IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAAD HALIM HABASHI,
Appellant,
vs.
SALLY KAMEL-KIROLLOS,
Respondent.

No. 85917-COA

FILED
DEC 26 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Saad Halim Habashi appeals from a district court decree of divorce establishing child custody. Eighth Judicial District Court, Family Division, Clark County; Mary D. Perry, Judge.

Habashi and respondent Sally Kamel-Kirollos were married in 2002 and have three children in common. The marriage experienced difficulties, and in 2020, Kamel-Kirollos, acting in pro se, filed a complaint for divorce and requested joint legal custody of the minor children, primary physical custody of the minor children, child support, and alimony. Habashi, also acting in pro se, filed an answer and counterclaim seeking joint legal and physical custody of the children.

In addition, on September 3, 2020, the district court entered an order directing Habashi to pay Kamel-Kirollos temporary child support for the three children in the amount of $650 per month. On March 7, 2021, Habashi filed a motion requesting a reduction in the monthly support

obligation because the oldest child reached the age of majority. Habashi also submitted additional requests for a reduction in his monthly support obligation but the court did not issue a decision concerning those requests.

The district court conducted a trial concerning the disputed issues and entered a decree of divorce on December 9, 2021. In the decree of divorce, the court divided the community property, found that Habashi did not owe any arrears, and ordered him to pay $687 per month in child support. However, Habashi filed a motion that the court construed as a request for reconsideration of the decree of divorce, and the court granted Habashi's motion.

This matter subsequently proceeded to a second trial. The parties previously filed financial disclosure forms which revealed that they both were employed and earned income, they owned an appliance repair business, they owned the marital residence, and they owned an apartment building located in Egypt. The parties testified concerning the values of the community property, the community debt, and their respective incomes. The parties also testified concerning their children, explained that the youngest child, a minor daughter, resided with Kamel-Kirollos and the middle child, a minor son, resided with Habashi. Kamel-Kirollos contended that Habashi interfered with her relationship with the minor children. In addition, the parties testified concerning Habashi's decision to reside in Egypt for a time following the initiation of the divorce proceedings and that decision's impact upon his ability or willingness to pay the marital community's obligations and child support.

After the trial, the district court entered a written order containing findings concerning disputed issues and its legal conclusions. Preliminarily, the court specifically found that Habashi did not provide credible testimony concerning his income, his business, and overall financial situation. The court also found that Habashi moved to Egypt for a time and failed to properly manage his business in an effort to show that he had little income.

Next, the district court made several findings concerning the parties' community property and community debts. The court considered the testimony presented concerning the business, found that Habashi's failure to disclose information related to the business during the discovery period meant there should be a negative inference against him as to its value, and decided to utilize the 2019 and 2020 tax returns concerning the income from the business to ascertain its value. The court also found that the COVID-19 pandemic affected the business in 2020. Utilizing the business income listed on the tax returns from 2019 and 2020, the court found that the business had a value of $73,333 and that each party was entitled to half of that value. The court also found that, after accounting for the remaining mortgage value, the community interest in the marital residence was $217,716.02. Next, the court found that the Egyptian apartment building had a value of $62,666.12.

In addition, the court noted that Habashi had previously been ordered to pay the monthly mortgage payments and the utilities for the marital home and he had failed to do so. And the total value of past-due bills that Habashi had failed to pay amounted to $41,410. Because Habashi

failed to comply with his previously ordered obligation to pay those bills, the court found that Habashi should be held responsible for that total amount and credited that amount toward Kamel-Kirollos' share of the community property. Moreover, the court found that Habashi withdrew $10,000 from the couple's bank account and that the $5,000 value of Kamel-Kirollos' share of those funds should also be credited toward her share of the community property.

The district court ultimately concluded that Kamel-Kirollos should retain the marital residence and Habashi should retain the Egyptian apartment. The court compared the values of each property and the various credits it applied toward Kamel-Kirollos' share of the community property, and equalized each party's share of the value of the divided assets.

