IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MELISSA HORTA, Appellant, vs. FRANCISCO HORTA, Respondent.	No. 86873-COA
FRANCISCO HORTA, Appellant, vs. MELISSA HORTA, Respondent.	No. 86978-COA

FILED
OCT 03 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

Melissa and Francisco "Paco" Horta both appeal from a decree of divorce establishing child custody. Melissa also appeals from an order denying a motion to modify the decree. Eighth Judicial District Court, Family Division, Clark County; Gregory G. Gordon, Judge.[1]

Melissa and Paco were married in October 2012 and have three minor children together, ages 8, 11, and 12.[2] A decade before their marriage, Paco's father gifted him Silver Lands, Inc., a landscaping business. Silver Lands paid Paco an annual salary, and as Silver Lands'

[1]The decree was signed by the Honorable Judge Amy Mastin. Following entry of the decree, the matter was reassigned to the Honorable Judge Gregory G. Gordon.

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

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sole shareholder, Paco would also earn income by taking company profits in the form of distributions.

While Paco earned a substantial income from Silver Lands, Melissa also worked periodically in various positions utilizing her real estate license. In 2017, Melissa accepted an offer of employment from Ensemble Services, LLC.[3] Later during the parties' marriage, in December 2019, Paco took $450,000 earned by Silver Lands and $26,000 from his personal account to invest in a property in Reno. However, Paco stated that he never received a return on his investment or repaid any funds to Silver Lands or the community.

In May 2021, Paco filed a complaint for divorce. Effective September 2021, the district court ordered Paco to pay temporary spousal support of $5,000 per month and temporary child support of $4,703 per month. The district court also awarded Melissa $25,000 in preliminary attorney and expert fees. In 2021, Paco also took a "shareholder loan" from Silver Lands and withdrew approximately $461,000.[4]

Starting in January 2022, Paco was ordered to pay Melissa an additional $10,000 per month to cover her expenses, and Melissa was required to account for these expenses. This brought Paco's total monthly support obligation to $19,703 pending trial. In July 2022, Paco was further ordered to pay Melissa an additional $10,000 in preliminary attorney fees.

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[3]The Ensemble Services offer letter reflected an initial salary of $80,000 from the start of Melissa's employment in April 2017, which would increase to $100,000 plus commissions in July 2017. Melissa worked for Ensemble Services until May 2018.

[4]Paco's trial testimony on this loan was limited to confirming the presence of the loan on Silver Lands' tax return. However, there was no testimony regarding the purpose of this loan or any subsequent repayments.

During a case management conference, the parties successfully mediated a parenting agreement for joint legal and joint physical custody. However, Melissa thereafter moved to set aside the parenting agreement after an incident that occurred when Paco picked their children up from school. Though the district court denied Melissa's motion, in September 2022 the parties stipulated to grant Melissa primary physical custody while maintaining joint legal custody; however, the parenting time schedule was deferred until trial.

The matter proceeded to trial on December 21, 2022, and January 23, 2023. Both Melissa and Paco testified, as did their experts who offered competing valuations for Silver Lands. Paco's expert, Beau Johnson, used the "capitalization of excess earnings" method to value Silver Lands on the date of marriage at $835,000. Utilizing the *Pereira*[5] method and applying an interest accumulation factor at the Nevada legal rate to the pre-marital value, Johnson determined that the pre-marital value of Silver Lands, including a fair rate of return, was $1,409,900. He also valued Silver Lands at $1,108,000 at the time of trial; thus, Johnson calculated the community's interest in Silver Lands to be zero because the pre-marital value, plus a fair rate of return, exceeded Silver Lands' current value. Melissa's expert, Jennifer Allen, used three different valuation methods—the income, market, and asset approach—and took the average of the three to calculate Silver Lands' value as $2,500,000 at the time of trial. However, Allen did not calculate Silver Lands' pre-marital value or undertake a *Pereira* analysis.

