IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD J. ROSIAK, Appellant, vs. MARGARITA E. ROSIAK, Respondent.	No. 85464-COA
RICHARD J. ROSIAK, Appellant, vs. MARGARITA E. ROSIAK, Respondent.	No. 86632-COA

FILED
FEB 22 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART AND REMANDING

Richard J. Rosiak appeals from a district court order following a decree of divorce, an order reducing child support arrears to judgment, and an order awarding attorney fees. Eighth Judicial District Court, Family Division, Clark County; Michele Mercer, Judge.

Richard J. Rosiak and Margarita E. Rosiak were married in 2000 but have been romantically involved since 1993.[1] They have two children. One, K.R., is a minor. Richard and Margarita first met while Richard was working as an associate attorney in a law firm where Margarita was a legal secretary. Shortly thereafter, Richard informed Margarita that he was going to start his own practice in California and invited Margarita to work for him.[2] Margarita accepted Richard's offer and worked as his only employee, earning $200 to $250 per week. Richard gave Margarita, who is fluent in Spanish, a

[1]We recount the facts only as necessary for our disposition.

[2]We note that Richard is 18 years older than Margarita.

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list of names to cold call because those potential clients all spoke Spanish and Richard did not.

In 1996, Margarita, her parents, and her nephew began renting and moved into the house (9917 Wiley Burke) across the street from Richard. Margarita and her mother purchased the house in 1998. In 1999, Margarita incurred medical debt after receiving surgery when she did not have health insurance. On Richard's advice, Margarita did not pay the bill. In 2000, the hospital filed a lawsuit against Margarita and Richard acted as Margarita's attorney. The hospital eventually obtained a judgment against Margarita. Richard advised Margarita to transfer her house to her 12-year-old nephew in October 2000.

In 2001, Margarita's nephew, without a guardian or conservator, transferred the property to Richard as an unmarried man. During their marriage, and beginning in 2004, Richard and Margarita purchased four properties in Las Vegas. Richard testified that he purchased the properties with cash by either taking out loans on his separate property in California or by using his inheritance from his father.[3] The properties were originally titled in joint tenancy with Margarita, but three properties were eventually placed into Richard's individual trust despite being held in their joint tenancy designation for several years. The transfer to Richard's trust only occurred once Margarita's creditors domesticated a judgment against her in Nevada. Margarita routinely told her creditors, allegedly on Richard's advice, that she had no interest in any property.

[3]Before marrying Margarita, Richard owned, as his separate property, his law firm, a house (which became the parties' marital residence), two commercial properties, and a rental house.

Throughout their entire marriage, Richard and Margarita paid for all of their expenses through Richard's law firm operating fund. Richard stopped paying Margarita a salary in 2001 and he has never paid himself a salary. Richard also stopped filing federal and California state income tax returns in 2015. All money received by the couple, whether from the law firm's clients, tenants, or other sources, was deposited into the law firm operating fund.[4] All withdrawals, whether for the law firm's business expenses, expenses for the rental properties, or personal expenses, were withdrawn from the law firm operating account. During their marriage, Margarita acted as Richard's bookkeeper, despite her having no formal training. Richard neither hired anyone else to assist him with his financial records, nor did either party hire an accountant for this litigation. Additionally, Margarita oversaw renovations on the properties. Margarita testified that the money for the renovations came from community funds.

In 2016, Margarita and the children moved to Las Vegas to allow their oldest child to attend college and lived in one of the parties' residences. Richard agreed that Margarita and the children should move to Las Vegas together.

In October 2018, Margarita filed for divorce in Nevada. In April 2020, the district court ordered Richard to pay Margarita $1,106 in monthly child support because K.R. was living with Margarita. The court also ordered Richard to pay Margarita $10,000 in preliminary attorney fees. Richard did not timely pay either. After Margarita sought to hold Richard in contempt, he paid some of his child support obligation but did not pay the preliminary

[4]Richard also has a client trust account which he occasionally withdrew money from to repay personal debts, although he would later replenish the account.

attorney fees until 2021. In July 2020, Richard began receiving Social Security benefits for himself and K.R. Despite the child support order, Richard frequently failed to transfer the appropriate dependent benefits for K.R. to Margarita. In July 2021, Margarita began receiving the benefits directly from the Social Security Administration.

