IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RYAN RAY BARRUS,
Appellant,
vs.
HEATHER MICHELLE MCBRIDE,
Respondent.

No. 85320-COA

FILED
JUL 10 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Ryan Ray Barrus appeals from a district court order dismissing his complaint in a family law matter. Eighth Judicial District Court, Family Division, Clark County; Mary D. Perry, Judge.

Barrus and respondent Heather Michelle McBride were married in Nevada but did not reside in the state. The parties have no minor children.

During the underlying proceeding, the parties each filed pleadings in which they sought an annulment of their marriage or, in the alternative, a divorce. However, the parties' pleadings diverged in that Barrus stated in his complaint that the parties had no community property to be divided while McBride alleged that the parties' primary residence constituted community property that should be divided equally between them. Without taking any motion practice or hearing oral argument, the district court subsequently entered an order dismissing the case for lack of jurisdiction. In particular, the district court acknowledged that it had jurisdiction pursuant to NRS 125.360 to grant the parties an annulment since they were married in Nevada. However, the district court reasoned that it could only adjudicate the community property issue in the context of

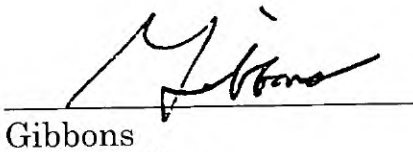
a divorce proceeding, and the court concluded that it lacked jurisdiction to grant the parties a divorce since they did not meet the residency requirements set forth in NRS 125.020. This appeal followed.

We review the district court's decision to dismiss a complaint for lack of personal or subject matter jurisdiction de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009); *Viega GMBH v. Eighth Judicial Dist. Court*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014). Nevertheless, the district court's factual findings are entitled to deference and "will be upheld if not clearly erroneous and if supported by substantial evidence." *Ogawa*, 125 Nev. at 668, 221 P.3d at 704; *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 703, 857 P.2d 740, 751 (1993). Substantial evidence is "evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

On appeal, Barrus argues that the record is devoid of any evidence to establish that the parties' primary residence constituted community property and that the district court therefore erred insofar as it relied on its conclusion that it lacked jurisdiction to adjudicate the community property issue as a basis to dismiss his complaint in its entirety. We agree. Indeed, the parties' pleadings presented the district court with a disputed issue of fact concerning the existence of community property. And because the district court did not permit the parties to address the issue, much less submit relevant evidence and testimony, substantial evidence did not support the district court's decision insofar as it was premised on a determination that the parties' primary residence constituted community property. *Ellis*, 123 Nev. at 149, 161 P.3d at 242. Moreover, the district court's summary resolution of the community property issue without notice or allowing briefing or oral argument was inconsistent with Barrus's right

to due process. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (recognizing that procedural due process requires reasonable notice and an opportunity to be heard); *see also, e.g., Micone v. Micone*, 132 Nev. 156, 159, 368 P.3d 1195, 1197 (2016) (holding the court's award of custody to paternal grandparents violated due process where the parents had notice that custody was at issue, but did not have notice that the court was considering that particular custody option). Thus, for the foregoing reasons, we conclude that the district court erred by dismissing Barrus's complaint. *See Ogawa*, 125 Nev. at 667, 221 P.3d at 704; *Viega GMBH*, 130 Nev. at 374, 328 P.3d at 1156. Accordingly, we

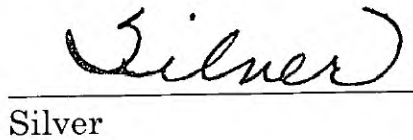
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[1]



_____, C.J.
Gibbons



_____, J.
Westbrook



_____, Sr.J.
Silver

[1]The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Mary D. Perry, District Judge, Family Division
Law Office of Timothy R. Treffinger
Heather Michelle McBride
Eighth District Court Clerk