[5]*Pereira v. Pereira*, 156 Cal. 1, 103 P. 488 (1909).

In February 2023, the district court entered its findings of fact, conclusions of law, and decree of divorce. The court crafted a parenting time schedule based on the parties' stipulation that Melissa have primary physical custody. The district court further calculated Paco's monthly income to be $33,235, imputed an annual income of $100,000 to Melissa, and determined that Melissa was entitled to alimony of $3,000 per month for 5 years as well as child support of $3,474 per month. As to Silver Lands, the district court adopted Johnson's $1,409,000 pre-marital valuation that included a fair rate of return, and Allen's $2,500,000 trial valuation. Utilizing the *Pereira* method, the court calculated the community property interest to be the difference between these two values, or $1,091,000, with Melissa owed half this amount, approximately $545,000. Based on its division of community property, the court ordered Paco to pay Melissa an equalization payment of $738,051 in monthly installments of $6,150 for 10 years, with statutory interest stayed so long as Paco made the monthly payments. Finally, the court determined that neither party was entitled to additional attorney or expert fees.

Subsequently, Melissa filed a motion to alter or amend the decree requesting, among other things, that the district court permit ongoing discovery regarding the marital home. The district court denied the motion, and this appeal followed. On appeal, Melissa challenges several aspects of the decree relating to the custody and community property determinations, and Paco cross-appealed, challenging the district court's community interest calculation for Silver Lands. We address each argument in turn.

The district court did not abuse its discretion in determining Paco's income

Melissa first argues that the district court abused its discretion in determining Paco's income because it failed to include Paco's $461,000

shareholder loan as income, and she contends this amount was not actually a loan and "was either income to Paco or profits of [Silver Lands]." Relying on Silver Lands' 2021 tax return, the district court calculated Paco's monthly income by adding his annual salary from Silver Lands ($120,500) to Silver Lands' 2021 net profits ($278,320), for a total of $398,820 annually, or $33,235 per month. Silver Lands' tax return listed the $461,000 as a shareholder loan rather than business income; thus, the court did not include it.

This court reviews a district court's factual findings, including a party's income, for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). 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). When determining whether the district court abused its discretion, this court will not reweigh conflicting evidence or reassess witness credibility. *Id.* at 152, 161 P.3d at 244.

In this case, the district court did not clearly err when it determined Paco's income by combining the net profits listed on Silver Lands' tax return with his annual salary without including the value of the shareholder loan. Though Melissa argues that both experts testified that a shareholder loan is income, Paco's expert actually testified that shareholder loans are *not* income, and her own expert testified that she could not comment on whether a shareholder loan qualifies as income "from a tax perspective." Further, neither expert testified that Silver Lands' tax return was inaccurate or incorrect by failing to include the shareholder loan as income. To the extent that Melissa contends that the tax return is not

credible evidence of income because it was prepared to "minimize any financial obligations," this court does not reweigh conflicting evidence or reassess the district court's credibility determinations. *Id.* Therefore, Melissa did not establish that the district court abused its discretion in calculating Paco's income.[6]

The district court did not abuse its discretion in calculating alimony

Melissa next contends that the district court abused its discretion by imputing $100,000 of income to her for purposes of the alimony determination and by failing to award her at least $5,000 per month based on Paco's request to pay that amount. On the subject of Melissa's income, the district court found that the nature of her work "was not explained at trial"[7] and that Melissa's financial disclosure forms did not report her prior employment. Relying on the Ensemble Services offer of employment, the court concluded that Melissa was capable of earning $100,000 a year. Melissa asserts this was error because she never actually earned $100,000 in any calendar year.

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[6]Melissa also argues that these funds cannot be considered a loan in the absence of an applicable interest rate, loan payments, or promissory notes. However, Melissa did not provide legal authorities to support her claim. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). We also note that Paco's expert specifically testified at trial that a loan is not required to have an applicable interest rate, loan payments, or promissory note.