During pretrial litigation, Richard filed four financial disclosure forms (FDFs). In the most recent FDF, Richard stated a gross monthly income of $16,695. At trial, Margarita, Richard, the parties' eldest child, Margarita's parents, Margarita's nephew, and one of Richard's former employees testified. No accountant nor financial expert testified or participated.

In September 2022, the district court entered an order with distinct findings about the parties' finances and property, as well as findings regarding child support and alimony. The district court found that Richard was not credible and had made multiple material misrepresentations. Richard offered no evidence to trace his claimed separate property. The district court found that any meaningful tracing was impossible because of Richard's failure to keep basic financial records and his commingling. The court acknowledged that it was not dividing the property equally but made thorough written findings, including that Richard gave his separate property to the community as gifts, failed to pay Margarita a salary, commingled all income, and failed to show that the rent from his purportedly separate property was enough to cover the expenses of the property.

The district court further found that Richard had a gross monthly income of $57,438 by looking at the gross deposits into the law firm operating fund because Richard provided no documentation to support the figure stated in his latest FDF. The court thus ordered Richard to pay $3,178

in monthly child support. The district court also ordered Richard to pay Margarita a lump sum of $202,500 in alimony.

The district court found that Richard's law firm, while initially separate property, had increased in value significantly during the marriage because of Richard and Margarita's community efforts such that Margarita had acquired an interest in the law firm. Since Richard presented neither expert testimony nor financial documents beyond the gross deposits into the firm's operating fund, the court used these deposits to guide its valuation of the firm. The court found that the firm had a valuation of $448,022 and awarded Margarita $224,011 for her interest. The district court held Richard responsible for all of his outstanding tax liability, which totaled at least $204,805, because Richard failed to provide the documents necessary to determine the exact tax liability.

Finally, the district court awarded Margarita 9917 Wiley Burke and the Las Vegas properties as her sole and separate property and awarded Richard the remaining properties as his sole and separate property. The court also held both parties individually responsible for all of the debt associated with 9917 Wiley Burke. Ultimately, the district court awarded Margarita $3,040,889 in assets and held Margarita responsible for $218,228 of the parties' debt. The district court awarded Richard $8,764,891 in assets and held Richard responsible for $1,491,647.09 of the parties' debt.

The parties thereafter sought various post-judgment relief. Relevant to this appeal is the schedule of child support arrears filed by Margarita in October 2022, to which Richard filed no objections in the time ordered by the court. Margarita was ordered to file this within 30 days of the Findings of Fact, Conclusions of Law, and Decision being entered. Richard was ordered to file an objection, if he had any, no later than 14 days after the

Schedule of Arrears was filed. Margarita timely filed the schedule and Richard never filed any objections. In April 2023, during a hearing, Richard expressed his displeasure with the schedule, but admitted that he had not filed an objection. In May, an order drafted by Richard and approved as to form and content by Margarita was entered, which stated the parties' stipulation that Richard owed $63,955 in child support arrears. The district court entered a separate order awarding Margarita attorney fees and costs under NRS 18.010(2)(b) and EDCR 5.219.

Richard now appeals, arguing that the district court abused its discretion in (1) calculating his child support obligation; (2) awarding Margarita lump sum alimony; (3) making an unequal division of community property and debt; and (4) awarding attorney fees.

We vacate the district court's order regarding Richard's monthly child support obligation as to the Social Security dependent payment only. Because this may affect the amount of child support arrears owed, we necessarily vacate the order finding that Richard owes $63,955 in child support arrears. We also necessarily vacate the order awarding attorney fees. Finally, we vacate the portion of the district court's order that held both Margarita and Richard responsible for all of the debt associated with 9917 Wiley Burke. We affirm the district court's order as to the remaining rulings.

