fact established the presumption that the property was community property and that Paulina had the burden of rebutting that presumption. See NRS 123.220; *Lopez*, 139 Nev. at 541, 541 P.3d at 125.

Paulina failed to rebut the presumption for three reasons. First, as mentioned above, she did not offer as evidence the various deeds to support her argument. But even if the district court had considered this unadmitted evidence, Paulina's pretrial briefing to the court acknowledged that the reason the property was titled in her name was because, at the time the parties purchased the home, Randy was "financially unstable"—meaning the conveyance was done for financial reasons and was not intended to be a gift. Moreover, Paulina offered no testimony at trial to rebut or clarify her earlier statement or to suggest that the transfer was intended to be a gift. Second, she apparently conceded that the home should be characterized as community property in the beginning and in the end of trial when asked by the court. Lastly, Paulina did not request that the district court *characterize* the house as her sole and separate property during or at the end of the trial. Instead, she requested that the court *award* her the house as her sole and separate property as part of the property disposition in the decree, but not as separate property acquired by gift during marriage.

Thus, even though the district court did not perform an analysis or make findings during the trial or in the decree regarding the home as community property, it did not abuse its discretion because it could presume that the home was community property and no evidence was presented at trial to rebut that presumption. *See Lopez*, 139 Nev. at 541-42, 541 P.3d at 125; *Gorden v. Gordon*, 93 Nev. 494, 496, 569 P.2d 397, 398 (1977) ("[I]n the absence of express findings, [this court] will imply findings where the evidence clearly supports the judgment."). Therefore, we conclude that the

district court did not err when it characterized the home as community property.¹

Award of alimony

Paulina argues that the district court erred when it conditioned the commencement of the award of alimony on the sale of the marital residence and when it failed to analyze whether a lump-sum award of alimony was more appropriate in the context of the separate versus community equity within the property, and her ability to remain in the home. Randy counters that the district court properly determined the start date for the payment of alimony should be when the residence is sold and that the denial of lump-sum alimony was proper.

This court will not disturb a district court's disposition of property or an award of alimony on appeal without a showing of an abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 66, 75, 439 P.3d 397, 400, 406 (2019). When awarding alimony, the district court must consider the eleven statutory factors under NRS 125.150(9), which include:

- (a) The financial condition of each spouse;

¹Paulina also argues that the district court erred when it ordered the parties to sell the marital residence before determining the amount of community equity in the residence under *Malmquist v. Malmquist*, 106 Nev. 231, 239-41, 792 P.2d 372, 377-78 (1990). We disagree because *Malmquist* is inapplicable in this case as the home was not Paulina's separate property and Paulina does not argue her separate funds were used to maintain or improve it. See *Kerley v. Kerley*, 111 Nev. 462, 466, 893 P.2d 358, 360 (1995), *reh'g granted*, 112 Nev. 36, 910 P.2d 279 (1996) (holding that a court need not "perform a *Malmquist* apportionment unless either separate property has increased in value through community efforts, or conversely, community property value has been enhanced by separate property contributions").

- (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.

Additionally, NRS 125.150(1)(a) provides that when granting a divorce, the district court may make an award of periodic alimony, or a lump-sum award, as appears just and equitable. *Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010). If a party presents a reason why periodic payments would be less just and equitable and/or illusory compared to a lump-sum payment, the district court is obligated to analyze which would be more appropriate. *Id.* at 91-92, 225 P.3d at 1276 (holding that the district court abused its discretion in failing to perform an analysis for a lump-sum payment of alimony to the wife because the situation called for it as the husband was in poor health); *see also Daniel v. Baker*, 106 Nev. 412, 414, 794 P.2d 345, 346 (1990) (same).

Here, Paulina asked the district court to award her lump-sum alimony for an offset of Randy's equity interest in the property as well as in exchange for agreeing to give up any potential interest she may have in Randy's retirement benefits. However, she only argued for a lump-sum payment to keep the marital residence—not because of Randy's health or ability to pay.

