IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAMUEL VASQUEZ, JR.,
Appellant,
vs.
JEANNETTE VASQUEZ,
Respondent.

No. 89329-COA

ORDER OF AFFIRMANCE

Samuel Vasquez, Jr., appeals from a decree of divorce. Eighth Judicial District Court, Clark County; Mari D. Parlade, Judge.

Samuel and respondent Jeannette Vasquez were married in October 1996. In August 2022, Jeannette filed a complaint for divorce. Because the parties' children were adults and child custody was not at issue, the case proceeded to an evidentiary hearing to resolve the division of assets and debts and Jeannette's alimony request.

During the evidentiary hearing, Jeannette testified that she was primarily a homemaker who raised the parties' children during the nearly 28-year marriage. She also testified that she worked as a teacher for the last ten years and had various medical conditions. Jeannette's Financial Disclosure Form (FDF) reported that she received $4,333.33 in gross monthly income as a teacher. Jeannette testified that Samuel had been providing her with financial support throughout their separation, paying at least $1,623 per month to her, and an additional $600 per month for her utility bills. She sought $2,000 in monthly alimony for fifteen years to supplement the additional $524.31 per month in disability income she was receiving from the United States Department of Veterans Affairs (VA)

for chronic heart disease. Jeannette also argued that Samuel could not account for approximately $210,000 that was deducted from his Chase savings account over seven months, noting that Samuel's September 25, 2023, FDF disclosed that Samuel had the sum of $230,000 in his Chase savings account, but Samuel's April 22, 2024 FDF established that the $230,000 amount had been reduced to $20,000 over the preceding seven months. Jeannette argued that Samuel improperly spent this amount so that she would not receive her community share. Thus, Jeannette requested that the district court make an unequal disposition of community property to compensate her for the dissipated $210,000 amount.

During Samuel's testimony, he stated that he works as a director at a healthcare company and earns $8,333.33 in gross monthly income. He also testified that he owns property in California, for which he receives monthly rental income of $4,250, and this was not disclosed on his FDFs. Samuel testified that he had been voluntarily providing Jeannette with financial support throughout their separation, paying approximately $2,000. He asserted that Jeannette did not need alimony, given her teacher's salary and disability income from the VA. With respect to the $230,000 in his Chase savings account, he testified that his mother gave him a gift/inheritance of $330,000, which he put into the Chase savings account. When questioned as to how he spent $210,000 in seven months, Samuel testified that he did remodeling projects and paid bills. But upon further questioning, he acknowledged certain charges on his credit card and bank statements evidencing international travel with his girlfriend.

Following the evidentiary hearing, the district court entered its findings of fact, conclusions of law, and divorce decree. The district court found Samuel failed to provide credible testimony to account for the

$210,000 amount dissipated from the Chase savings account. In particular, the court found Samuel disclosed $230,000 in his Chase savings account, per his October 2022 and September 2023 FDFs, and because it was deposited into his account during the marriage, it was presumed to be community property. *See* NRS 123.220 (discussing the presumption that any property acquired during a lawful marriage is community property). The court further found Samuel failed to rebut the legal presumption of community property by offering any credible evidence to establish that he acquired the funds by gift.

The district court then found that Jeannette credibly established that Samuel spent or withdrew $210,000, an unusually large amount, in the seven months leading up to the evidentiary hearing, as his April 22, 2024, FDF listed $20,000 as the balance of the account by that time. The court further found Samuel failed to provide credible testimony to account for the $210,000 from the Chase savings account. Additionally, the court found Samuel testified to spending money on travel expenses with his girlfriend internationally and admitted to several charges on his bank and credit card statements for travel and other charges on the community accounts. Thus, the court found that Jeannette effectively shifted the burden of proof to Samuel to prove the absence of waste, given the unusually large amount expended in seven months and due to Samuel's acknowledgement of travel expenses with his girlfriend. The court determined that Samuel failed to establish that the $210,000 removed from this Chase savings account in the seven months leading up to the evidentiary hearing, while he was still working making $8,333.33 per month, in addition to receiving $4,250 in unreported rental income per month, was not waste. To that end, the district court determined Jeannette

was entitled to half of the amount Samuel wasted. Therefore, the court determined Jeannette would be entitled to $105,000 to account for half of the amount Samuel wasted.[1]

Additionally, the district court awarded Jeannette $2,000 per month in alimony for ten years. In evaluating alimony, the court analyzed the NRS 125.150(9) alimony factors. The court noted the length of the marriage, marital lifestyle, the difference in income, and Jeannette's role as a homemaker who raised the parties' children while working as a teacher for the last ten years, while Samuel worked as a director making $100,000 annually, in addition to owning income-producing property. The district court ultimately found it just and equitable to award alimony, considering that Jeannette would receive a property in the divorce subject to a mortgage and an equalization payment of $203,513.13, while Samuel received income-producing property in California. This appeal followed.