The district court did not abuse its discretion in calculating Richard's gross income

Richard argues that the district court abused its discretion in calculating his income because he only has a gross monthly income of $16,695, not $57,438. Margarita responds that the only admissible evidence before the district court was the deposits made into the operating fund of Richard's law practice which supports the larger number. Margarita also

argues that Richard invited any error by failing to accurately calculate and provide evidence of his income.

This court reviews "decisions regarding child support for an abuse of discretion." *Romano v. Romano*, 138 Nev. 1, 7, 501 P.3d 980, 985 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167 (2023). A district court abuses its discretion if its decision is not supported by substantial evidence. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018). Substantial evidence is "that which a reasonable mind might accept as adequate to support a conclusion." *Finkel v. Cashman Pro., Inc.*, 128 Nev. 68, 73, 270 P.3d 1259, 1262 (2012) (quoting *McClanahan v. Raley's, Inc.*, 117 Nev. 921, 924, 34 P.3d 573, 576 (2001)).

Under the invited error doctrine, "a party will not be heard to complain on appeal of error which he himself induced or provoked the court or the opposite party to commit." *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (quoting 5 Am. Jur. 2d *Appeal and Error* § 713 (1962)). Richard was the only party in possession of the necessary financial statements at the time of trial. While the bank statements for the firm's operating fund were provided, it is practically impossible to differentiate the business expenses from the personal expenses. This is because Richard paid for all expenses, both personal and professional, from the operating fund. Richard removed Margarita from the law firm account in 2018 and failed to hire a bookkeeper, accountant, or any other individual to assist him in managing his or his firm's finances. Accordingly, Richard was the only party who was able to provide any records of the law firm's expenses at trial.

Additionally, Richard chose to pay for all his expenses entirely out of the operating fund instead of paying himself a salary. Richard has

also failed to file federal or California state income tax returns since 2015. Finally, Richard failed to attach supporting documentation to his FDFs in violation of NRCP 16.2(c)(1), (2), and (d)(1), (2) and (3). Accordingly, we conclude that Richard induced any error in calculating his income for the purposes of child support by (1) not paying himself a salary, (2) not keeping adequate records, and (3) failing to provide adequate explanation of the records he did provide. We therefore need not consider his arguments. Regardless, substantial evidence supports the district court's conclusions, and therefore, Richard has not established that the court abused its discretion in its finding as to his gross monthly income.

We vacate the district court's orders regarding Richard's child support obligation and child support arrears

Richard argues that the district abused its discretion by not reducing his child support obligation by the amount of money K.R. receives from Richard's Social Security dependent payment. Margarita concedes that Richard is entitled to a credit against his child support obligation for the amount that she receives as Social Security dependent benefits on behalf of K.R.

Under NAC 425.150(2), a court *may* adjust child support obligations by subtracting the benefit a child receives from the obligor's obligation. We note that the language of this regulation is permissive and not mandatory. Despite this, Nevada caselaw indicates that a credit should be applied to arrearages when a dependent child receives Social Security benefits. *See Hern v. Erhardt*, 113 Nev. 1330, 1335, 948 P.2d 1195, 1198 (1997) (holding that Social Security disability benefits paid in excess of the amount owed as child support should be credited toward child support arrears accruing after the date the obligor parent becomes disabled).

The district court heard testimony that Richard had previously received benefits on K.R.'s behalf but that once trial began, Margarita was receiving benefits on K.R.'s behalf. We also note that Richard requested that he be given a "dollar-for-dollar reduction in his child support obligation" for the benefits Margarita receives on K.R.'s behalf. The district court's order indicates that the court was aware of the situation; however, there is no discussion on the effect of the dependent benefits on Richard's child support obligation.

