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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRYSTAL TANNEHILL, Appellant/Cross-Respondent, vs. MATTHEW TANNEHILL; THOMAS TANNEHILL; AND MARY ELAINE TANNEHILL, Respondents/Cross-Appellants.	No. 91764-COA

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

Crystal Tannehill appeals and Matthew Tannehill, Thomas Tannehill, and Mary Elaine Tannehill cross-appeal from findings of fact, conclusions of law, and an order after bench trial in a divorce action.[1] Eighth Judicial District Court, Clark County; Kerri J. Maxey, Judge.

Crystal and Matthew married in Las Vegas in September 2000 and have three children, only the youngest of whom was still a minor at the time of trial.[2] Crystal and Matthew separated in September 2022, and Crystal filed for divorce in October 2023. The district court issued a joint preliminary injunction the next day, restraining both parties from "transferring,

[1]Because the parties share a surname, we refer to them by their first names. Matthew's parents, Thomas and Mary Elaine Tannehill were joined as third-party defendants below and, with Matthew, are the respondents and cross-appellants here (collectively, respondents). We refer to them as such unless reference to their individual names is required.

[2]The youngest child was born in November 2007. She was seventeen at the time of trial and had turned eighteen, though she remained in high school, when the district court entered its order.

encumbering, concealing, selling or otherwise disposing of" community property that was the subject of a claim of community interest, "except in the usual course of conduct or for the necessities of life or for the retention of counsel."

This dispute centers on a refrigeration and air-conditioning business that predates the marriage. Matthew's father, Thomas, started ET&M Refrigeration (ET&M) as a sole proprietorship in 1989 and ran its day-to-day operations for three decades. When Thomas and Elaine retired around 2019 and moved to Georgia, Matthew became the company's manager, ran ET&M himself, and drew a weekly wage. He also took additional funds from the business, reported to him on Forms 1099, which grew from roughly $36,000 in 2019 to $298,092 in 2022. Crystal, for her part, was primarily a homemaker and had little knowledge of the intricacies of the business.

While Matthew and Crystal were married, Matthew formed two limited-liability companies in his name, ET&M Refrigeration LLC (ET&M LLC) and Matthew Mechanical LLC (MM LLC) (collectively, the LLCs).[3] Beginning in April 2023, funds from the business that had flowed through ET&M were diverted to the accounts of Matthew's new LLCs. Roughly $1.6 million moved through the LLCs' accounts between April and November 2023. In addition, Matthew purchased, or guaranteed and titled, eight work vehicles in his own name, rather than in the name of the LLCs.

At trial, Matthew acknowledged that the day after he was served with divorce papers, he withdrew $100,000 from the ET&M LLC account by cashier's check and deposited it into Thomas's original ET&M business

[3]The record does not establish precisely when the LLCs were formed. Crystal alleged below that ET&M LLC was formed on February 4, 2022, and the order does not state when MM LLC was formed.

account, and that he subsequently transferred at least $239,000 to Thomas's account. At Matthew's request, the attorney who helped form his LLCs filed articles of dissolution for both on February 1, 2024. Crystal then amended her complaint, naming Thomas and Elaine as parties as it appeared that funds had been comingled between the LLCs and the ET&M account. Thomas and Elaine maintained that Thomas alone owned the ET&M account and all the monies contained in it. Discovery proved contentious. The district court found that Crystal was not diligent in obtaining access to the business records, which were in Thomas and Elaine's control, but it also found that the parties were not working together and that both sides were "playing games."

The matter proceeded to a three-day bench trial with the presentation of evidence concluding in June 2025. Matthew admitted to diverting more than $300,000 from ET&M between 2020 and 2022, and testified that the money went to home improvements, bills, and trips. The unreported income left him owing the Internal Revenue Service $128,103.04. He also testified that he gambled with his veterans' disability benefits of about $4,200 per month and never used other funds, although his 2023 win/loss statement from a single casino reflected almost $2 million in coin-in and a net win of $102,961.28. Matthew acknowledged that Crystal was not aware of the extent of his gambling, and no witness testified that she knew he was withdrawing money from the ET&M account. Matthew also testified that he withdrew $23,000 from his 401(k) retirement account after the divorce proceedings began. At the time, Crystal was working six hours a week earning $15.50 per hour at Ulta Beauty, and a temporary order entered earlier in the case required Matthew to pay her $3,000 per month in spousal support.

After the parties submitted closing briefs, the district court entered its findings of fact, conclusions of law, and order. Regarding the

businesses, the court found that Matthew, not Thomas, owned both LLCs; that their formation was never completed; that the LLCs had no present value; and summarily found that the assets transferred to and from ET&M were ultimately owned by Thomas and returned to him. The court further found that Crystal had not provided evidence that community funds purchased the vehicles titled in Matthew's name only, and thereby determined the vehicles were Matthew's separate property. Turning to the remaining property, the court divided it nearly evenly, awarding each party property valued at approximately $173,114, consisting chiefly of equal shares of the $310,000 marital residence, together with vehicles, a camper, and modest bank balances. Finally, it divided the community portion of Matthew's 401(k) equally.[4]

The district court found the family's certified public accountant and its business attorney credible as to the LLCs' formation and value. It found, however, that the attorney's testimony "directly contradict[ed]" the testimonies of Thomas, Elaine, and Matthew that there was no intention to sell or transfer ET&M to Matthew; that Thomas's and Elaine's explanations for their lack of knowledge of Matthew's withdrawals from ET&M were "dubious at best"; and that Matthew, Thomas, and Elaine "were not being forthright" about the purpose of the LLCs. As to Crystal, the district court found her testimony about her credit card spending less than credible and found that she remained underemployed without reasonable justification. The district court made no other adverse credibility findings as to Crystal, and it found her valuation of the marital residence more credible than Matthew's.