On appeal, Samuel challenges the district court's finding of marital waste, arguing that it was not supported by the record as Jeannette did not suffer an adverse economic impact, and that there is no indication that he had the intent to deprive Jeannette of her share of the community. Conversely, Jeannette avers that the district court properly awarded her an equalization payment because Samuel failed to provide credible evidence that his dissipation of funds from the Chase savings account in the seven months before the evidentiary hearing was not marital waste.

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[1]We note that Jeannette's total equalization payment was $203,513.13, which included her share of various other assets, including a California property, Samuel's retirement from his former employer, and to offset bank accounts.

A district court must make an equal disposition of community assets and debt in a divorce unless there is a "compelling reason" to make an unequal disposition. NRS 125.150(1)(b); *see also Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75, 439 P.3d 397, 406 (2019). "Dissipation," also known as "waste," can constitute a compelling reason for an unequal disposition of community property. *Kogod,* 135 Nev. at 75, 439 P.3d at 406; *see also 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 [or waste] 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 and 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").

As noted above, the district court made detailed findings with respect to Samuel's dissipation of $210,000 of community assets. The court found Samuel failed to provide credible testimony to account for the $210,000 amount dissipated from the Chase savings account, noting the unusually large amount expended over seven months before the evidentiary hearing. The court further found Samuel testified to spending money on

international travel expenses with his girlfriend and admitted to several charges on his bank and credit card statements for travel and other charges on the community accounts. Thus, the court found that Jeannette effectively shifted the burden of proof to Samuel to explain that the dissipated funds were not marital waste, and Samuel failed to present credible evidence to establish that he did not engage in marital waste. *Kogod*, 135 Nev. at 78, 439 P.3d at 408 (shifting the burden of proving the absence of waste if one spouse could demonstrate that the "transactions furthered a purpose inimical to the marriage, that [the other spouse] made them to diminish [that spouse's] community share, or even that they were unusually large withdrawals from community accounts").

Based on the aforementioned, the district court found Samuel committed waste by expending $210,000 in a manner that did not benefit the marital community. Thus, the court awarded Jeannette $105,000 as a property equalization payment, to account for half of the amount Samuel wasted. It is the role of the district court to determine witness credibility, and this court "will not reweigh credibility on appeal." *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007). Therefore, this court defers to the district court's finding that Samuel failed to credibly explain the $210,000 loss to the marital community. Given Samuel's testimony concerning charges for travel expenses with his girlfriend, and no other supporting documentation in the record on appeal explaining the dissipation of the large amount of funds, we conclude that substantial evidence supports the district court's finding that Samuel's dissipation of $210,000 constituted marital waste. Moreover, Samuel failed to provide this court with the bank records and credit card statements presented at the evidentiary hearing and thus we presume these portions of the record support the court's

findings. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

Although Samuel argues that money expended in his new relationship did not constitute waste because he was not engaged in an extramarital affair, since he and Jeannette had already separated, the Nevada Supreme Court has previously affirmed a marital waste determination based on community funds spent on a subsequent relationship. *See, e.g.*, *Edmands v. Edmands*, No. 58764, 2012 WL 5851137 (Nev. Nov. 16, 2012) (Order Affirming in Part, Reversing in Part, and Remanding) (determining that "appellant's share of the community property should be offset by community funds spent on his new girlfriend"). Moreover, to the extent Samuel argues that Jeannette did not suffer an adverse economic impact and that he did not have the intent to deprive Jeannette of her community share, we are unpersuaded by these arguments. Samuel made the unusually large expenditures after Jeannette filed for divorce, in the months leading up to the evidentiary hearing, and at a time when the parties' marriage was irretrievably broken. *See Kogod*, 135 Nev. at 75-76, 439 P.3d at 406-07. Thus, the district court could reasonably conclude that the amount expended constituted marital waste, and Samuel fails to establish an abuse of the court's discretion. *See Eivazi v. Eivazi*, 139 Nev. 408, 411, 537 P.3d 476, 482 (Ct. App. 2023).