Given this unusual situation, we could conclude that the district court did not abuse its discretion because NAC 425.150(2) does not require that an offset be given for current child support obligations. However, since Margarita concedes that an offset should be given for the Social Security benefits, we vacate the monthly child support obligation to the extent it includes the Social Security dependent payment and remand the matter to the district court to allow the district court to further consider the matter and explain its decision if it chooses not to allow an offset. To reiterate, we affirm the order regarding Richard's child support obligation except for the dependent payment. On remand, should the district court allow an offset for the dependent payment in Richard's child support obligation, all overpayments should be counted against his arrears. Since this may affect the amount of child support arrears, we necessarily vacate the order finding that Richard owes $63,955 in child support arrears. If the district court allows no offset, the monthly child support and arrearage orders shall be reinstated with any new arrears added.

The district court did not abuse its discretion in awarding Margarita alimony

Richard argues that the district court abused its discretion by awarding Margarita alimony because the award was not based on Margarita's needs or the lifestyle enjoyed by the parties during their

marriage. Margarita responds that she did not complete her higher education degree based on Richard's instructions to focus on the parties' real estate investments, she has not been able to obtain a job that pays near what Richard earns, and the district court properly considered all relevant facts in reaching its decision.

This court reviews a district court's award of alimony for an abuse of discretion. *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 482 (Ct. App. 2023). Additionally, this court reviews the district court's factual findings deferentially and will not set them aside unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

When considering an alimony award, the district court must consider 11 enumerated statutory factors, as well as any other factors the court considers relevant. NRS 125.150(9). Alimony may also be awarded to compensate for a spouse's loss of the standard of living enjoyed during the marriage. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 69, 439 P.3d 397, 403 (2019).

Here, the district court found, after evaluating the statutory factors, that Margarita was entitled to receive $2,250 in alimony per month for 7.5 years and ordered Richard to pay the award as a lump sum totaling $202,500. In addition, the district court found that Margarita needs alimony to support herself and maintain the lifestyle enjoyed by the parties during the marriage. The court found that the marriage was a long-term marriage (21 years). The court also found that while Margarita earned a bachelor's degree and master's degree during the marriage, she did not finish her higher education based on Richard's advice and preferences. These findings are supported by substantial evidence presented during trial.

Margarita's future income is affected by not finishing the coursework necessary to earn her higher education degree. At the time of trial, Margarita had started a job with the Clark County School District as a counselor and had an annual salary of $35,000. This is substantially lower than the gross annual income of $200,340 that Richard provided on his most recent FDF, which the district court found to be understated. Margarita was also awarded several properties in the divorce. During the divorce proceedings, the rent collected from these properties totaled $6,500 per month. Margarita will be able to use this money to supplement her income, but it still does not rise to the amount that Richard earns or the amount needed to maintain the lifestyle the parties enjoyed during the marriage. Accordingly, we conclude that the district court did not abuse its discretion when awarded Margarita alimony in a lump sum of $202,500.

The district court did not abuse its discretion when it distributed the parties' assets and debt

We review district court decisions regarding the characterization and disposition of property in divorce proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004); *Kogod*, 135 Nev. at 75, 439 P.3d at 406. Additionally, "[t]he opinion of either spouse as to whether property is separate or community is of no weight." *Peters v. Peters*, 92 Nev. 687, 692, 557 P.2d 713, 716 (1976).

The district court did not abuse its discretion by making an unequal distribution of community property and debt

Richard argues that the district court abused its discretion when it divided the community's properties and debt and focuses his argument on the parties' properties and his alleged separate property. Margarita responds that Richard invited any error with his poor record keeping.

Margarita also argues that the court made appropriate findings to support the unequal division of property and debt.

A district court should make an equal distribution of community property, but it may make an unequal distribution "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). Additionally, a court may reimburse a party for their separate property contribution to joint property, and when determining whether to provide reimbursement the court must consider "(a) [t]he intention of the parties in placing the property in joint tenancy; (b) [t]he length of the marriage; and (c) [a]ny other factor which the court deems relevant in making a just and equitable distribution of that property." NRS 125.150(2). Further, "separate property placed into joint tenancy is presumed to be a gift to the community unless the presumption is overcome by clear and convincing evidence." *Schmanski v. Schmanski*, 115 Nev. 247, 249, 984 P.2d 752, 754 (1999).

