

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID J PERKINS,
Appellant,
vs.
MATTHEW PERKINS, PERSONAL
REPRESENTATIVE OF LINDA KAY
PERKINS, DECEASED,
Respondent.

No. 89110-COA

FILED

MAR 16 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

David J Perkins appeals from a decree of divorce awarding alimony and unequally dividing community property, and a post-decree order awarding attorney fees and costs. Eighth Judicial District Court, Family Division, Clark County; Charles J. Hoskin, Judge.

David and respondent Linda Kay Perkins¹ were married in 1975 but separated without legal proceedings in 2007 when Linda moved to Texas. At the time the divorce proceedings were initiated, the parties had four adult children, no outstanding debts, and the marital estate was valued at over two million dollars. While separated, the parties maintained civil relations with one another and went on family trips with their adult children. During this time, David also continued his relationship with his long-term girlfriend, who Linda had met and acknowledged. Linda moved back to Nevada in 2012, but the parties remained separated.

¹Linda passed away following the filing of this appeal. Her estate, represented by her son and personal representative, Matthew Perkins, was substituted in on her behalf. For purposes of this order, we refer to the parties as David and Linda herein.

In July 2023, Linda filed a complaint for divorce, requesting division of property, alimony, attorney fees, and a joint preliminary injunction. Linda's claim for alimony was based on the inequality in social security incomes between the parties. David, the primary breadwinner of the marriage, received approximately \$1,996 per month in social security benefits and was withdrawing \$6,500 per month from his pension/retirement account. Linda, who had worked as a medical transcriptionist for 12 years, was a stay-at-home mother for the majority of the marriage and eventually received \$872 per month in social security benefits based on her earlier employment.

David later filed an answer and counterclaim, which sought equal division of the community and argued that Linda would not need alimony to meet her standard of living after the divorce as she would receive roughly one million dollars and be able to earn passive income from the assets she received. At Linda's request, the district court issued a joint preliminary injunction on July 11, 2023, that prohibited the parties from disposing of any community property for any purpose other than for usual expenses in the regular course of conduct, "the necessities of life," and attorney fees, without written consent of the other party or permission from the district court.

Litigation proceeded in the usual course and the district court set a non-jury trial for March 26, 2024. At this time, Linda was 69 years old and David was 73. On March 5, 2024, David, now proceeding pro se, filed his pretrial memorandum addressing alimony and outstanding community property issues. On March 11, 2024, Linda filed her pretrial memorandum, which likewise addressed alimony and outstanding community property issues but also contained, for the first time, three

claims for marital dissipation, two of which are relevant to this appeal. As pertinent here, Linda asserted that David knowingly dissipated community funds by going on two out-of-country vacations with his girlfriend in 2023: a 22-day trip to Europe in mid-2023 wherein he spent approximately \$10,000 in community funds, and another 12-day trip to Thailand in October 2023 wherein he spent approximately \$4,700 in community funds.² Linda argued that she did not know or approve of the expenditures for David's trips in advance, and that she should be reimbursed for half the cost of the vacations on account of David's dissipation of marital assets while the marriage was in jeopardy. David did not object to the inclusion of the marital dissipation claims prior to trial.

During the trial, the district court considered testimony from the parties concerning alimony and the marital dissipation claims. Notably, David did not present any objection to Linda's testimony concerning the dissipation claims or her counsel's closing argument regarding the same.

At that time, Linda testified that David utilized community funds to pay for two vacations with his girlfriend, that she did not approve of the use of funds, and that David spent a portion of those funds after the preliminary injunction prohibiting the use of community funds was in place. Linda testified that she had become aware of these expenditures on or around May 8, 2023, when she called to ask David to pick her up from the

²While the trip to Europe occurred prior to when Linda filed her complaint for divorce in July 2023, we note that the Thailand trip occurred *after* the district court entered the joint preliminary injunction requiring the parties to preserve marital assets, and therefore, some community funds were used for that trip after the injunction was in place.

hospital and he was unable to do so because he was in Europe. Thereafter, she filed her complaint for divorce in July 2023.

David testified during his case-in-chief that the expenditures were not marital waste because Linda was aware of his girlfriend's existence since at least 2007, she had never objected to previous vacations and similar expenditures during the 17-year separation, and that he was the one who grew the marital estate during the separation. David also testified that the expenditures were not made in contemplation of divorce as he purchased nonrefundable tickets for the Europe trip in February and the Thailand trip in March of 2023, and as far as he was aware, he and Linda did not have any serious marital issues during the separation until at least May 2023.