The district court also awarded Crystal alimony of $2,000 per month for four years, then $1,000 per month for four years, then $500 per

[4]Along with community portion of the 401(k) proceeds, the district court awarded Matthew $173,114.14 and Crystal $173,114.12.

month, in a schedule the parties describe as running another four years. Addressing community waste, the court found that Matthew had commingled veterans' benefits with community funds to earn the 2023 net gambling win; that he did not definitively testify about the source of the money he wagered; and that, although Matthew testified that he spent the winnings on the marital residence, the household bills, and weekly payments to Crystal, there was "no documented proof" of that spending. The district court ordered him to reimburse Crystal $46,362.43, representing one-half of the net winnings, less a $5,118.21 credit the court gave him.

The district court then turned to the parties' debts and the remaining disputes. It assigned the entire $128,103.04 tax debt to Matthew, finding that his concealed withdrawals from ET&M amounted to theft that created the liability, exposed community assets to seizure, and occurred without Crystal's knowledge. Of Crystal's roughly $30,000 credit card debt, the court treated the $20,751.25 balance reflected on her first financial disclosure after filing for divorce as community debt, and the rest, which accrued after she filed, as hers alone, and then applied the exact same method to apportion Matthew's credit card debt. It found that Thomas and Elaine gifted Matthew a new air conditioning unit and its installation at the marital residence, and it denied their request that Crystal reimburse half the cost. It further stated that no qualified domestic relations order was necessary to value

Matthew's retirement account because the parties would divide it evenly.[5] Finally, in denying every request for attorney fees, including Thomas and Elaine's, and denying the sanctions respondents sought against Crystal's counsel, the district court concluded that none of the parties truly prevailed, listing among its reasons that Crystal was solely responsible for approximately $30,000 in community waste without identifying the dissipated assets. Crystal appealed, and respondents cross-appealed, raising numerous issues. We address each issue in turn.

The district court erred by resolving characterization of the LLC bank accounts and the vehicles without applying the community property presumption

Crystal argues that the district court erred in its treatment of the LLCs' bank accounts, the money that moved through them in 2023, and the eight vehicles titled in Matthew's name. She contends that each vehicle was acquired during the marriage, as were the LLC accounts Matthew created, and therefore, they were presumptively community property. She further contends that the district court never applied the community property presumption, instead resolving the dispute based on both of the LLCs' present value, without deciding if any of the money that ran through the LLCs was community property. She asks this court to award her $145,560.09, which is half of the

[5]On appeal, Matthew challenges the district court's statement that no qualified domestic relations order was necessary in connection with the division of his 401(k). But because he represents that a qualified domestic relations order dividing the account was subsequently entered, that issue is moot, and we do not address it. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (explaining that a case presenting a live controversy at its beginning may be rendered moot by subsequent events); *see also In re Guardianship of A.L.R.-Q.*, 141 Nev., Adv. Op. 66, 584 P.3d 824, 830 n.6 (Ct. App. 2025) (noting that an issue had become moot and the court did not address it further).

LLCs' account balances at the time she filed for divorce, and half of the vehicles' value.

Respondents answer that substantial evidence supports the district court's finding that the money belonged to Thomas, that the district court found the testimony of the family's longtime accountant and the attorney who helped form the LLCs to be credible, and that this court may not reweigh those credibility determinations. As to the vehicles, respondents contend that every witness with personal knowledge testified that ET&M funds were used to purchase them for business purposes, that Matthew's name on the titles reflected his role as manager rather than owner, and that Crystal offered no evidence that community funds were used to purchase any of them. In reply, Crystal contends that the district court's own finding that Matthew owned both LLCs, not Thomas, triggers the community property presumption, and that the funds moving through their accounts were generated by Matthew's labor.

All property acquired after marriage by either spouse, other than separate property, is community property unless the spouses agree otherwise in writing or another statutory exception applies. NRS 123.220; *see also* NRS 123.130 (defining separate property to include property a spouse owned before marriage and property acquired after by gift, bequest, devise, or descent). As our supreme court has recognized, when property is acquired during the marriage there is a presumption that any such property is community property, which can only be overcome by clear and convincing evidence. *Pryor v. Pryor*, 103 Nev. 148, 150, 734 P.2d 718, 719 (1987); *Peters v. Peters*, 92 Nev. 687, 690, 557 P.2d 713, 715 (1976).

"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, [this court] will review a purely legal

question, such as the application of [the community property] presumption, de novo." *Draskovich v. Draskovich*, 140 Nev. 161, 163, 545 P.3d 96, 99 (2024) (quoting *Waldman v. Maini*, 124 Nev. 1121, 1128, 195 P.3d 850, 855 (2008)); *see also Eivazi v. Eivazi*, 139 Nev. 408, 411, 537 P.3d 476, 482 (Ct. App. 2023) (explaining that deference is not owed to legal error).

The community property presumption, and the burden of overcoming it by clear and convincing evidence, "also apply to entities created during the marriage from mixed community and separate funds." *Draskovich*, 140 Nev. at 163, 545 P.3d at 99. Where the origin of the money is unclear, the entities created or property purchased with those funds are presumed to be community property. *Id.* (citing *Moberg v. First Nat'l Bank of Nev.*, 96 Nev. 235, 237, 607 P.2d 112, 114 (1980) (presuming that property purchased during the marriage with funds of uncertain origin was community property)).

Here, the district court did not apply the community property presumption to the LLCs and related property that was acquired during the marriage. It found that the formation of the LLCs was never completed, that Matthew requested their dissolution, and that there was "currently no intrinsic or monetary value associated with either LLC." The court then went on to deny Crystal a share of each LLC, and any property ever held therein, "due to the company not having any intrinsic or monetary value." As for the money that moved through the LLCs' accounts during the marriage, the court treated "any and all funds transferred to and from ET&M's bank account" as Thomas's property "unless it is shown that [Matthew] legitimately earned the money or was gifted the funds." But that approach inverted the community property presumption. The court concluded that Matthew, not Thomas, owned both LLCs but the court did not find that the money held in the LLCs' accounts during the marriage was presumptively community property. The district

court never applied the community property presumption to the roughly $1.6 million that moved through the LLCs' accounts in 2023 or to the balances on hand when Crystal filed for divorce, and it never explained how this presumption was overcome.