Here, as noted, the district court awarded Margarita $3,040,889 in assets and held Margarita responsible for $218,228 of the parties' debt. The court awarded Richard $8,764,891 in assets and held Richard responsible for $1,491,647.09 of the parties' debt. The district court set forth the necessary written findings warranting this distribution, and those findings are supported by the record. First, the court found that all income was commingled, Margarita worked for Richard's law firm since he created it, Margarita was not paid for 20 years of work at the law firm, the Nevada properties were jointly titled for nine years, Richard was unable to prove that the rent from his claimed separate rental properties was enough to pay for the expenses of these properties, and extensive community funds were used to renovate property that he claimed was his separate property.

The court also found that the length of time the parties held the Nevada properties in joint tenancy demonstrated an intention to give any separate property interest he might have had in the property as a gift to the community. Next, the court found that due to the 21-year marriage Richard should not be reimbursed for any separate property contributions. Finally, the court found that "Richard's commingling, non-existent record keeping, overreaching and undue influence are all justification for making an unequal distribution of property." These findings are all supported by the record and bolstered by the court's finding that Richard lacked credibility. Accordingly, we conclude that the district court did not abuse its discretion when it distributed the assets and debt of the parties.

We recognize, as Richard has noted, that the district court separately ordered that each party is responsible for 100 percent of the debt associated with 9917 Wiley Burke. Since both parties cannot be 100 percent responsible for the same debt without the district court stating that the parties were jointly responsible for the debt, we vacate this portion of the order and remand for the district court to correct what appears to be a clerical error. *See* NRCP 60(a).

The district court did not abuse its discretion when it awarded Margarita a community interest in Richard's law firm

Richard argues that the district court abused its discretion by only using gross deposits to determine the value of the business without considering necessary business expenses.[5] Margarita responds that

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[5]Additionally, Richard argues, without any support, that the district court was required to consider the compensation the community received from the law firm. Accordingly, this court need not consider his argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). We also note that Richard chose not to pay himself

Richard's poor record keeping and commingling made it impossible for the district court to complete any additional analysis.

When separate property increases in value during a marriage as a result of "both the investment of the property and the labor and skill of the parties . . . the increase in value should be apportioned between separate and community property." *Johnson v. Johnson*, 89 Nev. 244, 246, 510 P.2d 625, 626 (1973). Nevada applies the *Pereira*[6] or *Van Camp*[7] analysis to determine the proper apportionment of value. *Id.* at 247, 510 P.2d at 626. The *Pereira* analysis appears to be the preferred method and instructs the court "to allocate a fair return on the investment to the separate property and to allocate any excess to the community property" as arising from the party's efforts. *Cord v. Neuhoff*, 94 Nev. 21, 26, 573 P.2d 1170, 1174 (1978).

The district court found that the only financial information it had to determine the value of the law practice were the gross deposits into the operating fund. The district court determined that a fair valuation of the law firm would be 65% of the gross annual deposits into the operating fund. Therefore, the district court reached a valuation of $448,022. The court found that Margarita should receive $224,011 to compensate her for the community interest in the firm. The court also found that it was not able to conduct a more detailed analysis of the law firm because of Richard's poor or non-

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or Margarita a salary, so it is disingenuous to now argue that the law firm compensated the community when he created a situation where there would have been no income for the community but for the law firm supporting the community. Accordingly, we conclude that we need not consider his argument. And to the extent we do consider it, Richard has not established that the district court abused its discretion.

[6]*Pereira v. Pereira*, 103 P. 488 (Cal. 1909).