As to alimony, Linda testified that her income consisted of her social security check, babysitting income, and the voluntary support David provided to her, and that she had to request additional funds from David for any expenses beyond this income. During their separation, David voluntarily paid Linda \$1,000 monthly in financial support, which was subsequently increased to \$1,500. Linda had previously received some income from babysitting their grandchildren, but that income had ceased. Linda further testified that she had increased medical expenses due to being diagnosed with cancer and beginning chemotherapy in January 2024. David testified and later argued that an award of alimony was inappropriate as Linda would be receiving assets that would produce passive income above her spending level stated in her Financial Disclosure Form.

In its findings of fact, conclusions of law, and decree of divorce, the district court divorced the parties, adjudicated community and separate

property interests, and awarded alimony to Linda in the amount of \$200 per month commencing in the month when the assets from the marriage were transferred and continuing until her remarriage or the death of either party. Further, recognizing that Linda previously relied upon David's voluntary support to cover her monthly expenses, the court ordered David to maintain his \$1,500 monthly payments to Linda until the assets from the marriage were distributed. The district court also determined that David's expenditures on the 2023 vacations constituted marital dissipation such that an unequal division of community property was appropriate, awarding Linda \$7,017 to account for David's waste of marital assets, which was one-half of the total expenses David incurred for both trips. The remainder of the community property, including income generating property, was divided equally between the parties. Aside from the award for marital waste, the division of community property is not at issue in this appeal.

Following entry of the divorce decree, David filed two unsuccessful motions for reconsideration, challenging the alimony and marital dissipation decision. Linda opposed and moved for attorney fees and costs in the amount of \$5,453.50. After briefing and a hearing on those motions, the district court entered an order denying David's motions for reconsideration and granted Linda's countermotion in part, awarding Linda \$2,865 in attorney fees and costs. David now appeals.

David first challenges the district court's award of permanent alimony to Linda in the amount of \$200 per month until her remarriage or the death of either party.³ In doing so, he argues that the district court

³David's alimony obligation ended upon Linda's passing. See NRS 125.150(6) ("In the event of the death of either party or the subsequent

failed to consider the impact of the assets the court awarded to Linda as her share of the community on her ongoing need for alimony. Linda argues that the district court properly considered all of the appropriate factors under NRS 125.150 and urges this court to affirm the permanent alimony award in light of the parties' disparate social security incomes and their standard of living throughout the marriage.

This court reviews a district court's decision whether to award alimony under NRS 125.150(9) for an abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 66-67, 439 P.3d 397, 400-01 (2019). The district court's factual findings related to these factors must be supported by substantial evidence. *See Eivazi v. Eivazi*, 139 Nev. 408, 426, 537 P.3d 476, 492 (Ct. App. 2023). But "deference is not owed to legal error," or to findings of fact so conclusory that they may mask legal error. *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015).

In the divorce decree, the district court considered the factors set forth in NRS 125.150(9) and awarded Linda permanent alimony of \$200 per month commencing on the month the assets from the marriage were transferred and continuing until her remarriage or the death of either party. The district court recognized that Linda previously relied upon David's voluntary support to cover her monthly expenses, and ordered

remarriage of the spouse to whom specified periodic payments [of alimony] were to be made, all the payments required by the decree must cease, unless it was otherwise ordered by the court."). The record does not support any ongoing dispute related to alimony arrears, the recoupment of which would benefit Linda's estate; therefore, the issue of whether alimony should have been permanently awarded into the future is moot. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (stating that as a general rule, this court will decline to hear a moot case).

David to maintain his \$1,500 monthly payment until the assets from the marriage were distributed.

In awarding alimony, the district court expressly “considered whether the award of property granted by the Court in the divorce has an effect on Linda’s need or lack thereof and on David’s ability to pay support,” and noted that based upon the testimony presented at trial, it expected the parties would receive similar incomes from those assets. In addition, the district court also considered that there remained a disparity in the parties’ income received from social security, the fact the parties had been married 48 years, notwithstanding a prolonged period of separation, and the health of the parties. The court also recognized Linda’s contributions to the community as a homemaker and that an award of equitable support would recognize her economic and personal contributions to the marriage. We conclude these findings of fact, as stated in the divorce decree, are sufficient to support the award of alimony, and affirm the portion of the divorce decree awarding Linda a permanent alimony award of \$200 per month. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142.

We now turn to David’s arguments regarding the unequal division of community property based on the district court’s finding of marital dissipation. As to this point, David first argues that the district court abused its discretion when it allowed Linda to try her marital dissipation claim as the claim was raised for the first time in her pretrial memorandum and Linda did not amend her complaint to add the claim prior to trial. David also argues that, because he was representing himself pro se, he did not receive proper notice of the marital dissipation claim.