Instead, the district court solely focused on the purported value of the LLCs at the time it was resolving Crystal's claim of a community interest, rather than determining whether any of the funds belonged to the community. After determining whether any of the funds that passed through an LLC were community property, valuation becomes important for dividing the proceeds of the LLC, because the community's interest in the LLC can rise or fall with what the LLC owns at the time of the division. *See* NRS 86.091 (defining a member's interest as "a share of the economic interests in a limited-liability company, including profits, losses and distributions of assets"); NRS 86.351(1) (providing that "[t]he interest of each member of a limited-liability company is personal property"). But valuation does not determine the character of property. Therefore, the character of the funds that passed through the corresponding LLC accounts must be determined.

Accordingly, the district court's finding that "all assets that were transferred to and from ET&M were ultimately owned by Thomas and returned to Thomas" fails to resolve an important question. That is, whether any of the funds that passed through the LLCs' accounts were community property. The challenged finding summarily resolved that question in a single sentence, as quoted above, even though the funds transferred to Thomas were substantially less than the amounts that passed through the LLCs. By resolving the issue in this way, the district court did not address the roughly $1.6 million that moved through the LLCs' accounts in 2023, the balances on hand when Crystal filed for divorce, and all the transfers that followed.

The record also indicates that some of the money did come from Thomas. Indeed, bank records show that about $215,000 deposited into the ET&M LLC account in April 2023 came from Thomas, but ET&M LLC also earned business revenues and cut checks for labor on its jobs and paid for the vehicles. In fact, Matthew's 2023 personal tax return reported about $1.6-million in gross receipts for ET&M LLC as his own sole proprietorship, and Matthew testified that the ET&M LLC account "was paying for everything while we were using it," including insurance on personal vehicles. To the extent the LLCs acquired funds and other assets during the marriage, that property was presumptively community property. *See Draskovich*, 140 Nev. at 165, 545 P.3d at 100-01. The court, however, made no finding explaining how that presumption was overcome as to the assets the LLCs acquired.

Additionally, the district court's findings conflict with its characterization of the LLC accounts. The court found that ET&M LLC "was formed with the intention of [Matthew] being the business owner," "suspect[ed] that Thomas and Elaine intended to transfer ET&M assets to [Matthew] instead of forcing an actual sale," and found that "[Matthew], not Thomas, was the owner of ET&M LLC and MM LLC." But the court never reconciled those findings with its conclusion that all the funds in the LLCs' accounts remained Thomas's. We recognize that Thomas paid the taxes associated with the LLCs and that funds from Thomas were eventually returned to ET&M's account. But the funds were returned only after Crystal filed for divorce and after the joint preliminary injunction was issued, and the district court did not weigh this evidence against the evidence described above, including the $1.6 million that was acknowledged as gross receipts in 2023.

The district court also treated the vehicles the same way, by failing to apply the community property presumption. The court found that Crystal

"did not provide any evidence that [Matthew] utilized community funds" to purchase the vehicles, and it concluded that they "were in [Matthew's] name only." But title does not determine the character of the property. *Lopez v. Lopez*, 139 Nev. 533, 541 n.12, 541 P.3d 117, 125 n.12 (Ct. App. 2023) (noting that an account's titling "is not determinative of the character of the funds contained therein"). Indeed, the record shows that the vehicles, although titled in Matthew's name alone, may have ties to the LLCs. Because the vehicles were acquired during the marriage, the community property presumption applied to them as well, and the order does not explain how it was overcome. *See Eivazi*, 139 Nev. at 411-12, 537 P.3d at 482. Further, to the extent the vehicles were paid for with funds held in the LLCs' accounts, their character depends, at least in part, on the character of the accounts and all of the funds therein, which the district court did not determine. *See Malmquist*, 106 Nev. at 245, 792 P.2d at 381.

Respondents' reliance on the deference owed to the district court's credibility determinations does not alter our conclusion that the district court failed to properly account for and evaluate the ownership of all the funds in the LLCs' accounts and assets purchased with those funds including the vehicles. We do not question the district court's decision to credit the family's accountant and attorney, but those determinations addressed the LLCs' formation and value, not the ownership or characterization of the funds that moved through the LLCs' accounts that Matthew operated during the marriage. *See Castle v. Simmons*, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004) (explaining that this court will not reweigh credibility determinations on appeal). The district court, moreover, found that Matthew, Thomas, and Elaine "were not being forthright" about the purpose of the LLCs, and that Thomas and Elaine's explanations for their lack of knowledge of Matthew's withdrawals were

"dubious at best." Based on this record, deference to credibility findings cannot substitute for factual findings that the district court never made. *See Eivazi*, 139 Nev. at 411, 537 P.3d at 482 (explaining that deference is not owed to findings so conclusory that they mask legal error).

Finally, we decline Crystal's request that this court resolve the characterization question and enter an award in her favor. "An appellate court is not particularly well-suited to make factual determinations in the first instance." *Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012). Nor will we imply the missing findings, because a finding may be implied only "where the evidence clearly supports the judgment." *Gorden v. Gorden*, 93 Nev. 494, 496, 569 P.2d 397, 398 (1977). Where it is not clear that the district court would have reached the same result without the errors that were made, the proper course is to reverse and remand for further proceedings. *See In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) (reversing and remanding because it was not clear that the district court would have reached the same conclusion had it applied the correct standard).

On remand, the district court shall determine whether any of the funds that passed through the LLCs or the vehicles were community property applying the community property presumption and requiring clear and convincing evidence to overcome it. If the district court finds on remand that the funds were community property, it shall address the post-filing transfers under NRS 125.150(1)(b) to determine the distribution of value to the parties. This is not to suggest that the district court must award Crystal any portion of the funds that were once in the LLCs' accounts or any of the vehicles' value. Rather, it must apply the correct standard when adjudicating Crystal's claims.

