

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT BENTON,  
Appellant,  
vs.  
JACQUELINE CLOUTIER,  
Respondent.

No. 89224-COA

FILED

MAR 05 2026

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Robert Benton appeals from a district court order dividing real property between an unmarried couple. Eighth Judicial District Court, Family Division, Clark County; Stephanie Charter, Judge.

Benton and respondent Jacqueline Cloutier were not married but were involved in an intimate relationship and had two children. While the couple was still together, Cloutier purchased property located at 475 S. Chesapeake Way from Benton's parents in July 2016 and took the deed and mortgage on the property in her name only. The parties resided in the property during their relationship. During the COVID-19 pandemic, Cloutier, who was a cosmetologist, was suffering financially and decided to refinance the house and, in connection with the refinance, the property was transferred from Cloutier's name alone to both parties' names in March 2021 (the deed identified the parties as unmarried persons and joint tenants). Cloutier withdrew \$98,831.65 from the refinance, and Benton received approximately half of these funds (\$49,415). The parties subsequently executed a deed transferring the residence to "Jacqueline

Cloutier and Robert Benton, Trustees of the JnB Trust dated June 17, 2021,” which is a jointly held trust. When the couple’s relationship ended, Cloutier filed a complaint seeking, among other things, disposition of the property in September 2023.

Because the parties disputed what their respective interest in the property was, the matter proceeded to an evidentiary hearing in June 2024. Benton asserted it was undisputed that the parties held title as joint tenants, and thus, he argued that Cloutier had the burden of proof to show that there was no donative intent when she transferred the property first to the parties as joint tenants and then into the trust with both parties named as trustees. He asserted that during the three-year period that he was on the mortgage, he made payments directly to the mortgage. He also testified that he transferred sums of money to Cloutier into the account she used to pay the mortgage when she made the payments. He further asserted that he contributed to the expenses incurred by the family in the home. He argued that though the parties were not “related” as they never married, there was donative intent to the couple as a unit which continued until Cloutier decided to terminate the parties’ relationship. Thus, he argued that he was entitled to his equal share of the value of the residence.

Cloutier’s position was that she was responsible for the down payment and costs of purchasing the residence. She testified that she refinanced the house in both parties’ names because she needed Benton’s name to be on the mortgage in order to qualify to refinance and that her contributions to the mortgage exceeded Benton’s contributions. She further testified that after Benton’s name was added to the deed and the

mortgage, she continued to make the mortgage payments on the residence as she had done prior to the March 2021 refinancing. Cloutier testified that she made all the mortgage payments towards the residence prior to the 2021 refinancing of the mortgage, other than one payment, and asserted that Benton made three payments totaling \$3,184.50 towards the mortgage between the refinance in March 2021 and the time of the evidentiary hearing. Thus, Cloutier maintained that she was entitled to the property.

After the evidentiary hearing, the district court entered an order dividing the property at issue. The court referenced that the applicable standard was preponderance of the evidence. The court found that Benton did not provide evidence that there was any intent by Cloutier to give him one half of the equity in the residence. Based upon its finding that Cloutier's contributions to the mortgage vastly exceeded those of Benton's, the district court granted Cloutier 95.83 percent of the equity in the property and granted Benton the remainder, determining that Benton "did not meet the presumption that the parties intended to share equally in the value of [the property.]" This appeal followed.

Benton argues that the district court erred by requiring him to provide substantial evidence to prove that the parties intended to equally share property that was jointly held before and without finding that Cloutier had overcome the initial presumption that jointly held property is intended to be shared equally. He argues the court further erred by applying the preponderance of the evidence standard, despite Nevada law stating that clear and convincing evidence is required to overcome a presumption on jointly held property. Conversely, Cloutier argues that the

court's application of the preponderance of the evidence standard was harmless because she nevertheless provided clear and convincing evidence at trial to establish that she had no donative intent to equally divide the interest of the residence, and thus, she properly overcame the presumption that was created by the parties holding the property in joint tenancy.

This court reviews a district court's interpretation of caselaw de novo. *LVMPD v. Blackjack Bonding*, 131 Nev. 80, 85, 343 P.3d 608, 612 (2015). As set out in NRS 111.065(1), "[j]oint tenancy in real property may be created by a single will or transfer when expressly declared in the will or transfer to be a joint tenancy, or by transfer from a sole owner to himself or herself and others." Any person holding title to real property as a joint tenant may bring an action for partition of said real property according to the rights of the persons holding title. See NRS 39.010. Under *Sack v. Tomlin*, cotenants are presumed to equally share property, "unless circumstances indicate otherwise." 110 Nev. 204, 213, 871 P.2d 298, 304 (1994) (applying the presumption in the context of a tenancy in common). "[U]nequal contributions toward acquisition of property by cotenants who are not related and show no donative intent can rebut the presumption of equal shares." *Id.* If successfully rebutted, fractional shares are based on the amount contributed by each party. *Id.*; *Langevin v. York*, 111 Nev. 1481, 907 P.2d 981 (1995) (extending the *Sack* presumptions to joint tenants and ultimately dividing the property in proportion to each party's contributions to the purchase price).

