

IN THE SUPREME COURT OF THE STATE OF NEVADA

HEIDI BOTE FLOOD,
Appellant,
vs.
RAYMOND EDWARD FLOOD,
Respondent.

No. 51374

FILED

NOV 03 2009

ORDER OF AFFIRMANCE

MARIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is an appeal from a final divorce decree. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Respondent Raymond Flood filed a complaint for divorce from appellant Heidi Flood. The parties settled property issues prior to trial, and agreed to equal division of a marital estate in excess of \$20 million. A trial was held by the district court on alimony issues. Subsequently, the district court filed a memorandum decision awarding Heidi alimony payments of \$100 per year from 2008 to 2010. The district court stated that it awarded minimal alimony in order to preserve jurisdiction over the issue of Raymond's career asset for potential future modifications.¹

On appeal, Heidi argues that the district court abused its discretion by: (1) awarding only minimal spousal support when she is comfortable financially but cannot approach Raymond's income level, and (2) refusing to consider respondent's stock-option income in making its alimony decision. We conclude that Heidi's arguments are without merit, and thus, affirm the district court's award of alimony.

¹The parties are familiar with the facts, and we do not recount them here except as necessary to our disposition.

Standard of review

We review a district court's decision concerning a divorce proceeding for an abuse of discretion, and we will affirm the court's rulings regarding the disposition of property in such proceedings if supported by substantial evidence. Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998). Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. See Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999). Such evidence need not be voluminous. Wright v. State, Dep't of Motor Vehicles, 121 Nev. 122, 125, 110 P.3d 1066, 1068 (2005). Further, the district court is entitled to wide discretion in determining whether to grant spousal support and the amount of the award. Fick v. Fick, 109 Nev. 458, 464, 851 P.2d 445, 450 (1993).

Minimal spousal support award

NRS 125.150(8) lists the relevant factors that a district court shall consider when determining an award of spousal support. These factors include:

- (a) The financial condition of each spouse;
- (b) The nature and value of the respective property of each spouse;
- (c) The contribution of each spouse to any property held by the spouses pursuant to NRS 123.030;
- (d) The duration of the marriage;
- (e) The income, earning capacity, age and health of each spouse;
- (f) The standard of living during the marriage;
- (g) The career before the marriage of the spouse who would receive the alimony;

(h) The existence of specialized education or training or the level of marketable skills attained by each spouse during the marriage;

(i) The contribution of either spouse as homemaker;

(j) The award of property granted by the court in the divorce, other than child support and alimony, to the spouse who would receive the alimony; and

(k) The physical and mental condition of each party as it relates to the financial condition, health and ability to work of that spouse.

NRS 125.150(8) (permitting the court to consider these factors in addition to any other factors it deems relevant).

Heidi argues that the application of the NRS 125.150(8) factors indicate that she should have been awarded significant alimony. She contends that the factors pronounced in paragraphs (a), (c), (d), and (e) of subsection 8 of NRS 125.150 weigh in her favor, while paragraph (b) has no parity.² Specifically, Heidi argues that while both parties entered the union with substantial wealth, Raymond leaves with much greater earning power, and she will resume her role in taking care of their daughter. Further, Heidi argues that she gave the parties a financial start, kept a home base for Raymond, and relieved him of his child rearing responsibilities for the 15-year duration of their marriage.

While Heidi admits that she has significant assets from which she will derive an income, she argues that she will never approach Raymond's earning capacity. She contends that in Shydler v. Shydler, 114 Nev. 192, 198, 954 P.2d 37, 40 (1998), this court set out a policy of

²Heidi does not discuss the other factors in her brief.

narrowing any large gaps in post-divorce earnings, and that policy should have been applied in this case.

We conclude that Heidi's arguments are without merit and that the district court did not abuse its discretion in awarding only minimal spousal support. Alimony is an equitable award serving to meet the post-divorce needs and rights of the former spouse. Id. at 198, 954 P.2d at 40 (1998). NRS 125.150(1)(a) authorizes the district court to award spousal support as "appears just and equitable."

This court has consistently held that two of the primary purposes of alimony "are to narrow any large gaps between the post-divorce earning capacities of the parties, and to allow the recipient spouse 'to live as nearly as fairly possible to the station in life [] enjoyed before the divorce.'" Shydler, 114 Nev. at 198, 954 P.2d at 40 (quoting Sprenger v. Sprenger, 110 Nev. 855, 860, 878 P.2d 284, 287-88 (1994) (other internal citations omitted)). However, this court has indicated that "our case law does not require the district court to award alimony so as to effectively equalize salaries." Shydler, 114 Nev. at 199, 954 P.2d at 41. Based on our view of alimony awards, the district courts are bestowed with wide discretion in determining the amount and duration of alimony payments. Fick, 109 Nev. at 464, 851 P.2d at 450.

We conclude that the alimony award must stand because the award was not contradictory either to the express language of NRS 125.150(8) or to the relevant caselaw. In fact, the district court thoroughly analyzed the NRS 125.150(8) factors when concluding that alimony should not be awarded. Further, having reviewed the record and the parties' appellate briefs, we conclude that the district court's award of minimal spousal support was supported by substantial evidence.

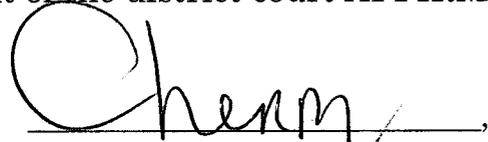
Respondent's stock-option income

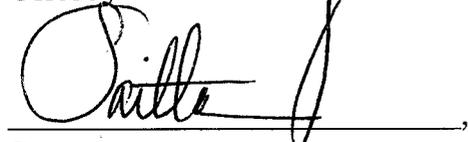
Heidi next argues that in deciding the alimony award, the district court failed to consider Raymond's stock-option income and ignored Raymond's testimony that his income for 2007 would be between \$3 million and \$4 million, with \$300,000 of his income attributable to salary and the remainder of his income attributable to exercising stock options. We disagree.

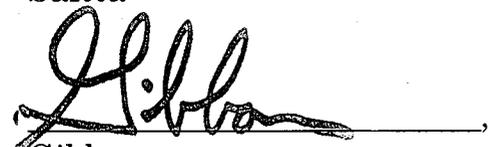
The district court clearly stated in its memorandum decision that Raymond "will likely not replicate his 2003-07 taxable income in the future because all Ivanhoe Mines options have now been exercised." Further, the court found that Raymond's "income is not as predictable or recurring as [Heidi] contends." Accordingly, we conclude that the district court's determination of Raymond's post-divorce earning capacity was based on substantial evidence, and thus, was not an abuse of discretion.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. David A. Hardy, District Judge
Carolyn Worrell, Settlement Judge
Bowen, Hall, Ohlson & Osborne
Holland & Hart LLP/Reno
Molof & Vohl
Washoe District Court Clerk