In the proceedings below, David argued that the discovery proceedings during the case⁴ and the bench trial were insufficient to constitute trial by consent under NRCP 15(b)(2) (“When an issue not raised by the pleadings is tried by the parties’ express or implied consent, it must be treated in all respects as if raised in the pleadings.”). On appeal, however, David does not argue the NRCP 15(b)(2) trial by consent point; thus, this argument is forfeited. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed forfeited). Further, David fails to otherwise provide this court with relevant authority to support his contention that the trial on the marital dissipation claim was by surprise or an abuse of discretion. Thus, we need not consider this argument and now turn to David’s challenges to the merits of the marital dissipation decision. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued or lack relevant authority).

David argues that the district court abused its discretion when it found that his 2023 vacations with his girlfriend constituted dissipation of marital funds. We disagree.

We review the district court’s division of community property for an abuse of discretion. *Kogod*, 135 Nev. at 75, 439 P.3d at 406. “[A] court must make an equal disposition of community property in a divorce unless there is a ‘compelling reason’ to make an unequal disposition.” *Id.*

⁴During David’s deposition, while he was still represented by counsel, Linda questioned David, without objection, concerning the assets he used for the trips to Thailand and Europe.

(quoting NRS 125.150(1)(b)). Dissipation, or waste, may provide a compelling reason for the unequal disposition of community property. See *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 . . .”). “Generally, the dissipation 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 & Separation § 524 (2018)).

Here, the district court considered the testimony of the parties and the evidence presented at trial and determined that David’s expenditures during the vacations at issue constituted marital waste as he used those funds for personal reasons and not for the benefit of the community. The district court likewise found that these expenditures were made during a time when the marriage was in serious jeopardy and undergoing an irretrievable breakdown in light of the parties’ 17-year separation.

On appeal, David argues that these findings constitute an abuse of discretion as the district court was not required to make a finding of marital dissipation, and equitable factors, such as Linda’s prior knowledge of David’s girlfriend and his previous spending patterns, indicate that she waived her objections to the same over the course of the separation. However, the division of property is left to the sound discretion of the district court, *Kogod*, 135 Nev. at 75, 439 P.3d at 406, and this court will not

reweigh witness credibility or substitute its judgment for that of the district court, 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); see also, e.g., *Nunnery v. State*, 127 Nev. 749, 766, 263 P.3d 235, 247 (2011) (“The question thus is not whether members of this court or other jurists would have [reached the same conclusion], but whether the district court abused its discretion.”).

During trial, Linda testified that David utilized community funds to pay for a vacation with his girlfriend; testified that she did not approve of the use of funds; and further testified, without contrary documentary evidence, that David spent a portion of those funds after the preliminary injunction prohibiting the use of community funds was in place by taking a trip to Thailand in October 2023. Although David testified that he purchased nonrefundable tickets for both the May 2023 Europe vacation and the October 2023 Thailand vacation prior to the entry of the preliminary injunction in this case, he did not present any documentary evidence at trial corroborating this testimony, or address Linda’s argument that the October 2023 vacation occurred after the entry of the preliminary injunction.

Under these circumstances, we conclude that a reasonable trier of fact could find that David’s actions constituted marital dissipation. See *Leavitt v. Simms*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014) (stating an abuse of discretion only occurs “when no reasonable judge could reach a similar conclusion under the same circumstances.”). Thus, based on the evidence presented at trial, we conclude that substantial evidence supports the district court’s decision and in the absence of an abuse of discretion, affirm

the portion of the divorce decree regarding marital dissipation. *Kogod*, 135 Nev. at 75, 439 P.3d at 406.

Finally, David argues that the district court abused its discretion when it awarded Linda attorney fees and costs based on his post-decree motions for reconsideration.

“The decision to award attorney fees [and costs] rests within the district court’s discretion, and we review such decisions for an abuse of discretion.” *O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 554, 429 P.3d 664, 668 (Ct. App. 2018). In determining the reasonableness of requested attorney fees, the district court must consider the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). The district court need not make express findings for each *Brunzell* factor in its written order, although such written findings are preferred. Instead, “the district court need only demonstrate that it considered the required factors, and the award must be supported by substantial evidence.” *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).

In the proceedings below, Linda moved the court to award her \$5,453.50 in attorney fees and costs that were directly attributable to her defense of David’s post-decree motions. Linda’s countermotion for attorney fees and costs and subsequent supporting affidavits included an express analysis of the *Brunzell* factors, as well as redacted billing statements reflecting that the fees requested. Ultimately, the district court’s order reflected that it considered the briefs and oral arguments presented by the parties and determined that a reduced award of \$2,865 was appropriate. Although the district court did not expressly address the *Brunzell* factors in its order, we conclude that this amount is supported by substantial evidence and therefore affirm the district court’s award of attorney fees and costs.

See *O'Connell*, 134 Nev. at 554, 429 P.3d at 668; *Logan*, 131 Nev. at 266, 350 P.3d at 1143.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Charles J. Hoskin, District Judge, Family Division
Hofland & Tomsheck
Pecos Law Group
Wood Law Group
Eighth District Court Clerk