[7]Melissa argues the court's finding that her employment was not explained is erroneous. However, her citation to the record does not support this argument and she does not establish that the court's finding is clearly erroneous. *See Ogawa*, 125 Nev. at 668, 221 P.3d at 704.

An alimony determination is reviewed for an abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 66, 439 P.3d 397, 400 (2019). When calculating alimony, NRS 125.150(9)(e) requires the court to consider, among other things, the "income, *earning capacity*, age and health" of each spouse. (Emphasis added). When exercising its discretion to grant alimony, the district court is allowed "to consider what a [spouse] could in good faith earn if [they] so desired." *Rosenbaum v. Rosenbaum*, 86 Nev. 550, 554, 471 P.2d 254, 256 (1970).

The district court's decision to consider that Melissa had the ability to earn $100,000 annually and therefore to impute income to Melissa based on her prior earning potential in determining alimony was not an abuse of discretion and was supported by substantial evidence in the record. *See Kogod*, 135 Nev. at 66, 439 P.3d at 400. Although Melissa argues that she never made $100,000 during any calendar year, she worked for Ensemble Services for a period during which she earned a $100,000 annual salary, specifically from July 2017 until her employment ended in May 2018. Given her work history, professional licenses, and credentials, the district court was within its discretion to conclude that she was capable of earning $100,000 annually.[8]

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[8]Melissa also argues that it was unreasonable to find that she could earn $100,000 while being the children's primary caretaker. However, the district court rejected this argument and found that the alimony amount was premised on Melissa being "able to work and not limited in her ability to work." *Cf. Rosenbaum*, 86 Nev. at 554, 471 P.2d at 257 (providing that the district court should consider the paying spouse's good faith ability to obtain a job commensurate with their skills when imputing income for purposes of calculating alimony). Here, the district court was not considering Melissa's ability to earn income for the purpose of imputing income to her as the paying spouse, but rather to determine the amount of alimony that Paco would be required to pay.

As to the alimony amount, the district court was not obligated to award Melissa at least $5,000 per month based on Paco's request to pay that much. Where Melissa had requested alimony of $15,000 per month, Paco's willingness to pay $5,000 per month did not create a stipulation that was binding on the district court. *Cf. Leher McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1118, 197 P.3d 1032, 1042 (2008) ("To be valid, a stipulation requires mutual assent to its terms and either a signed writing by the party against whom the stipulation is offered or an entry into the court minutes in the form of an order."). Nor was this a situation where Melissa was provided insufficient notice or was surprised that alimony would be determined in the divorce decree. *Cf. Anastassatos v. Anastassatos*, 112 Nev. 317, 320, 913 P.2d 652, 654 (2006); *Micone v. Micone*, 132 Nev. 156, 159, 368 P.3d 1195, 1197 (2016).

A district court is not limited in calculating alimony based on the amount a party requests; rather, the court must determine an amount which is proven by the facts and the evidence presented. *See Heim v. Heim*, 104 Nev. 605, 613, 763 P.2d 678, 683 (1988) ("We will not invade the province of the trial court by determining what is the minimum amount which should be considered as just an equitable alimony award in this case, but we believe that the award should not necessarily be limited to the [amount] per month prayed for by [the wife]."), *superseded by statute on other grounds as stated in Rodriguez v. Rodriguez,* 116 Nev. 993, 994-1000, 13 P.3d 415, 416-20 (2000). In this case, the district court evaluated each factor under NRS 125.150(9)(a)-(k) and ultimately ordered Paco to pay Melissa alimony of $3,000 per month for 5 years. Substantial evidence supports the district court's determination; thus, Melissa is not entitled to relief.

The district court did not abuse its discretion in calculating child support or by declining to award Melissa child support arrears

Melissa next argues that the district court abused its discretion by failing to account for the costs of daycare or family therapy when calculating child support as required by NAC 425.130.[9] She further contends that the district court abused its discretion in failing to award her child support arrears because Paco had failed to make the required temporary child support payments in September and October 2021. Paco responds that Melissa failed to request consideration of daycare or family therapy costs and that substantial evidence supports the district court's decision not to award child support arrears because he paid Melissa $10,000 for each of those months.