In addition, the district court awarded primary physical custody of the minor son to Habashi and primary physical custody of the minor daughter to Kamel-Kirollos. The court also found that the parties' incomes were substantially similar and that neither party was required to pay child support until the middle child reached the age of majority. Moreover, the court found that Habashi was in arrears for the previously ordered child support in the amount of $10,420.33, and ordered Habashi to pay that amount to Kamal-Kirollos. Finally, after considering the appropriate factors pursuant to NRS 125.150(9), the court found that it was just and equitable for Habashi to pay Kamel-Kirollos alimony in the amount of $1 for a period of ten years subject to modification should previously withheld income be discovered.

Habashi subsequently filed a motion to reconsider or amend the decree. Habashi contended that the district court miscalculated the child-support arrears, miscalculated the business value, erred by awarding alimony to Kamel-Kirollos, and erred by holding him responsible for the mortgage and utility bills. The court conducted a hearing and subsequently entered a written order denying Habashi's motion. This appeal followed.

Child custody

First, Habashi argues that the district court abused its discretion by awarding Kamel-Kirollos primary physical custody of the parties' minor daughter. Habashi contends the court should not have altered the previously ordered joint-custody arrangement as the alteration was not in the child's best interest. Habashi also asserts that the court's findings concerning this issue were not supported by the record and that the court's decision concerning the primary physical custody of his daughter were not in her best interest.[1]

This court reviews a child custody decision for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm the district

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[1]Habashi also contends that the district court should not have granted a new trial concerning the child custody order. We note Habashi requested a new trial concerning the first divorce decree and the court granted Habashi's request. And we conclude Habashi fails to demonstrate that the court abused its discretion in this regard. *See Edwards Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1036, 923 P.2d 569, 576 (1996) ("The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court, and this court will not disturb that decision absent palpable abuse.").

court's factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). However, this court is not at liberty to reweigh the evidence or the district court's credibility determinations on appeal, *see Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal), and this court presumes that the district court properly exercised its discretion in determining the best interest of the child, *see Culbertson v. Culbertson*, 91 Nev. 230, 233-34, 533 P.2d 768, 770 (1975) (presuming that the district court properly exercised its discretion in determining the best interest of the child where the court made substantial factual findings).

While under certain circumstances there is a presumption that joint physical custody and joint legal custody would be in the best interest of the child, *see* NRS 125C.002(1); NRS 125C.0025(1), a court may award one parent primary physical custody if it determines that joint physical custody is not in the best interest of the child, NRS 125C.003.

During the trial, Habashi acknowledged that he relocated to Egypt for a time but explained that the parties' minor son wishes to reside with him and he engages in parenting time with the minor daughter. Both parents explained their contentious relationship with each other and the effect the contentions had upon their ability to co-parent their children. And Kamel-Kirollos testified to her belief that Habashi harmed her relationship

with her minor son. In its custody order, the district court considered the children's previously ordered living arrangements, expressly considered the required factors under NRS 125C.0035(4) and found several factors favored an award of primary physical custody of the daughter to Kamel-Kirollos. Specifically, the court found the following factors favored Kamel-Kirollos: (1) Habashi relocated to Egypt for a months-long period and he did not participate in parenting time during that time, (2) it appeared that Habashi interfered with Kamel-Kirollos' relationship with their minor son, (3) Habashi's decisions concerning his business harmed his ability to meet the needs of the children, and (4) Habashi had done nothing to facilitate the son's relationship with Kamel-Kirollos while Kamel-Kirollos had ensured that the daughter spent time with Habashi after he returned from Egypt. Based on those findings, the court concluded that it was in the minor daughter's best interest to award Kamel-Kirollos primary physical custody.

The district court's factual findings are supported by the record, and this court will not second guess a district court's resolution of factual issues involving conflicting evidence or reconsider its credibility findings. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244; *Quintero*, 116 Nev. at 1183, 14 P.3d at 523. Accordingly, we discern no abuse of discretion by the district court. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241. Therefore, we conclude that Habashi is not entitled to relief based on this claim.

Division of community property

Second, Habashi challenges the division of community property. Habashi contends that the district court improperly found that he harmed his business in an effort to avoid his support obligations and

argues that it did not accurately calculate the value of the business, in part because it misunderstood how long the business had been in operation. Habashi also asserts that the court abused its discretion by crediting toward Kamel-Kirollos' share of the community property the amounts for the overdue mortgage payments and utilities bills for the marital home, as well as the $5,000 for her share of the funds he withdrew from their bank account.