The district court abused its discretion by setting alimony without determining Crystal's earning capacity or explaining the award

Crystal argues that the district court overstated her income by counting the temporary spousal support she was receiving as though it were her own earnings. She also argues that the district court never made a determination of what she could earn, and that it never explained why it selected a declining award for a marriage of this length and an income gap of this size. Matthew answers that the schedule is rehabilitative, that Crystal remains voluntarily underemployed despite a judicial directive to seek work, and that the district court considered each statutory factor before awarding alimony.

This court reviews a challenge to the fairness of an alimony award for an abuse of discretion. *Oshiro v. Oshiro*, 141 Nev., Adv. Op. 59, 579 P.3d 1024, 1027 (2025). Under that standard, "[r]ulings supported by substantial evidence will not be disturbed on appeal." *Id.* at 1030 (quoting *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004)); *see also Eivazi*, 139 Nev. at 411, 537 P.3d at 482 (explaining that factual findings will not be set aside unless they are clearly erroneous or unsupported by substantial evidence). A district court must award such alimony as appears "just and equitable," "having regard to the conditions in which the parties will be left by the divorce." *Shydler v. Shydler*, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998) (quoting *Sprenger v. Sprenger*, 110 Nev. 855, 859, 878 P.2d 284, 287 (1994)); *see also* NRS 125.150(1)(a). Temporary support is not one of those conditions. As the supreme court has explained, "orders for preliminary allowances pending litigation in divorce cases, including counsel fees and support, are interlocutory, not final judgments," and they leave "the ultimate awards of custody and spousal support . . . to be made after the later bench trial." *Barry v. Lindner*, 119 Nev. 661, 669, 81 P.3d 537, 542-43 (2003), *superseded by rule*

on other grounds as stated in LaBarbera v. Wynn Las Vegas, LLC, 134 Nev. 393, 395, 422 P.3d 138, 140 (2018).

As the *Shydler* court recognized, "[p]ayment of . . . interim support should not preclude a post-divorce spousal support award." 114 Nev. at 197, 954 P.2d at 40. There, the district court denied alimony after noting that the wife had received more than $165,000 in pre-divorce support and would receive post-divorce property equalizing payments. *Id.* The supreme court observed that the pre-divorce payments had been "mainly disbursed for then-current community expenses," and went on to conclude that the district court "was wrong in finding that [the husband's] pre-divorce support and post-divorce property equalizing payments obviated the need for any post-divorce spousal support." *Id.* at 197-98, 954 P.2d at 40-41. Consistent with these conclusions, the supreme court reversed the denial of alimony and remanded for the district court to determine a fair award. *Id.* at 199, 954 P.2d at 41. In short, temporary spousal support paid while a divorce is pending does not control the final determination of alimony.

Before determining alimony, the district court found that Crystal's gross monthly income was $3,403, "with only $403.00 coming from her employment," and the remaining $3,000 coming from temporary spousal support. The court also reasoned that, had Crystal obtained meaningful employment, she would have been able to pay for her financial necessities since she was also receiving $3,000 per month in temporary spousal support. The court therefore treated the temporary spousal support as part of Crystal's ongoing means. But the temporary award did not continue once the final award was made and thus it did not represent income earned by Crystal. *See Shydler*, 114 Nev. at 198-99, 954 P.2d at 41. Instead, the court replaced the temporary spousal support with the $2,000 alimony award beginning

December 2025. Thus, the district court improperly included the $3,000 in temporary spousal support as part of Crystal's income in making its final alimony determination, even though after the final order was entered, Crystal's income consisted of the $403 in wages she earned plus the alimony the court set.

Further, the district court did not consider Crystal's "earning capacity when evaluating an award of alimony." *Eivazi*, 139 Nev. at 425, 537 P.3d at 491-92. "[R]egardless of whether [Crystal] was willfully unemployed," the district court should have determined her "ability to earn money in light of her talent, skills, training, and experience." *Id.* But the court never determined the amount Crystal could reasonably earn. Rather, the court's underemployment finding appears in its discussion of Crystal's credit card debt, where it found that she "remains underemployed and reliant on temporary spousal support without reasonable justification" and had not reasonably explained her $30,000 credit card balance. And when the court addressed the earning-capacity factor in NRS 125.150(9)(e), it noted the parties' ages and health and then stated that "[t]he earnings/ability to earn of each [spouse] was addressed in" its finding regarding each spouse's financial condition. But that finding did not actually determine or address Crystal's earning capacity in light of her training and experience. Instead, it simply recited Crystal's current hours and income, including the temporary spousal support, without determining her ability to earn money in light of her training and experience, which the district court should have considered. *See Eivazi*, 139 Nev. at 425, 537 P.3d at 491-92.

These summary findings cannot sustain this award, because a district court must consider the factors in NRS 125.150(9), *Kogod*, 135 Nev. at 66, 439 P.3d at 400-01, and must then "explain why those findings supported

its alimony award in both amount and duration," *Eivazi*, 139 Nev. at 426, 537 P.3d at 492. That explanation matters most when the findings point toward compensatory alimony, which addresses the economic losses a marriage causes, including lost earning capacity. *Kogod*, 135 Nev. at 70-71, 439 P.3d at 403-04. The findings here describe that kind of case, including a marriage of about twenty-five years, a "comfortable" standard of living, no career before the marriage and none developed during it, and a homemaker contribution "greater than [Matthew's]." Yet, the court only provided a single sentence adopting the tiered alimony award as "both fair and appropriate." The court did not explain why it selected $2,000, why it chose four-year steps, or why the award should fall to $500. Nor did the court describe Crystal's necessary expenses when considering an appropriate award of alimony.

Additionally, two findings the district court made under the second statutory factor, NRS 125.150(9)(b), which addresses the nature and value of the respective property of each spouse, further compound the court's alimony award error. Under that factor, the court weighed "the amount of the marital waste committed by both parties," which included an unsupported finding of $30,000 of waste by Crystal, which we address below.[6] The court also treated Matthew as leaving the marriage with "over $400,000.00 in debt," a figure it had declined to credit earlier in its order "due to lack of supporting information." It then confusingly concluded that the marital waste factor "benefits [Matthew]." These findings undermine the district court's alimony award. *See Eivazi*, 139 Nev. at 423, 537 P.3d at 490.