"Matters of . . . support of minor children of parties to a divorce action rest in the sound discretion of the trial court, the exercise of which will not be disturbed on appeal unless clearly abused." *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004) (internal quotation marks omitted). A district court's child support determination will be upheld if it is supported by substantial evidence. *Id.* NAC 425.130 requires the district court to "consider the reasonable costs of child care paid by either or both parties and make an equitable division thereof."

Contrary to Melissa's assertion, the district court's order expressly accounted for child care and medical costs and stated that "NAC

[9]Melissa also asserts that the district court erred in its calculation of child support based on its alleged miscalculation of Paco's income for failing to account for the shareholder loan. Because we conclude that the district court did not abuse its discretion in declining to include the loan in Paco's income determination, we necessarily also conclude that the district court did not miscalculate child support on this basis.

425.130 requires consideration of whether either parent incurs daycare expenses for the minor children. . . . Neither party reported daycare expenses. Any out-of-pocket medical expenses incurred on behalf of the minor children shall be equally divided between the parties." Thus, the district court properly considered child care and medical costs as required by NAC 425.130. Though Melissa argues on appeal that child care costs are approximately $1,200, she did not provide a citation to the record where she requested the district court consider and divide this amount between the parties, and this court will not consider an argument made for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (stating that a point not raised in the district court is generally "deemed to have been waived and will not be considered on appeal").

Substantial evidence also supports the district court's decision not to award child support arrears. A pre-trial order found that Paco did not pay child support for September and October 2021, but it expressly stated that "arrears, if any, will be an issue addressed at trial." During trial, Paco advised the court that he did not owe arrears because he actually paid Melissa $10,000 in September and October, and Melissa did not refute Paco's assertion.[10] These payments were reflected in evidence admitted at trial. Therefore, the district court was within its discretion not to award Melissa child support arrears.

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[10]We further note that, on appeal, Melissa seemingly concedes that Paco paid her $10,000 during these months. She argues that Paco "was ordered to pay $9,703 in temporary and spousal support, not $10,000," and so these funds were actually "the additional expenses he was ordered to pay." However, Paco was ordered to pay Melissa an additional $10,000 per month for her expenses beginning January 2022. In September and October 2021, Paco's temporary support obligation totaled $9,703, which would have been satisfied by Paco's $10,000 payments.

The district court failed to make adequate findings regarding Paco's Reno investment

Next, Melissa contends that the district court abused its discretion in declining to find that Paco wasted $476,000 in marital funds in connection with his failed 2019 property investment in Reno. She argues that the burden should have shifted to Paco to establish that these funds were not wasted because Paco failed to disclose the investment to her, never claimed a loss on his personal tax returns, and failed to produce documentation regarding the terms of the investment. Alternatively, she claims that the $476,000 still exists and the district court erred in failing to account for these funds when distributing community property.

A district court's disposition of community property is reviewed for an abuse of discretion. *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 919 (1996). The court must make an equal disposition of community property in a divorce unless there is a "compelling reason" to make an unequal disposition, NRS 125.150(1)(b), such as marital waste, *Kogod*, 135 Nev. at 75, 439 P.3d at 406. "Generally, the dissipation which a court may consider refers to one spouse's use of marital property for a selfish purpose unrelated to the marriage in contemplation of divorce or at a time when the marriage is in serious jeopardy or is undergoing an irretrievable breakdown." *Id.* at 75-76, 439 P.3d at 406-07 (quoting 24 Am. Jur. 2d *Divorce and Separation* § 524 (2018)); *cf. Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 487 (Ct. App. 2023) (recognizing that certain expenditures, even when not disclosed or agreed to, may not constitute marital waste if the expenditures are not for a purpose inimical to the marriage).