This court reviews the district court's division of property for an abuse of discretion. *Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010). And this court will not disturb a district court's decision that is supported by substantial evidence. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.* The district court, to the extent practicable, should make an equal distribution of community property, "except that the 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). Moreover, "if 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." *Lofgren v. Lofgren*, 112 Nev. 1282, 1283, 926 P.2d 296, 297 (1996).

Concerning the value of the business, the district court reviewed the evidence provided by the parties concerning the business' income and both parties' testimonies. And the court found that Habashi's testimony concerning his income and the business was not credible, and that there should be a negative inference concerning the business value drawn from his failure to disclose information concerning the business to Kamal-Kirollos during discovery. The court also found that Habashi's decision to reside in Egypt harmed the business and caused him to earn less income than he should have. The court also found that the parties failed to present an appraisal of the business' value and they otherwise presented little evidence concerning its value. The court therefore utilized the tax records to ascertain its value and considered the impact the COVID-19 pandemic had upon the business. And, as stated previously, the court concluded that, based on the foregoing, the business had a value of $73,333. Notably, the court did not review the length of time the business had been operating when it made its finding as to the business value.

The district court's findings are supported by the record, and a reasonable person could accept its decision to utilize the tax records to calculate the value of the business. *See Williams*, 120 Nev. at 566, 97 P.3d at 1129. In addition, Habashi does not challenge on appeal the district court's decision to apply a negative inference to the value of the business as a discovery sanction, and therefore, Habashi has waived that argument on appeal. *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 waived).

Moreover, Habashi does not identify any alternative methods the court should have utilized to ascertain the value of the business. Habashi has thus failed to set forth any cogent argument or authority in support of his assertion that the court utilized an improper method for calculating the business' value, and this court need not consider his bare allegation. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument or relevant authority).

Turning to Habashi's contention that the district court abused its discretion by concluding that he was solely responsible for the overdue mortgage payments, utilities bills, and the withdrawal from the bank account, we conclude that Habashi's contention lacks merit. The court found that Habashi avoided making the previously ordered payments for the mortgage and utilities for the marital residence and that he intentionally harmed his business and lowered his income. And based on Habashi's conduct, the court concluded that he was solely responsible for the overdue mortgage payments and utilities bills. The court also found that Habashi withdrew $10,000 from the family bank account, and that Kamel-Kirollos was entitled to half that amount as a credit toward her share of the community property.

The court made specific findings in support of its decision to unequally divide the debts stemming from Habashi's failure to make the relevant payments and his withdrawal of funds from the bank account, *see* NRS 125.150(1)(b); *Lofgren*, 112 Nev. at 1283, 926 P.2d at 297, and its

decision is supported by substantial evidence, *see Williams*, 120 Nev. at 566, 97 P.3d at 1129.

Therefore, based on the foregoing, Habashi fails to demonstrate the district court abused its discretion when it divided the community property. *See Schwartz*, 126 Nev. at 90, 225 P.3d at 1275. Accordingly, we conclude that Habashi is not entitled to relief based on this claim.

Alimony

Third, Habashi argues that the district court abused its discretion by awarding alimony to Kamel-Kirollos. Habashi contends that the court did not make any findings as to Kamel-Kirollos' post-divorce need, her alleged economic losses related to the marriage and divorce, and made insufficient findings as to her standard of living during the marriage.

A district court has broad discretion in deciding whether to award alimony. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 66, 439 P.3d 397, 400 (2019). Under NRS 125.150, a court may award alimony "as appears just and equitable." NRS 125.150(1)(a). In deciding the amount and duration of an alimony award, the court should consider what is just and equitable based on the circumstances of each case. *Shydler v. Shydler*, 114 Nev. 192, 199, 954 P.2d 37, 41 (1998). The supreme court has recognized that an award of alimony can be considered just and equitable when alimony is necessary to support the economic needs of a spouse, equalize post-divorce earnings, or maintain a spouse's marital standard of living. *Kogod*, 135 Nev. at 68, 439 P.3d at 401. Further, the district court must consider the factors enumerated in NRS 125.150(9) in addition to any other factors the district court considers relevant. *Id.* at 66, 439 P.3d at 400-01.