[6]Because the $30,000 finding of waste by Crystal is unsupported and must be reversed, the district court shall not consider this finding in reconsidering the alimony issue on remand.

Matthew nevertheless defends the alimony schedule as rehabilitative and argues that a declining tiered award is appropriate under the circumstances presented here. *See Shydler*, 114 Nev. at 199, 954 P.2d at 41 (concluding that the equities favored support "at least for a period of rehabilitation"). But the district court did not use the term "rehabilitative", nor did the court adopt this rationale when awarding alimony, *see* NRS 125.150(10), and a court "must have reached its conclusions for the appropriate reasons," *Eivazi*, 139 Nev. at 411, 537 P.3d at 482 (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2007)). Further, Crystal did not seek rehabilitative alimony below, and as discussed above, the district court's findings and analysis regarding the alimony issue do not suggest that an award of rehabilitative alimony was considered or intended by the court. NRS 125.150 grants district courts "broad discretion to craft just and equitable alimony awards." *Oshiro*, 141 Nev., Adv. Op. 59, 579 P.3d at 1027. Thus, the record dissuades us from concluding that the district court's award was rehabilitative in nature.

Accordingly, we vacate the alimony award and remand for further proceedings. On remand, the district court shall determine Crystal's earning capacity and reasonable expenses and explain the amount and the duration of the alimony award. If the court imposes a tiered award, a precise and correct date for the conclusion of the final tier shall be included.[7] And because the property division may change on remand, the district court may need to reconsider the amount of the alimony award in light of that division. *See* NRS 125.150(9)(j); *Draskovich*, 140 Nev. at 166, 545 P.3d at 101 (vacating the denial of alimony because the district court had to reconsider its community property

[7]The current order states the third tier of the alimony award runs from "December 1, 2033, through November 30, 2033 [sic]."

determination). We express no view on the amount or duration of the alimony award and we note that, in awarding alimony, Nevada law does not require a district court to "effectively equalize salaries."[8] *Kogod*, 135 Nev. at 72, 439 P.3d at 404 (quoting *Shydler*, 114 Nev. at 199, 954 P.2d at 41).

The waste finding against Crystal is unsupported, and her attorney fee request must be reconsidered without it

Crystal argues that the order allocates $30,000 in community waste against her without identifying a single transaction that constituted waste, and that the unsupported finding undermined her request for attorney fees, which the district court denied. Matthew answers that the waste finding played at most a limited role in the district court's fee decision in which the court concluded that no party prevailed.

This court reviews district court decisions regarding marital waste and whether to award attorney fees for an abuse of discretion. *Eivazi*, 139 Nev. at 411, 537 P.3d at 482. "However, where a trial court exercises its discretion in clear disregard of the guiding legal principles, this action may constitute an abuse of discretion." *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993), *superseded by statute on other grounds as recognized in In re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017).

Waste, or dissipation, generally may be found when a spouse uses "marital property for a selfish purpose unrelated to the marriage" while the

[8]In our disposition of this matter, we do not disturb the district court's consideration of Matthew's veterans' disability benefits, *see Oshiro*, 141 Nev., Adv. Op. 59, 579 P.3d at 1026 (holding that a district court may consider such benefits in the alimony calculus although NRS 125.165 bars dividing them), and its use of his current documented income rather than a multi-year average, which was a permissible weighing of the evidence, *see Barry*, 119 Nev. at 670, 81 P.3d at 543; *Ellis*, 123 Nev. at 152, 161 P.3d at 244.

marriage is in serious jeopardy or breaking down. *Kogod*, 135 Nev. at 75-76, 439 P.3d at 406-07 (quoting 24 Am. Jur. 2d *Divorce and Separation* § 524 (2018)). "Whether a particular expenditure by one spouse constitutes waste does not turn on whether the other spouse had *knowledge* of the expenditure at the time it was made; rather, waste generally requires a finding by the court that the expenditure in question was for a selfish *purpose*." *Eivazi*, 139 Nev. at 420, 537 P.3d at 488. And a district court may not find waste simply because a spouse fails to account for everyday expenditures. *See Kogod*, 135 Nev. at 78, 439 P.3d at 408 (concluding that a district court erred by requiring a spouse to account for everyday expenditures where the other spouse had not raised a reasonable inference that the transactions furthered a purpose inimical to the marriage, were made to diminish her community property share, or were unusually large withdrawals from community accounts).

In *Eivazi* the district court listed categories of unexplained transactions, found a prima facie case of waste because the wife had not known of or consented to the expenditures, and required the husband to disprove waste. *Eivazi*, 139 Nev. at 417-18, 537 P.3d at 486-87. This court reversed, explaining that the district court erred by "placing an evidentiary burden on [the husband] to demonstrate the absence of waste . . . without first requiring [the wife] to raise a reasonable inference that any transactions were, in fact, waste." *Id.* at 418, 537 P.3d at 487. This court then remanded for a proper evaluation of waste. *Id.* at 421, 537 P.3d at 489.

Here, in addressing whether Matthew committed waste, the district court focused on Matthew's conduct, such as his 2023 gambling activities, his trips—including those with his girlfriend—and his withdrawal from his retirement account. In contrast, the only finding that Crystal committed waste appears in the attorney fee discussion, where the district

court states that she "is also solely responsible for approximately $30,000.00 in community waste." But the order identifies no transaction, no account, no date, and no purpose behind this purported waste figure. If the $30,000 refers to Crystal's credit card balance, as both parties assume, then treating this balance as waste cannot be reconciled with the district court's treatment of that same balance as $20,751.25 in community debt and the remainder as Crystal's separate debt. Because the district court's "factual findings were incomplete, unsupported by substantial evidence, and internally inconsistent," we must reverse the district court's finding that Crystal committed $30,000 in community waste. *See Eivazi*, 139 Nev. at 423, 537 P.3d at 490.

