

IN THE SUPREME COURT OF THE STATE OF NEVADA

LOIS SIGLER,
Appellant,
vs.
GRAY SIGLER,
Respondent.

No. 41156

FILED

SEP 04 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from a final divorce decree. This court has received and filed a proper person document from appellant entitled, "Motion to Amend Judgment." In the document, appellant raises numerous arguments on appeal.

First, appellant contends that the district court abused its discretion when it awarded respondent primary physical custody of the children. Appellant contends that since she has always been the primary caregiver, she should continue in that role. Moreover, appellant contends that respondent frequently travels on business, whereas her job allows her to be free in the evenings and on the weekends. "Matters of custody and support of minor children rest in the sound discretion of the trial court."¹ Additionally, in determining the custody of a minor child, the sole consideration is the child's best interest.² "It is presumed that a trial

¹Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

²See NRS 125.480(1) (providing that the sole consideration in awarding custody of a child is the best interest of the child); Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993) (stating that in determining the custody of minor children, the sole consideration of the court is the best interest of the children).

court properly exercised its discretion in determining a child's best interest."³ Here, the district court found that it is in the children's best interest that respondent has primary physical custody. Appellant was awarded reasonable visitation. Thus, we conclude that the district court did not abuse its discretion regarding child custody and visitation.

Next, appellant contends that the child support obligation is "excessive" and that she should not have to pay support during the summer months when she has custody of the children. Under NRS 125B.070(1)(b)(2), a formula has been established providing that a noncustodial parent's monthly child support obligation for two children is set at 25% of the parent's gross monthly income. Here, the district court determined that appellant's gross monthly income is \$1,600 and that 25% of that amount is \$400. The district court did not abuse its discretion as to the issue of child support.

Further, appellant contends that the district court erred when it stated that the tax consequence from the retirement withdrawal was \$52,000. She also insists that the district court erroneously concluded that respondent did not commit intentional waste of community assets when he invested a portion of the retirement money in the stock market at a loss. According to appellant, the tax penalty is \$50,000. Appellant contends that the community is entitled to reimbursement for one half of the withdrawn retirement funds because respondent invested the money without any consideration for his family responsibilities.

³Wallace, 112 Nev. at 1019, 922 P.2d at 543.

This court will not interfere with a district court's disposition of the parties' community property unless it is clear from the entire record that the district court abused its discretion.⁴ Further, "[t]his court's rationale for not substituting its own judgment for that of the district court, absent an abuse of discretion, is that the district court has a better opportunity to observe parties and evaluate the situation."⁵ Under NRS 125.150(1)(b) the district court must, to the extent practicable, make an equal disposition of the parties' community property. The court may make an unequal disposition of the community property, however, in proportions 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.⁶ "[I]f community property is lost, expended or destroyed through the intentional misconduct of one spouse, the court may consider such misconduct as a compelling reason for making an unequal disposition of community property and may appropriately augment the other spouse's share of the remaining community property."⁷

Here, the district court determined that the parties agreed during the marriage to withdraw the funds from the retirement account, and that respondent's investment of some of the funds in the stock market was not waste. Nevertheless, the district court ordered respondent

⁴Shane v. Shane, 84 Nev. 20, 22, 435 P.2d 753, 755 (1968).

⁵Wolff v. Wolff, 112 Nev. 1355, 1359, 929 P.2d 916, 919 (1996).

⁶NRS 125.150(1)(b).

⁷Lofgren v. Lofgren, 112 Nev. 1282, 1283, 926 P.2d 296, 297 (1996).
See also NRS 125.150(1)(b).

responsible to repay the debt. The court expressly made an unequal distribution of community property and considered the distribution when determining the amount of spousal support. Therefore, we conclude that the district court did not abuse its discretion.

With regard to spousal support, appellant contends that the district court abused its discretion when it awarded her only \$1,400 per month in spousal support for eight years from the decree's entry. Appellant points out that the parties had a long marriage, that she gave up her career prospects so that respondent could pursue his career, and that she cared for the children throughout the marriage. Moreover, appellant contends that respondent is willfully underemployed and that the district court abused its discretion when it concluded that respondent only makes \$5,500 per month. Appellant insists that respondent earns \$6,000 per month. She asks this court to order the district court to increase respondent's spousal support obligation to \$2,500 per month.

The district court is entitled to wide discretion in determining whether to grant spousal support, as well as the amount thereof.⁸ Thus, this court will not disturb the district court's award of spousal support absent an abuse of discretion.⁹ NRS 125.150 authorizes the district court to award spousal support as is just and equitable. This court has also noted that the individual circumstances of each case will determine the appropriate amount and length of any alimony award.¹⁰

⁸Fick v. Fick, 109 Nev. 458, 464, 851 P.2d 445, 450 (1993).

⁹Daniel v. Baker, 106 Nev. 412, 414, 794 P.2d 345, 346 (1990).

¹⁰Shydler v. Shydler, 114 Nev. 192, 198, 954 P.2d 37, 40 (1998).

Here, the parties declared bankruptcy before the divorce proceedings commenced, and respondent's employment changed resulting in him earning less money per year. The district court found that respondent was not willfully underemployed. Although appellant has been out of the workforce for many years, she has found a job and is currently employed. Moreover, the court held respondent responsible for the \$52,000 tax penalty and weighed this distribution when awarding spousal support. Thus, we conclude that the district court did not abuse its discretion when it ordered respondent to pay spousal support in the amount of \$1,400 per month.

Finally, appellant contends that the district court abused its discretion when it ordered the parties to be responsible for their own attorney fees. An award of attorney fees in divorce proceedings lies within the sound discretion of the district court.¹¹ Here, the district court found that appellant delayed the proceedings by filing an action in California after respondent had filed his complaint in Nevada. The district court concluded that both parties were responsible for their own fees. The district court did not abuse its discretion in not awarding appellant fees.

¹¹Sprenger v. Sprenger, 110 Nev. 855, 878 P.2d 284 (1994).

As the district court did not abuse its discretion with respect to child custody, child support, spousal support, division of community assets and debts and attorney fees, we

ORDER the judgment of the district court AFFIRMED.¹²

Becker J.
Becker

Shearing J.
Shearing

Gibbons J.
Gibbons

cc: Hon. David R. Gamble, District Judge
Peter B. Jaquette
Lois Sigler
Douglas County Clerk

¹²We have considered appellant's remaining arguments and conclude that they lack merit. Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from her.