The district court specifically applied NRS 125.150(9) and analyzed the appropriate factors when evaluating an award of alimony. The court noted that Kamel-Kirollos had been a stay-at-home mother for the majority of the parties' marriage and she only recently started working outside of the home. The court also found that Habashi failed to disclose the true income of the family business or his own personal income. And, based on those circumstances, the court concluded that it was just and equitable for Habashi to pay $1 per year in alimony for a period of ten years, while also recognizing that payment may be adjusted should Kamel-Kirollos discover that Habashi withheld information concerning his true income.

We conclude that the district court made sufficient findings concerning its alimony award, its findings are supported by the record, and a reasonable person could accept its decision. *See Williams*, 120 Nev. at 566, 97 P.3d at 1129. Accordingly, Habashi fails to demonstrate that the court abused its discretion when awarding alimony to Kamel-Kirollos. *See Kogod*, 135 Nev. at 66, 439 P.3d at 400; *Bauer v. Bauer*, No. 62469, 2015 WL 5735056 (Nev. September 28, 2015) (Order Affirming in Part, Reversing in Part, and Remanding) (finding the district court did not abuse its discretion by awarding nominal alimony in the amount of $1.00 per year for the purpose of retaining jurisdiction to protect a party from liability based on the other party's potential noncompliance with the divorce decree). Therefore, we conclude that Habashi is not entitled to relief based on this claim.

Child support arrears

Fourth, Habashi argues that the district court abused its discretion by awarding Kamel-Kirollos child support arrears. Habashi contends that the child support award was miscalculated because the court failed to consider his prior request to reduce his child support payment, one child resided with him for a time, and because his oldest child reached the age of majority and his support obligation should have accordingly been reduced.

This court reviews child support orders for an abuse of discretion. *Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). A district court abuses its discretion when its findings are not supported by substantial evidence, *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018), which is evidence that a reasonable person may accept as adequate to sustain a judgment, *Ellis*, 123 Nev. at 149, 161 P.3d at 242. Although we deferentially review the district court's discretionary determinations, "deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis*, 131 Nev. at 450, 352 P.3d at 1142 (internal citations omitted).

Generally, a parent's support obligations under a child custody order cease "[w]hen the child reaches 18 years of age if the child is no longer enrolled in high school, otherwise, when the child reaches 19 years of age." NRS 125C.0045(9)(b). "The law presumes that once a child reaches majority, the child is capable of self-support." *Edgington*, 119 Nev. at 582, 80 P.3d at 1286; *see also* NRS 125B.200(2) (defining a minor child, in

relevant part, as a person either under the age of 18 years or a person under the age of 19 years if enrolled in high school).

As explained previously, Habashi requested a reduction in child support in 2021 and contended that his oldest child reached the age of majority, but the district court did not enter a written order concerning Habashi's motion. Moreover, the decree of divorce did not state that it considered whether the oldest child had reached the age of majority when it calculated Habashi's child-support arrears or otherwise explain the information it relied upon in reaching the arrears amount.

The district court did not make findings concerning when the oldest child reached the age of majority, but the record indicates and the district court's order states that the oldest child reached the age of majority prior to issuance of the second divorce decree in 2022. Because Habashi's child support obligation for the oldest child should have ceased when that child reached the age of majority, *see* NRS 125C.0045(9), and it is not clear from the record before this court whether the district court considered that issue when it calculated Habashi's child-support arrears, we cannot state that the arrears amount was supported by substantial evidence. *See Miller*, 134 Nev. at 125, 412 P.3d at 1085; *Ellis*, 123 Nev. at 149, 161 P.3d at 242. Accordingly, we must reverse and remand for additional findings to support the district court's calculation of Habashi's child support arrears, including findings concerning the date upon which the oldest child reached the age of majority and an explanation of any alterations to arrears based upon the emancipation of the oldest child. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142. 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.
Gibbons



_____, J.
Bulla



_____, J.
Westbrook

cc: Hon. Mary D. Perry, District Judge, Family Division
Pecos Law Group
Sally Kamel-Kirollos
Eighth District Court Clerk