Our reversal of the district court's $30,000 waste finding against Crystal also requires reversal of the court's decision to deny her request for attorney fees. Here, the court denied attorney fees because it concluded that "none of the Parties truly prevailed," and the court's waste finding was one of the reasons the district court gave for its conclusion that attorney fees were not warranted for either side. Because that finding against Crystal is not supported, we necessarily reverse and remand the denial of Crystal's request for fees for further proceedings. Reversal and remand of the denial of fees is further necessitated by our reversal of the district court's findings as to the LLCs' accounts and the vehicles and our vacatur of the alimony award, as the outcome of those issues on remand may bear on whether Crystal prevailed, such that an award of attorney fees could potentially be warranted.

The district court did not abuse its discretion in awarding Crystal one-half of Matthew's 2023 net gambling winnings

On cross-appeal, Matthew raises four challenges to the gambling award. First, he argues that he gambled only with his veterans' disability benefits, which are his separate property. Second, he contends that his multi-year results show a far smaller gain than the 2023 figure the district court

used, and that there can be no waste where the community suffered no loss. Third, he argues that the winnings were used to benefit the community, and that a net gambling win cannot constitute waste because waste addresses the destruction of community assets, and not their use to benefit the community which he claims occurred here. And fourth, he argues that the district court's finding is contradictory because the court found that the coin-in/coin-out statements were "not a true representation" of how much money Matthew spent on his gambling habit, yet it adopted the 2023 Dotty's figure as the measure of waste. Crystal answers that the winnings were acquired during the marriage, that Matthew offered no tracing to support that they should be treated as separate property, and that the district court's decision to award her a share of Matthew's gambling winnings properly remedies the gambling waste the district court found.

This court reviews the disposition of community property, including a waste determination, for an abuse of discretion, and it upholds characterization findings supported by substantial evidence. *Eivazi*, 139 Nev. at 411, 537 P.3d at 482; *Draskovich*, 140 Nev. at 163, 545 P.3d at 99. Gambling winnings acquired during the marriage are presumptively community property, and the community continues until the district court enters a decree of divorce. *See Kogod*, 135 Nev. at 79, 439 P.3d at 409; *Hybarger v. Hybarger*, 103 Nev. 255, 259 n.5, 737 P.2d 889, 891 n.5 (1987) (explaining that separation does not alter the character of the parties' income). Once separate funds are commingled with community funds, the spouse claiming separate character must rebut the presumption either by tracing the particular expenditure to separate funds or by proving that, at the time, "all community income was exhausted by family expenses." *Malmquist*, 106 Nev. at 245, 792 P.2d at 381.

Here, Matthew failed to prove that the gambling winnings were separate property. While the district court could not determine the precise amount Matthew spent from ET&M funds, veterans' benefits or the community to support his gambling activities, it found that he nonetheless commingled community money with these funds and that he did not definitively testify about the source of those stakes. Matthew could have rebutted the presumption either by tracing the money he wagered to his veterans' benefits or by showing that all community income was exhausted by family expenses. *See Malmquist*, 106 Nev. at 245, 792 P.2d at 381. But instead, he offered nothing beyond his own testimony to support that only his veterans' benefits were spent on gambling and that all community assets were exhausted by family expenses. For instance, he offered no bank records showing his benefits flowing to the gambling accounts. And the district court was not required to accept his testimony. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244.

We are likewise unpersuaded by Matthew's contention that the district court's findings contradict one another. A casino win/loss statement reports two different kinds of figures. The coin-in and coin-out figures measure the gross amounts wagered and paid out over the year, including winnings that were wagered again, while the win/loss figure reports the year's net result. The district court found that the coin-in and coin-out figures are "not a true representation of how much money [Matthew] actually spent and utilized from ET&M and / or the community." That finding immediately follows the district court's summary of Matthew's testimony that he gambled only with his benefits. Considered in that context, the finding reflects that the gross figures cannot show how much money Matthew actually put into the machines—whether from his benefits, ET&M funds, or community funds. The

$102,961.28 figure, by contrast, is the net result reported on Matthew's 2023 win/loss statement, and the amount which the district court found he had won "based on [Matthew's] testimony and the evidence admitted." It was not unreasonable for the court to find that the gross coin-in figure overstates a gambler's outlay while also finding that the net annual figure more accurately states the year's result. A factfinder may credit part of the evidence and reject the rest, and this court will not reweigh those determinations. *See Castle*, 120 Nev. at 103, 86 P.3d at 1046; *Ellis*, 123 Nev. at 152, 161 P.3d at 244.

Further, Matthew's contention that a net win cannot constitute waste, while literally true, misapprehends the basis for the award. Here, the district court's waste finding concerned what became of Matthew's winnings, not the money he wagered. The district court found that he "comingled the money [with community funds] to earn the $102,961.28" in net winnings in 2023. The court then recounted Matthew's testimony that he spent the winnings on the marital residence, the family, the household bills, and weekly payments to Crystal. It found, however, that "there is no documented proof" of that spending, and that there was "no evidence or supporting testimony showing that [Matthew] placed half of the winnings in [Crystal's] account."

The record supports the district court's findings regarding what became of Matthew's winnings. Matthew relied only on his own testimony to show how he spent the winnings, and he offered no documentation tracing any of the $102,961.28 to that spending. He also acknowledged that he never deposited any of the winnings into Crystal's account. And Crystal testified that she did not see or benefit from Matthew's gambling winnings in 2022 or 2023. On this record, the district court was entitled to find Matthew's testimony insufficient to show that all the winnings were spent for the benefit of the community. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244.

The district court therefore concluded that Matthew must reimburse Crystal for half of the net winnings, less the credit it gave him.[9] When community property is lost or expended through one spouse's intentional misconduct, the district court may augment the other spouse's share of the remaining community property. *See Kogod*, 135 Nev. at 75, 439 P.3d at 406 (citing *Lofgren v. Lofgren*, 112 Nev. 1282, 1283, 926 P.2d 296, 297 (1996)). We therefore conclude that substantial evidence supports the district court's findings and that the court did not abuse its discretion in awarding Crystal half of the 2023 net gambling winnings less the credit to Matthew.