During trial, Paco testified that he and an executive of a large construction company purchased a piece of land in Reno in order to build a

custom house. He produced a wire transfer document showing the funds had been wired to a title company in Reno. Paco further testified that he received no return on his investment due to multiple factors, including the COVID-19 pandemic, the increase in material costs, and excessive financing fees due to delays. However, he also stated that the house was sold, though he did not know how much it sold for. Melissa only testified that she was not aware of Paco's investment and would like to be reimbursed for half the amount.

In its order, the district court found that Melissa did not meet her burden "to establish with specificity the nature and facts that give rise to" marital waste. The court expressly considered the same arguments that Melissa reasserts on appeal—that Paco took the funds from Silver Lands, that he did not disclose the investment to Melissa, and that he lacked documentation. Despite these claims, the district court found that Melissa failed to meet her burden to establish waste under *Kogod*.

An investment that subsequently does not result in a positive return is not necessarily an expenditure inimical to the marriage. *Cf. Kogod*, 135 Nev. at 76, 439 P.3d at 407 (recognizing that community property spent on extramarital affairs will almost always constitute waste because the act of engaging in an extramarital affair is inherently inimical to the marital relationship). Further, Paco's investment was made in December 2019, nearly 18 months before he filed for divorce, and Melissa does not argue on appeal that at that time, their marriage "was in serious jeopardy" or "undergoing an irretrievable breakdown." *Id.* at 75-76, 439 P.3d at 406-07. While Melissa testified that Paco did not discuss the investment with her, she likewise did not testify that they were contemplating divorce or that their marriage was undergoing an

irretrievable breakdown at the time of the investment. *Id.* Therefore, the district court did not abuse its discretion in finding that Melissa failed to present sufficient evidence to shift the burden to Paco in support of her marital waste claim.

However, Melissa also argues that the $476,000 still exists and that Paco has access to these funds, which should have been equally distributed to the marital community. In the decree, the district court found that Melissa failed to meet her burden regarding waste, but the court did not make findings as to whether any funds remained from Paco's investment. Though Paco stated that he did not receive a return or profit on his investment, he testified that the investment home was eventually sold, but he could not recall the sale price. Thus, the record reflects that Paco's investment, or a portion thereof, may have still existed at the time of trial.

Therefore, we reverse and remand this matter to the district court for further findings on the existence or whereabouts of Paco's $476,000 investment. On remand, the district court must make clear findings regarding the existence of Paco's investment funds and, if any funds exist, they must be equally divided absent clear findings to support an unequal distribution. *See* NRS 125.150(1)(b).

The district court did not abuse its discretion in declining to award Melissa further attorney or expert fees

Next, Melissa argues that the district court should have awarded her attorney and expert fees. The district court acknowledged in its order that Paco already paid $25,000 in initial attorney and expert fees, $9,000 towards a custody evaluator's retainer, and then an additional $10,000 in preliminary attorney fees. Further, the court found Melissa did not "prevail" in the custody determination because the parties stipulated

that Melissa would have primary physical custody; nor did she prevail on other significant trial issues, including the business valuation, alimony, and limiting Paco's access to the children. The court also found that Melissa failed to properly account for her additional expenses that Paco was ordered to pay beginning in January 2022.[11] Noting that both parties incurred substantial fees in the matter, the district court determined that both parties were responsible for incurring those fees. Finally, the court found that because the community property and support awards put the parties on a level playing field, neither party was entitled to additional attorney fees.

"[A]n award of attorney fees in divorce proceedings will not be overturned on appeal unless there is an abuse of discretion by the district court." *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). In family law matters, courts must consider the disparity in income of the parties when evaluating an attorney fee request, *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998), and fees may be awarded so that a party is "able to meet [their] adversary in the courtroom on an equal basis" without having to liquidate their assets or jeopardize themselves financially, *Sargeant v. Sargeant*, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972). An expert fee award is also reviewed for an abuse of discretion. *Logan v. Abe*, 131 Nev. 260, 267, 350 P.3d 1139, 1144 (2015).