The district court did not expressly address the lump-sum request in the decree of divorce but analyzed the NRS 125.150(9) factors and awarded Paulina \$750 a month for 11 years. Further, the court extended the alimony payments indefinitely as permanent alimony in the order granting the motion for reconsideration in part. The district court concluded that (1) Randy must pay alimony to Paulina due to their difference in income; (2) the parties had been in a long-term marriage, necessitating an award of alimony; (3) Randy has no health issues and will be able to work for many years; and (4) Paulina has a physical disability which impacts her ability to earn income.²

All these findings are supported by substantial evidence, and Paulina does not challenge any of these findings specifically. Instead, she argues that the district court failed to analyze whether she should be awarded a lump sum. However, in the reconsideration order, the court explained why it chose to order periodic payments and not a lump sum, including that Paulina failed to present evidence at trial for a lump-sum analysis such as evidence of the equity in the home, a present value determination, and a projection of the tax consequences. But as explained in the next section, the district court will need to reevaluate this issue, and

²The district court concluded that all the other NRS 125.150(9) factors were either neutral or inapplicable.

determine if lump-sum alimony is just and equitable under the unique circumstances of this case as an offset for Randy's interest in the home. See *Schwartz*, 126 Nev. at 90-92, 225 P.3d at 1275-76.

Sale of the home

Paulina argues that the district court erred when it failed to analyze the hardship on Paulina and the minor children in securing alternative housing. Randy argues that Paulina failed to provide any legal authority to support her argument that the district court needed to analyze the hardships that she and her children would suffer if the marital residence was sold.

The district court briefly considered the effect of selling the home on the Sotelo family before it made its decision to order the sale and it provided further explanation in the reconsideration order. However, while the court analyzed the parties' incomes and expenses, it did not compare the community debt, which was approximately \$27,000, to the equity in the home, which was approximately \$237,000. Specifically, Randy submitted evidence before and at trial on the equity in the home based upon a home value estimated by Zillow at \$470,000 and a mortgage payoff of \$213,000 (and possibly a second mortgage in the amount of \$20,000). Paulina presented similar information.

As explained in the post-trial reconsideration order, the district court disregarded this information and did not adjudicate the valuation issue because it was not satisfied with the testimony from Randy, who based his valuation estimate from the Zillow website, and the court preferred an appraisal. However, both parties provided information from Zillow, there was no objection at trial, and they effectively agreed that it was reliable under the circumstances of this case. Here, where the value of the marital

home was highly relevant to Paulina's requested relief, the district court should not have disregarded this evidence as not competent or credible. In doing so, the court avoided adjudicating the issue when there was undisputed evidence and no alternative was presented because an appraisal had not been undertaken.


In that regard, Paulina provided testimony and argument that she would be unable to acquire a house or apartment in Las Vegas on her monthly disability income of \$1,487, even with child support and periodic alimony, while she could afford to continue to pay the monthly mortgage of \$1,268.47 and provide the family home for her and the children. Although the district court was not required to prioritize retaining the home for Paulina, the record does not reveal that it gave her request adequate consideration when the available evidence indicated there was substantial equity in the home and a reasonable possibility existed to satisfy Randy's interest in the home with an offset if lump-sum alimony had been awarded to Paulina as just and equitable. *See Schwartz*, 126 Nev. at 90-92, 225 P.3d at 1275-76. We note the original alimony order was for \$750 a month for 11 years, which equals \$99,000 in present dollars. Of course a lifetime award of alimony would substantially increase the equivalent lump-sum award. We also note that if the district court grants lump-sum alimony, Randy will not have to make monthly alimony payments, and his child support payments may end in 2027 due to the age of E.S., over whom the parties share joint physical custody.

Thus, Paulina demonstrates that the district court abused its discretion by failing to formally analyze the hardship of losing the marital home when she would be without reasonable alternative housing, and by not considering her lump-sum alimony request at trial and potentially

awarding Randy's retirement benefits to him in full as Paulina suggested.³
Accordingly, we

ORDER the judgment of the district court AFFIRMED IN
PART, REVERSED IN PART AND REMAND for proceedings consistent
with this order.⁴


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

³Nothing in our order should be construed as limiting the district court's ability to authorize discovery or additional evidence related to the valuation of the home upon remand if the court deems it appropriate. See *generally* NRCP 16.21.

⁴In light of this order, the supreme court order staying the sale of the home will remain in effect. The district court order deferring the commencing of alimony payments should be reviewed by the district court after it determines if lump-sum alimony is appropriate.

Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for further relief or need not be reached given the disposition of this appeal.

cc: Hon. Bryce C. Duckworth, District Judge, Family Division
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