The district court did not abuse its discretion in denying respondents' requests for attorney fees and sanctions

Respondents argue that Crystal's claim regarding Matthew's ownership of ET&M was groundless, that joining Thomas and Elaine rather than pursuing a subpoena needlessly prolonged the litigation, and that the district court never addressed whether Crystal maintained the claim without reasonable ground. Thomas and Elaine further argue that they prevailed on the only claim asserted against them, which was the dispute regarding the ownership of ET&M. Respondents also argue the court should have imposed sanctions against Crystal's counsel. Crystal answers that the district court's findings establish that she had a reasonable basis to maintain her claim.

This court reviews a fee ruling for an abuse of discretion. *Eivazi*, 139 Nev. at 411, 537 P.3d at 482. NRS 18.010(2)(b) provides that a district

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[9]Matthew also argues that the district court should have considered his net gambling results from 2021 through 2023 rather than the single 2023 statement and offset the losses from the prior years against his 2023 winnings. But he cites no authority requiring the district court to offset losses from earlier years against a gain he earned after the parties separated. His multi-year figures, moreover, were revised at trial after his counsel acknowledged that the initial calculation had counted the 2022 results twice.

court "may" award fees to a prevailing party when a claim "was brought or maintained without reasonable ground or to harass the prevailing party," and it directs courts to construe that provision liberally in favor of awards in appropriate situations. A claim is groundless only if its allegations "are not supported by any credible evidence at trial," and an unsuccessful claim is not necessarily a groundless one. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1354-55, 971 P.2d 383, 387 (1998) (quoting *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996, 860 P.2d 720, 724 (1993)) (vacating a fee award where the claim had survived summary judgment and prevailed at trial before being reversed on appeal).

Here, the district court's findings indicate that Crystal's claim regarding Matthew's ownership of ET&M was not groundless, because they show that Crystal had a reasonable basis both when she brought it and while she maintained it. Addressing Crystal's claim that the business and the money moving through ET&M belonged in part to the community because Matthew, not Thomas, owned them, the district court found that "a reasonable person could have deemed [Matthew] to be the owner of ET&M and all of its assets" before Thomas and Elaine were joined. And the record supports the district court's finding. By the time Crystal sought to join Thomas and Elaine, Matthew had managed ET&M for years, the LLCs had been formed in his name, the business's revenue had run through accounts he alone controlled, and the work vehicles were titled to him. Thomas himself had testified at his deposition that Matthew owned ET&M LLC. The district court likewise found that it "would not have determined the actual ownership of ET&M and the purpose of the formation of ET&M LLC or MM LLC without Thomas or Elaine being joined." Thus, Thomas and Elaine's joinder did not needlessly prolong the litigation. Rather, the district court could reasonably conclude it was

necessary to join Thomas and Elaine to resolve the question of ownership that Crystal had raised.

The district court's findings also demonstrate that Crystal had reasonable grounds to maintain her claim of Matthew's ownership, because the findings show that her claim was supported by credible evidence, even if it did not ultimately succeed at trial. *See Berosini*, 114 Nev. at 1354-55, 971 P.2d at 387. Although Crystal did not establish that Matthew owned ET&M, the district court accepted significant parts of her theory after hearing the evidence. Indeed, it concluded that "[Matthew], not Thomas, was the owner of ET&M LLC and MM LLC," and it found that ET&M LLC was formed with the intention of Matthew becoming the business owner of ET&M. It also found the family's explanations for the parents' lack of knowledge of Matthew's withdrawals from the ET&M accounts "dubious at best" and concluded that the defendants were "not being forthright" about the purpose of the LLCs. Thus, Crystal's claim was supported by trial evidence, as it persuaded the district court to make adverse credibility findings against respondents. Finally, had respondents shown that the claim lacked reasonable grounds, NRS 18.010(2)(b) permits rather than compels an award, and the record does not suggest that the district court abused its discretion in declining to award attorney fees.

The argument that sanctions should have been imposed against Crystal's counsel is also unpersuasive based on the findings outlined above. NRS 7.085 requires an attorney to personally pay the additional fees and costs caused by the filing or maintaining of an action that "is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith," or by "[u]nreasonably and vexatiously" extending it. NRS 7.085(1)(a)-(b). A claim supported by the findings described

above could reasonably be found by the district court to be well-grounded in fact. The district court's finding that both sides were "playing games" during discovery further undercuts any contention that Crystal's counsel alone extended the litigation vexatiously. Respondents are thus not entitled to relief on this issue.

The district court did not abuse its discretion in allocating the credit card debt

Matthew argues that the district court erred in assigning him half of the debt on the $20,751.25 credit card balance reflected on Crystal's first financial disclosure form. He contends that the parties separated in September 2022, that any debt Crystal incurred after that date was not for the community's benefit, and that the district court should have measured the community's responsibility from the date of their separation rather than from the filing of the complaint. He further contends that the district court treated the spouses "asymmetrically" by drawing the line between community and separate debt at different dates, using his November 2023 financial disclosure but Crystal's October 2023 disclosure. Crystal answers that the record does not establish when the charges were incurred and that the district court applied a single method to both parties.

Debt incurred during a marriage is generally community debt. NRS 123.220; *see also Eivazi*, 139 Nev. at 428-29, 537 P.3d at 494 (applying the equal-disposition requirement to community credit card debt). And the community continues until the district court enters a decree of divorce. *Kogod*, 135 Nev. at 79, 439 P.3d at 409; *Hybarger*, 103 Nev. at 259 n.5, 737 P.2d at 891 n.5. A debt incurred after separation and not for the community's benefit may nonetheless be treated as separate property. *See Barry*, 119 Nev. at 671, 81 P.3d at 543 (affirming the treatment of a loan for legal expenses as separate debt where substantial evidence showed it was obtained after separation and not for the community's benefit).