[7]*Van Camp v. Van Camp*, 199 P. 885 (Cal. Dist. Ct. App. 1921).

existent record keeping, commingling of funds, and failure to have an expert analyze the finances even though he was the only party with the financial means to hire an expert. *See* NRCP 16.2(d)(3)(M) (stating that a party in a family law action must provide all tax returns, balance sheets, profit and loss statements, and other documents for the prior five years that may assist in valuing a business); *see also* NRCP 16.2(d)(3)(L) (requiring a party in a family law action to provide all documents that may assist in valuing real and personal property). Finally, the court also found that Margarita had not only been with the law firm since its inception, but she was also an essential part of its growth since she translated for the mostly Spanish speaking clientele. Additionally, Margarita worked without pay at the law firm for most of the 21-year marriage. These findings are all supported by the record.

Once again, Richard has invited any error in the district court's rulings regarding the firm. Specifically, Richard argues that the district court only used the gross deposits to determine the value of the business without considering necessary business expenses. Yet that is the evidence that was presented. Without additional financial records or an explanation of the records provided, it was not possible for the district court to conduct a more precise analysis. The court deemed Richard's testimony not credible and too vague to alleviate the dearth of proper records. Richard could have easily avoided this situation by having separate accounts for his personal and business funds, and by retaining an expert to analyze his finances. Having failed to do so, Richard may not now complain of any error that he invited. *See Pearson*, 110 Nev. at 297, 871 P.2d at 345. Further, substantial evidence supports the district court's conclusion, and therefore, Richard has not established that the court abused its discretion in its finding as to Margarita's community interest in Richard's law firm.

The district court did not abuse its discretion when it awarded Margarita all of the interest in 9917 Wiley Burke

Richard argues that the district court abused its discretion by awarding Margarita all of the interest in 9917 Wiley Burke because Richard has been paying the mortgage on the property since 2001 with profits from his law firm and without contributions from Margarita or her parents.[8] Margarita responds that Richard invited any error because of his "rampant commingling of all income and expenses, his failure to keep financial records, his control of all community assets, his failure to maintain separate bank accounts and his failure to provide Margarita with funds for attorney's fees and experts prior to trial."

Richard may not complain of any error that he invited. *See Pearson*, 110 Nev. at 297, 871 P.2d at 345. Richard chose to commingle all of his income and expenses, to maintain only one bank account, and to not hire an accountant. This thwarted a determination as to what, if any, assets were separate property. *See* NRCP 16.2 (requiring the early and full disclosure of all financial records in family court proceedings). Accordingly, we conclude that Richard again invited any error.[9]

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[8]Richard also argues that the district court erred since Margarita allegedly admitted that she had no ownership interest in the property. As Richard failed to include a citation to the record to support this argument, we decline to consider it. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; *see also* NRAP 28(a)(10)(A).

[9]Even if we considered Richard's argument, the record reveals that Margarita and her mother purchased the property before Margarita married Richard. Margarita and her mother then transferred the property to Margarita's nephew, who was a minor. After Richard and Margarita were married, the property was transferred to Richard. "Properties acquired during marriage are presumed to be community property, and this presumption can be overcome only by clear and convincing evidence." *Lopez*

The district court did not abuse its discretion by not reimbursing Richard for his alleged separate property contributions to the Las Vegas properties

Richard argues that the district court abused its discretion by not giving him a full reimbursement for his separate property contributions towards the Las Vegas properties. Margarita responds that Richard failed to trace any separate property contributions. Richard replies that the district court did not give Richard the opportunity to trace his separate property contributions.

"[I]ntermingled properties are considered community properties." *Ormachea v. Ormachea*, 67 Nev. 273, 297, 217 P.2d 355, 367 (1950). The party asserting that commingled property remained separate has the burden to prove that the property was not transmuted to community property. *Lucini v. Lucini*, 97 Nev. 213, 215, 626 P.2d 269, 271 (1981). And, as noted, "separate property placed into joint tenancy is presumed to be a gift to the community unless the presumption is overcome by clear and convincing evidence." *Schmanski*, 115 Nev. at 249, 984 P.2d at 754.