Next, we address Samuel's arguments concerning alimony. He asserts that the district court abused its discretion by awarding Jeannette alimony, arguing that she has no need for it. Conversely, Jeannette argues that the district court did not abuse its discretion in awarding her alimony because the court appropriately analyzed the NRS 125.150(9) alimony factors. This court reviews a district court's decision of whether to award

alimony for an abuse of discretion. *Kogod*, 135 Nev. at 66, 439 P.3d at 400. "In granting a divorce, the [district] court [m]ay award such alimony to either spouse . . . as appears just and equitable." NRS 125.150(1)(a). "The decision of whether to award alimony is within the discretion of the district court," but in doing so, the court "must consider the eleven factors listed in NRS 125.150(9)." *Kogod*, 135 Nev. at 66-67, 439 P.3d at 400-01. The district court's factual findings related to these factors must be "supported by substantial evidence." *Eivazi*, 139 Nev. at 426, 537 P.3d at 492.

"Alimony is financial support paid from one spouse to the other whenever justice and equity require it." *Rodriguez v. Rodriguez*, 116 Nev. 993, 999, 13 P.3d 415, 419 (2000); *see also* NRS 125.150(1)(a) (providing that the alimony award must be "just and equitable"). Alimony may be awarded "based on the receiving spouse's need and the paying spouse's ability to pay." *Kogod*, 135 Nev. at 68, 439 P.3d at 401. Alternatively, alimony may "be awarded to compensate for economic loss as the result of a marriage and subsequent divorce, particularly one spouse's loss in standard of living or earning capacity." *Id.* at 70, 439 P.3d at 403. A district court has broad discretion in deciding whether to award alimony. *Buchanan v. Buchanan*, 90 Nev. 209, 215, 523 P.2d 1, 5 (1974).

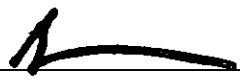
Here, the record reflects that the district court adequately evaluated the factors set out in NRS 125.150(9) when making its alimony award, such as the income difference between the parties and the nearly 28-year duration of the parties' marriage. The court also found that Jeannette primarily raised the parties' children and worked as a teacher for the last ten years of the parties' marriage, while Samuel worked as a director making $100,000 annually, in addition to owning income-producing property. The court also considered each spouse's age, health, work history,

and other contributions during the marriage. The court determined that it was just and equitable to award Jeannette alimony to compensate her for economic loss as a result of the marriage and subsequent divorce. Considering the testimony and evidence presented at the evidentiary hearing, the district court's award of alimony is supported by substantial evidence. *See Ellis,* 123 Nev. at 149, 161 P.3d at 242. The district court was in the best position to hear and decide the facts of the case, and its findings support its award of alimony of $2,000 per month for ten years. *See Schwartz v. Schwartz,* 126 Nev. 87, 91, 225 P.3d 1273, 1276 (2010) (holding that the district court is in the best position to assess the facts and make decisions in matters of alimony).

To the extent Samuel asserts Jeannette did not need alimony because she has sufficient income and received an equalization payment in the divorce, we are not persuaded by these assertions. While Samuel is dissatisfied with how the district court weighed the evidence and testimony in determining that an award of alimony was warranted, this court does not reweigh the evidence or witness credibility determinations on appeal. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009); *Roggen v. Roggen,* 96 Nev. 687, 689, 615 P.2d 250, 251 (1980) (noting that it "is not the duty of a reviewing court to instruct the trier of facts as to which witnesses, and what portions of their testimony, are to be believed"). The district court made sufficient findings concerning its alimony award, its findings are supported by the record, and a reasonable person could accept its decision. *See Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Accordingly, Samuel fails to demonstrate that the court abused its discretion when awarding alimony to Jeannette. *See Kogod*, 135 Nev. at 66, 439 P.3d at 400.

Therefore, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Mari D. Parlade, District Judge
American Freedom Group, LLC
Nevada Defense Group/702-Divorce
Eighth District Court Clerk