Melissa first asserts she was entitled to attorney fees under NRS 18.010(2) because she "prevailed in some respect" on all of the pleadings prior to trial as well as the physical custody modification from the initial parenting agreement. She similarly argues that she was entitled to

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[11]The district court's order mistakenly stated that Melissa was required to account for $15,000 per month, rather than $10,000.

expert fees paid to the custody evaluator because she prevailed on the custody determination. With respect to the custody determination—which was resolved by stipulation—the Nevada Supreme Court "has consistently held that a party cannot be a 'prevailing party' where the action has not proceeded to judgment," including when issues are resolved by stipulation. *Dimick v. Dimick*, 112 Nev. 402, 404, 915 P.2d 254, 256 (1996). Melissa recognizes *Dimick* and claims that "family law has developed greatly since then," but she does not argue why *Dimick* does not apply. To the extent Melissa argues we should ignore or overrule *Dimick*, this court cannot overrule supreme court precedent. *Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d at 487 n.7.

With respect to Melissa's claim that she prevailed on all of the pretrial pleadings, Melissa did not provide any citations to the record in support of her contention, and so we decline to consider it. *See* NRAP 28(e); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993) ("This court need not consider the contentions of an appellant where the appellant's opening brief fails to cite to the record on appeal.").[12] In any

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[12]Melissa similarly argues, without any citations to the record or supporting legal authority, that she should have received attorney fees because her alimony request was not excessive and because the parties have disparate financial conditions. In the absence of appropriate citations or authorities, we decline to consider these claims. *See Allianz*, 109 Nev. at 997, 860 P.2d at 996. Melissa also contends that she was entitled to fees under EDCR 5.219 because she claims it is "indisputable" that Paco's actions delayed proceedings so as to increase fees and costs unreasonably and vexatiously. However, the district court noted that there were some instances when Paco's conduct increased fees and other instances when Melissa's conduct increased fees; thus, the court effectively excused what it deemed to be mutual conduct. *See* EDCR 5.219 (allowing the court to impose attorney fees for "*unexcused* intentional or negligent conduct"

event, Melissa fails to argue or demonstrate that Paco's claims or defenses were "brought or maintained without reasonable ground or to harass" as required to receive fees under NRS 18.010(2)(b). *See Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 293-94 (Ct. App. 2023) (recognizing that being a prevailing party in a custodial action is not enough to be entitled to an award of attorney fees; rather, the district court must make findings that a party's "claims or defenses were either unreasonable or meant to harass").

Second, Melissa disputes the district court's finding that she should not receive additional attorney fees because she failed to account for her expenses. Rather, she contends that she actually accounted for a "large portion" of the expense deposits. Melissa was required to account for $10,000 per month between January 2022 and the time of trial, which began 11 months later in December 2022. However, she concedes that she only accounted for approximately $58,000. Thus, the district court did not clearly err in finding that Melissa did not account for the expenses as ordered. Therefore, we conclude that the district court did not abuse its discretion in declining to award Melissa attorney or expert fees.

Melissa is not entitled to relief on her remaining claims

Melissa further argues the district court abused its discretion in setting the parenting time schedule, by allowing Paco to select the family therapist, by declining to keep discovery open regarding the marital home, and by failing to impose interest on Paco's equalization payment. We disagree with each of these arguments.

(emphasis added)). In this regard, the court found that "multiple requests for relief pursued by Melissa lacked merit," and she does not establish that this finding was clearly erroneous. Therefore, the district court did not abuse its discretion in declining to award Melissa attorney fees under EDCR 5.219.

