

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

UCHE NGBEKEN,
Appellant,
vs.
FRANK NGBEKEN,
Respondent.

No. 89259-COA

FILED

MAY 29 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa J. Allen*
DEPUTY CLERK

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

Uche Ngbeken appeals from a final district court order in a divorce action. Eighth Judicial District Court, Family Division, Clark County; Heidi Almase, Judge.

Uche and respondent Frank Ngbeken were married in 2017 and share two minor children. In 2023, the parties filed competing complaints for divorce. The parties stipulated to a resolution of child custody and, at the time of the trial, the only remaining issue was the division of assets and debt, primarily the marital home. During the trial, Frank testified that he purchased the home in 2019 and was the only person listed on the mortgage and deed. Further, Frank testified that Uche signed a quitclaim deed, wherein she acknowledged it was her intent to convey any interest she may have in the property to Frank. Frank claimed Uche signed the quitclaim deed because she did not wish to own a home in the United States and instead wished to use her money to build a home in her home country of Nigeria. Frank further testified that he was responsible for all mortgage payments and used his wages to pay the mortgage.

Uche admitted to signing the quitclaim deed but denied that she intended to gift her interest in the home to Frank. Instead, Uche

claimed Frank asked her to sign the quitclaim deed to protect her credit so that if he defaulted on the mortgage, the family could rely on her credit. Uche conceded she did not make any mortgage payments during the marriage but claimed this was because the couple kept their finances separate and she instead paid the childcare costs.

Ultimately, the district court entered an order which concluded that the signing of the quitclaim deed created the rebuttable presumption that Uche intended to gift her interest in the home to Frank. Further, the court found Frank credibly testified that the parties intended for the home to be his sole and separate property and this was reflected by the fact that he used his wages to pay the mortgage. Because the court found Uche failed to rebut the gift presumption by clear and convincing evidence, the court awarded Frank the home as his sole and separate property. Uche now appeals.

“When reviewing a district court’s determination of the character of property, this court will uphold the district court’s decision if it was based on substantial evidence. However, we will review a purely legal question, such as the application of a presumption, *de novo*.” *Waldman v. Maini*, 124 Nev. 1121, 1128, 195 P.3d 850, 855 (2008). “We have consistently held that a spouse to spouse conveyance of title to real property creates a presumption of gift that can only be overcome by clear and convincing evidence.” *Kerley v. Kerley*, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996).

On appeal, Uche first urges this court to overrule *Kerley* and abolish “transmutation-by-deed.” However, this court cannot overrule Nevada Supreme Court precedent. *See Eivazi v. Eivazi*, 139 Nev. 408, 418 n.7, 537 P.3d 476, 487 n.7 (Ct. App. 2023) (holding “this court cannot

overrule Nevada Supreme Court precedent”). Accordingly, we need not address Uche’s contention that public policy supports overturning *Kerley* and instead analyze this case pursuant to the supreme court’s well-established precedent.

Uche next argues the district court abused its discretion by finding Uche did not overcome the gift presumption and thus erred by concluding the home was Frank’s separate property. Uche further argues the court erred by failing to conduct a *Malmquist*¹ analysis because even assuming Uche did not rebut the presumption, Frank nevertheless admitted he used his wages to pay the mortgage and thus the community gained an interest in the home. Frank counters that the court’s findings are supported by substantial evidence and that Uche forfeited her *Malmquist* argument by arguing to the district court that a *Malmquist* analysis was not required because the home was community property.²

We conclude the district court did not abuse its discretion by determining Uche failed to overcome the gift presumption. Although Uche contends that she did not understand the legal significance of the deed and believed she was signing it solely to protect her credit, the court ultimately determined Frank’s testimony credibly established that Uche intended to

¹*Malmquist v. Malmquist*, 106 Nev. 231, 792 P.3d 372 (1990).

²We conclude Uche has not forfeited her ability to request a *Malmquist* analysis. Although Uche argued a *Malmquist* analysis was not required below, this was because she argued the home was entirely community property. Further, Uche expressly argued during closing arguments that Frank used community assets, i.e., his wages, to pay the mortgage. And Uche has consistently maintained that the community has an interest in the home. Accordingly, we conclude the application of forfeiture is not warranted.

gift her interest in the home. Substantial evidence in the record supports that finding, *see Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007) (defining substantial evidence as “evidence that a reasonable person may accept as adequate to sustain a judgment”), and this court cannot reweigh witness credibility nor will it 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). Consequently, to the extent the district court determined that Frank initially acquired the home as his separate property based on the gift presumption, relief is unwarranted.

However, this does not end our inquiry. “Where payments are made with community funds on real property” which is owned by one spouse “the community is entitled to a *pro tanto* interest in such property.” *Robison v. Robison*, 100 Nev. 668, 670, 691 P.2d 451, 453 (1984). “The earnings of either spouse during the marriage are considered to be community funds.” *Id.* At the time Uche signed the quitclaim deed, she gifted only the interest she had in the home which existed at the time of signing, i.e., the interest attributable to the down payment. However, signing the quitclaim deed did not gift any future interest the community may gain in the home. *See Admassu v. Fikre*, No. 87490-COA, 2025 WL 432980, at *3 (Nev. Ct. App. Feb. 5, 2025) (concluding the community regained an interest in the marital home following the signing of a quitclaim deed because community assets were used to pay the mortgage). Thus, when Frank later used his wages, which are a community asset, to pay the mortgage, the community gained a *pro tanto* interest in the property. *Id.* The district court was therefore required to conduct a *Malmquist* analysis to determine the value of the separate and community property interests in the home. *See Kerley*, 111 Nev. at 465, 893 P.2d at 360 (noting *Malmquist* is used to determine the

value of the separate and community property interests in an asset). We therefore reverse the portion of the order which found the marital home was solely Frank's separate property and remand for the district court to conduct a *Malmquist* analysis.

Accordingly, we

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


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Heidi Almase, District Judge, Family Division
Pecos Law Group
Law Office of Malik W. Ahmad
Eighth District Court Clerk