As discussed above, Richard maintained only one bank account. All money, regardless of whether it might be community or separate property, was deposited into this account. Additionally, all expenses associated with maintaining the household, maintaining all properties

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v. Lopez, 139 Nev., Adv. Op. 54, 541 P.3d 117, 125 (Ct. App. 2023). The district court did not abuse its discretion when it found that Richard failed to present clear and convincing evidence that the property was separate property. Additionally, due to Richard's comingling of funds and failure to maintain adequate records, we reject his argument that the property was his because he had been paying the mortgage with only the proceeds from his law firm. *See Robison v. Robison*, 100 Nev. 668, 670, 691 P.2d 451, 453 (1984) (noting that the earnings of either spouse are community funds).

owned by the parties during the marriage, and with maintaining the law firm were paid by withdrawing funds from this account. Therefore, Richard commingled all community and separate property.

The record reveals that Richard took out loans, secured by the property he owned before marriage, in similar amounts to the price of the Las Vegas properties. However, the Nevada properties were all titled in joint tenancy with Margarita when they were purchased and only three of the four properties were transferred to a trust after attempts were made to collect on the judgment against Margarita.[10] Richard has not shown the district court erred in finding that he failed to overcome the presumption that he intended to gift his separate property to the community with clear and convincing evidence. The only evidence he provided that the property was not a gift was his self-serving testimony, and the district court deemed him not credible. Finally, Richard had ample opportunities during trial to produce any tracing evidence he had beyond his testimony, but he failed to do so. Accordingly, we conclude that the district court did not abuse its discretion.

The district court did not abuse its discretion when it made Richard solely responsible for the tax debt associated with the law firm's earnings

Richard argues that the district court abused its discretion because it found that his income was community property but held him solely responsible for the tax debt. Richard also argues that the district court's decision was essentially a sanction for failing to disclose discovery and is not a compelling reason for an unequal distribution of assets. Margarita responds that the tax debt was not assigned to Richard as a discovery sanction but rather because he obscured his true income. Margarita also

[10]One remained titled in joint tenancy at the time of the trial.

argues that Richard invited any error by failing to provide the information needed to accurately determine the debt at issue.

Richard invited any error by choosing not to file his federal and state tax returns. Further, by choosing not to hire a financial expert to determine his tax liability, despite filing tax returns before 2015. Accordingly, we decline to consider Richard's argument.[11] *See Pearson*, 110 Nev. at 297, 871 P.2d at 345.

The award of attorney fees is vacated

Since portions of the judgment supporting the award of attorney fees have been vacated and Margarita may no longer be considered the only prevailing party by the district court, we necessarily vacate the award of attorney fees. *See Iliescu v. Reg'l Transp. Comm'n of Washoe Cnty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 462 (Ct. App. 2022) (vacating an award of attorney fees because the underlying judgment was reversed in part).[12]

Accordingly, we

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[11]Even if we consider Richard's argument, hiding community assets, refusing to provide information to the court about financial matters, and being less than truthful with the court about income are compelling reasons for an unequal property distribution. *See* NRS 125.150(1)(b); *Putterman v. Putterman*, 113 Nev. 606, 609, 939 P.2d 1047, 1049 (1997). Here, the court found that Richard attempted to hide his true income and failed to produce the financial documents necessary to divide the parties' debts. These are compelling reasons to justify an unequal distribution of debts. Further, contrary to Richard's argument that failing to disclose discovery is not a compelling reason for an unequal distribution of assets, this type of sanction is specifically allowed. *See* NRCP 16.2(h)(3). Accordingly, we conclude that the district court did not abuse its discretion.

[12]We remind the district court that it is required to make more than conclusory legal findings regarding the basis for awarding attorney fees. *Stubbs v. Strickland*, 129 Nev. 146, 152 n.1, 297 P.3d 326, 330 n.1 (2013).

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[13]



_____, C.J.
Gibbons



_____, J.
Bulla



_____, J.
Westbrook

cc: Hon. Michele Mercer, District Judge, Family Division
Israel Kunin, Settlement Judge
McFarling Law Group
The Grace Law Firm
Eighth District Court Clerk

[13]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.