Here, Crystal's financial disclosure form, filed two days after the complaint was filed, reflected approximately $20,751.25 in credit card debt, and, by trial, the balance on the card had grown to about $30,000. The district court expressly found that it "did not receive any testimony on whether some or all of [Crystal's] initial $20,751.25 was acquired before or after September 2022." And Matthew identifies no evidence in the record specifying when any of those charges were made to support treating the pre-filing balance as post-separation debt incurred for Crystal's sole benefit. *Cf. Barry*, 119 Nev. at 670-71, 81 P.3d at 543 (determining substantial evidence supported the district court's finding that specific debts were not community debt). Crystal, moreover, remained in the marital residence with the parties' minor child during that period, and a district court may treat a separated spouse's spending on housing, groceries, and household expenses as "of a community nature." *Hybarger*, 103 Nev. at 259, 737 P.2d at 891-92.

Matthew's asymmetry argument is also unpersuasive, because the district court applied the same analysis to both spouses' debts. It treated each spouse's balance as reported on his or her first financial disclosure filed after the complaint as community debt, and it treated any later increases as separate debt. Applying that method, the district court divided Crystal's initial $20,751.25 debt evenly and assigned her the remaining increase of $9,248.75 as her separate debt. The court divided the $8,088.76 balance on Matthew's first post-filing disclosure evenly and assigned him the later increase as his separate debt. Thus, the district court did not abuse its discretion when allocating Crystal and Matthew's credit card debt.

The district court did not abuse its discretion in assigning the tax debt to Matthew

Matthew argues that the community benefited from the funds Matthew withdrew from the ET&M account and that the unequal allocation of

the resulting tax debt punishes Matthew for moral failings rather than any economic harm to Crystal. Crystal answers that the district court gave written, specific reasons for the unequal allocation that were tied to the consequences of Matthew's conduct.

A district court may "make an unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition." NRS 125.150(1)(b). One reason a court may make an unequal disposition of the community property is if community property was lost, expended, or destroyed through one spouse's intentional misconduct or other marital misconduct that has an "adverse economic impact" on the other spouse. *Kogod*, 135 Nev. at 75, 76-77, 439 P.3d at 406, 407 (quoting *Wheeler v. Upton-Wheeler*, 113 Nev. 1185, 1190, 946 P.2d 200, 203 (1997)). Reversal may be appropriate if "the district court failed to state its reasoning for why it made an unequal distribution of the parties' community debt." *Eivazi*, 139 Nev. at 429, 537 P.3d at 494.

Here, Matthew admitted to taking more than $300,000 from ET&M without authorization from Thomas or his knowledge, which Matthew himself characterized as theft. The district court found it unreasonable for him to contend that his conduct benefited the community, because the unauthorized withdrawals exposed community assets to being "seized, frozen, or assessed with a [tax] lien." It further found that Crystal had no knowledge of the withdrawals. Thus, contrary to Matthew's argument, the district focused its analysis on the economic consequences of Matthew's conduct, not on his morality, when determining whether the tax debt related to his unauthorized withdrawals should be his separate debt.

Although Matthew testified that the money from the unauthorized withdrawals was used to help the household, the district court was not required to accept that testimony and it was entitled to weigh that testimony against the evidence as a whole, including the risk Matthew's conduct created for the community's assets. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244; *Castle*, 120 Nev. at 103, 86 P.3d at 1046 ("[W]e will not reweigh the credibility of witnesses on appeal; that duty rests within the trier of fact's sound discretion."). Thus, Matthew is not entitled to relief on this issue.

Substantial evidence supports the district court's finding that the air conditioning unit was a gift

Thomas and Elaine also raise an issue regarding an air conditioning unit that the district court found they had gifted to Matthew. They argue that they paid for the air conditioning unit expecting reimbursement and that Crystal should reimburse them for half its cost. Crystal disagrees, arguing that the district court determined that it was a gift to Matthew and therefore they were not entitled to reimbursement.

A gift requires donative intent, delivery, and acceptance, and a donor "may not reclaim or expect repayment." *In re Irrevocable Tr. Agreement of 1979*, 130 Nev. 597, 603, 331 P.3d 881, 885-86 (2014). Whether a donor intended a gift is a question for the factfinder. *Id.* at 608, 331 P.3d at 888.

Here, the district court found that Thomas and Elaine gifted Matthew the unit and its installation, relying on Matthew's testimony that his parents gave him and his siblings expensive gifts, without demanding reimbursement, and based on Thomas and Elaine's failure to prove the full cost

of the unit.[10] The district court properly relied on this evidence in establishing donative intent.[11] *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. As a result, Thomas and Elaine are not entitled to relief on this issue.

Having considered the parties' arguments, we reverse the order as to the LLC accounts and the vehicles and the denial of Crystal's request for attorney fees, vacate the alimony award, and remand for further proceedings on those issues. We further conclude that the waste finding against Crystal is unsupported and it is reversed, and that her requests for alimony and attorney fees must be reconsidered without it. Finally, we conclude that the district court acted within its discretion or did not err in its remaining rulings and relief is therefore unwarranted as to the parties' challenges to those determinations.

Accordingly, we

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[10]A gift to one spouse is that spouse's separate property. NRS 123.130. The unit, however, was installed in the marital residence, which the district court treated as community property, and Matthew does not contend on appeal that the unit was his separate property or that he is entitled to reimbursement for it. We therefore do not address the unit's character as between the spouses. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (explaining that issues not raised on appeal are deemed forfeited).

[11]Thomas and Elaine also argue that Crystal should reimburse the cost of the unit because they contributed to an improvement she enjoys. But this argument was not presented below, and therefore, we need not consider it. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Further, Thomas and Elaine were never co-owners of the residence and are thus not entitled to reimbursement for an improvement to it. *Cf. Sack v. Tomlin*, 110 Nev. 204, 210-11, 871 P.2d 298, 303-04 (1994) (apportioning sale proceeds in proportion to each party's contribution to the purchase price where unmarried cohabitants held title to a house as tenants in common).

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[12]

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Kerri J. Maxey, District Judge
Mills & Anderson Law Group
Willick Law Group
Eighth District Court Clerk

[12]Insofar as the parties have raised other arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for further relief or need not be considered in light of our disposition.