As to the parenting time schedule, Melissa contends that the district court improperly awarded Paco more time than he requested. The district court's decision regarding custody, including parenting time allocations, is reviewed for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Melissa claims that Paco only requested parenting time for five days total during the first two weeks of each month. However, Paco requested this schedule "on alternating weeks," and thus actually requested parenting time for ten-to-eleven days each month. The district court ultimately granted Paco parenting time with the children approximately nine-to-ten days per month based on the parties' stipulation that Melissa have primary physical custody. Therefore, Melissa's claim that the court awarded Paco more time than he requested is belied by the record, and the district court did not abuse its discretion in setting the parenting time schedule.

Next, Melissa argues that Paco should not have been allowed to unilaterally select the family therapist given that the parties were awarded joint physical custody. However, the parties concede that the court-ordered family therapy ended in February 2024. Therefore, Melissa's argument regarding the selection of the therapist is moot. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("[A] controversy must be present through all stages of the proceeding, and even though a case may present a live controversy at its beginning, subsequent events may render the case moot." (citations omitted)).

Melissa next contends that the district court erred in declining to keep discovery open regarding the marital home. During their marriage, the parties resided at a rental home, but pursuant to the lease, they had an option to purchase the home for the amount necessary to satisfy the

outstanding principal on the mortgage. At the time of trial, neither party had attempted to exercise that option, and in a post-trial order the district court denied Melissa's request to keep discovery open regarding the property.

NRCP 16.21(a) generally prohibits postjudgment discovery in family law matters. It does, however, permit a court to order postjudgment discovery in two situations: (1) if a court has ordered an evidentiary hearing in a postjudgment child custody matter, or (2) if a court finds "good cause" for the discovery. NRCP 16.21(b). Melissa did not argue, either to the district court or on appeal, what "good cause" would permit the district court to keep discovery open, what information would be disclosed during discovery, or why discovery could not be reopened in the event Paco exercises the option to purchase the home. Therefore, Melissa did not establish that the district court abused its discretion by declining to keep discovery open.

Lastly, Melissa contends that the district court erred in failing to impose interest on Paco's equalization payment. The district court ordered Paco to pay Melissa an equalization payment of approximately $738,000, to be paid in monthly installments of $6,150 over 10 years. Interest on the judgment was stayed so long as Paco made his monthly payment, but if Paco failed to make a payment, Melissa would "be entitled to statutory interest on the unpaid balance." She argues this was error because there is a rebuttable IRS presumption that after six years, a property transfer is not incident to the cessation of marriage, and so the last four years of payments create a "taxable event." She further asserts that she is losing income in the "time value of money" during the pendency of the equalization payments because she could use the funds for investments.

However, Melissa did not raise these arguments in the district court, and we decline to address them for the first time on appeal. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983. Insofar as Melissa contends the district court was required to impose interest on Paco's equalization payment, she did not provide any authority in support of her claim, and so we decline to address it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). Therefore, she is not entitled to relief.[13]

The district court did not abuse its discretion in calculating the community's interest in Silver Lands

In his cross-appeal, Paco contends that the district court erred in calculating the community's interest in Silver Lands, his separate business. In its order, the district court recounted the testimony of Beau Johnson, Paco's expert, and Jennifer Allen, Melissa's expert, regarding Silver Lands' value. The court found that "[Johnson's] methodology was the correct methodology for determining the community's interest in the business, but that [Allen] used the correct methodology for determining the current value of Silver Lands." The district court then adopted Johnson's pre-marital business valuation, which allocated a fair rate of return under *Pereira*, and determined Silver Lands' pre-marital value to be $1,409,900. The court subtracted this amount from Allen's valuation of Silver Lands at the time of trial, $2,500,000, which resulted in a community interest of $1,091,000.

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[13]However, in the event the district court revises the division of community property to account for Paco's $476,000 investment, the court may also need to reconsider the installment plan for Paco's equalization payment.

As noted above, a district court's disposition of community property is reviewed for an abuse of discretion. *Wolff*, 112 Nev. at 1359, 929 P.2d at 919. Whenever conflicting evidence is presented, including expert testimony, it is for the trier of fact to determine what weight and credibility to give to that testimony. *Ford Motor Co. v. Trejo*, 133 Nev. 520, 531, 402 P.3d 649, 657 (2017). When faced with conflicting evidence, this court will "leave witness credibility determinations to the district court and will not reweigh credibility on appeal." *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007).