In *Howard v. Hughes*, the Nevada Supreme Court applied the property interest presumptions outlined in *Sack v. Tomlin*, 110 Nev. 204,

871 P.2d 298 (1994), and *Langevin v. York*, 111 Nev. 1481, 907 P.2d 981 (1995), to unmarried joint tenants, and held that “the initial presumption that cotenants share equally must first be successfully rebutted through evidence of lack of relatedness or donative intent, prior to the court dividing the property or proceeds in proportion to each party’s contributions.” 134 Nev. 664, 667-68, 427 P.3d 1045, 1048-49 (2018).

In *Howard*, the supreme court analyzed and ultimately approved of the approach that the district court followed in applying the property interest presumptions. In particular, the district court began with the presumption that the parties, who were joint tenants, shared the property equally. *Id.* The district court then found that appellant rebutted the initial presumption of equal ownership with evidence that she paid the entire purchase price of the property. *Id.* at 668, 427 P.3d at 1048. Having rebutted the first presumption, appellant was presumed to be the full owner, and the burden shifted to respondent to prove either that the parties were related, or that appellant possessed sufficient donative intent. *Id.* at 668, 427 P.3d at 1049. In that vein, the district court went on to conclude that respondent provided “clear and convincing evidence of [appellant’s] donative intent at the time of the transfer” when executing a quitclaim deed and that appellant intended to gift respondent an equal share as a joint tenant when she executed the quitclaim deed. *Id.* Based on that framework, the supreme court concluded that the district court “correctly interpreted and applied the presumptions from *Sack* and *Langevin*” and affirmed the district court’s decision after determining that respondent presented sufficient evidence of appellant’s donative intent at trial to rebut

the secondary presumption that the parties did not own the property equally. *Id.* at 668-69, 427 P.3d at 1049.

Here, the district court made findings concerning the parties' respective contributions and the lack of donative intent as detailed above. But the district court did not expressly analyze the parties' respective interests in the property based on the burden-shifting framework established in *Sacks, Langevin, and Howard*. Moreover, the district court only referenced a presumption insofar as it found that Benton "did not meet the presumption that the parties intended to share equally in the value of [the property.]" However, because the parties own the property as joint tenants, the district court was required to begin with the presumption that the parties share the property equally. *See Howard*, 134 Nev. at 667-68, 427 P.3d at 1048. And given the foregoing finding, it is unclear whether the district court properly applied the presumptions and burden-shifting framework. Thus, because this court cannot discern whether the district court correctly applied the various presumptions and held the parties to their respective burdens, reversal is required for the district court to properly analyze the property interest presumptions set forth above when determining the parties' interests in the property. *Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842, 850 (Ct. App. 2025) (explaining that an error is reversible if "we cannot conclude that the result would have been the same if the error had not occurred").

Benton further argues that the district court erroneously evaluated the property interest presumptions under a preponderance of the evidence standard, rather than the clear and convincing standard. Cloutier


acknowledges that the court utilized the wrong standard but nevertheless asserts that the error was harmless because clear and convincing evidence was presented at the evidentiary hearing. We agree with Benton. The supreme court in *Howard* affirmed the district court's determination and found that respondent presented sufficient evidence of donative intent at trial and referenced the district court's application of the clear and convincing evidence standard. 134 Nev. at 668, 427 P.3d at 1048-49; *see also, e.g., Graham v. Graham*, 104 Nev. 472, 474, 760 P.2d 772, 773 (1988) (explaining that 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); *Monzo v. Eighth Jud. Dist. Ct. (In re Irrevocable Trust Agreement of 1979)*, 130 Nev. 597, 607, 331 P.3d 881, 888 (2014) (“[A] donor’s unilateral mistake in executing a donative transfer may allow a donor to obtain relief from that transfer if the mistake and the donor’s intent are proven by clear and convincing evidence.”). And we cannot say that such error was harmless as clear and convincing evidence “is beyond a mere preponderance of the evidence.” *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1260 n.4, 969 P.2d 949, 957 n.4 (1998); *see In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) (“[B]ecause it is not clear that the district court would have reached the same conclusion . . . had it applied the correct standard of proof, we must reverse the district court’s decision and remand for further proceedings.”); *cf. Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that, to establish an error is not harmless and reversal is warranted, “the movant must show that the error

affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"). Thus, because the district court did not undertake the correct analysis outlined above in determining the parties' respective shares of the property, we necessarily reverse the court's order and remand for further proceedings.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Stephanie Charter, District Judge, Family Division  
Ara H. Shirinian, Settlement Judge  
Law Offices of F. Peter James, Esq.  
Burger, Meyer & D'Angelo, LLP / Las Vegas  
Eighth District Court Clerk

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<sup>1</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered these arguments and conclude they do not present a basis for relief or need not be addressed given our resolution of this matter.