When apportioning the community interest of a spouse's separate property, the *Pereira* method is the preferred allocation method unless the separate property owner can establish that a different method is more likely to accomplish justice. *Cord v. Neuhoff*, 94 Nev. 21, 26, 573 P.2d 1170, 1173 (1978). Under the *Pereira* method, "the district court may allocate a fair rate of return on the initial investment in the business to the separate property estate, with the remaining value of the business being allocated to the community property estate." *Devries v. Gallio*, 128 Nev. 706, 710, 290 P.3d 260, 263 (2012) (citing *Pereira v. Pereira*, 156 Cal. 1, 103 P. 488 (1909)).

Paco argues the district court should have compared Johnson's pre-marital and trial valuations and found the community value interest in Silver Lands to be zero, instead of comparing Johnson's pre-marital valuation with Allen's valuation of the business at the time of trial. Specifically, Paco asserts that the district court's decision was an abuse of discretion because it found that Johnson's methodology "was the appropriate business valuation methodology," but then used Allen's different methodology to calculate Silver Lands' current value. Further, he

contends that the court should not have relied on Allen's expert report at all because she did not calculate Silver Lands' pre-marital value or conduct her own *Pereira* analysis.

Contrary to Paco's argument, the district court did not determine that Johnson's *valuation* methodology was correct; rather, the court found that Johnson's *community interest* methodology—the *Pereira* method—was correct, and the district court conducted a *Pereira* analysis consistent with the pre-marital value contained in Johnson's report. Further, Allen did not propose a competing pre-marital valuation, and so Johnson's pre-marital value of $1,409,900 under *Pereira* was undisputed. Therefore, the district court did not abuse its discretion in utilizing Johnson's pre-marital value and Allen's current value in its *Pereira* analysis.

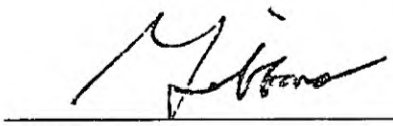
To the extent that Paco contends the district court should have relied exclusively on Johnson's report, the court recognized that Johnson and Allen presented competing valuations of Silver Lands at the time of trial, with each expert relying on different methodologies to calculate their respective values. When faced with this conflicting evidence, the district court found Allen's trial valuation to be more accurate than Johnson's. This was a credibility determination within the district court's discretion, which we do not reweigh on appeal.[14] *See Ellis*, 123 Nev. at 152, 161 P.3d at 244.

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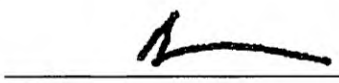
[14]Paco asserts that, had Allen used her methodology to determine Silver Lands' pre-marital value, "the assumption can be made that the beginning values would also vary vastly" from Johnson's pre-marital valuation, and this "could have resulted in [Allen] also finding a zero community interest in the business." However, as Paco acknowledges, his argument rests on an assumption and is speculative; further, Paco did not support his claim with any legal authorities or citations to the record, and

Therefore, we reverse and remand for further findings regarding Paco's $476,000 investment, but we affirm the remaining aspects of the decree. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, AND REMAND this matter to the district court for proceedings consistent with this order.[15]



_____, C.J.
Gibbons



_____, J.
Bulla



_____, J.
Westbrook

cc: Hon. Amy Mastin, District Judge, Family Division
Hon. Gregory G. Gordon, District Judge, Family Division
Pintar Albiston LLP
Jones & LoBello
Eighth District Court Clerk

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so we decline to consider it. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. To the extent that Paco argues the district court was obligated to reject Allen's trial valuation because she did not separately conduct her own *Pereira* analysis, he did not provide legal authorities in support of his assertion. *See id.*

[15]Insofar as the parties raise other issues not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.