IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT TELLES, ADMINISTRATOR OF THE ESTATE OF MICHAEL BRANNAN,
Appellant,
vs.
DONALD CORNELIUS, SPECIAL ADMINISTRATOR OF THE ESTATE OF DIANA FREDERICK,
Respondent.

No. 74695-COA

ROBERT TELLES, ADMINISTRATOR OF THE ESTATE OF MICHAEL BRANNAN,
Appellant,
vs.
DONALD CORNELIUS, SPECIAL ADMINISTRATOR OF THE ESTATE OF DIANA FREDERICK,
Respondent.

No. 74815-COA

ORDER AFFIRMING IN PART, REVERSING IN PART, VACATING IN PART, AND REMANDING

Robert Telles, administrator of the estate of Michael Brannan, appeals from a district court divorce decree and post-decree order awarding attorney fees and costs. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

Michael Brannan filed a complaint for divorce from Diana Frederick in 2016.[1] Following a trial, the district court issued a written decree of divorce in which it distributed various marital assets between the parties—including a pest-control business, two residential properties, and four vehicles—and ordered Brannan to pay alimony. Following entry of the

[1]We do not recount the facts except as necessary to our disposition.

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decree, the district court awarded Frederick $2,955 in attorney fees and costs. On appeal, Brannan's estate (the Estate) argues that the district court abused its discretion by: (1) improperly valuing the business at $180,000 without any evidence to substantiate that amount;[2] (2) making an unequal distribution of marital assets and failing to support the distribution with sufficient findings; (3) failing to join the business as a party to the proceedings; (4) awarding attorney fees and costs to Frederick under NRS 18.010(2)(b); and (5) awarding an excessive amount of attorney fees and costs.

We first address whether the district court improperly valued the business. The Estate argues that the district court essentially guessed what the value of the business was and that its finding was not supported by substantial evidence. We review a district court's decisions in a divorce decree for an abuse of discretion. *Devries v. Gallio*, 128 Nev. 706, 709, 290 P.3d 260, 263 (2012). We will affirm those decisions that are supported by substantial evidence in the record. *Id.* "Substantial evidence is that which

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[2]We note that the Estate also argues that the district court improperly valued the business both as an asset subject to distribution and as income for purposes of its alimony calculation. However, the Estate also argues that the issue of alimony is now moot. Both Brannan and Frederick have since passed away, and Frederick's estate does not argue that Brannan missed any alimony payments while she was still living. Accordingly, we decline to address any issues pertaining to the district court's award of alimony, as those issues are now moot. *See* NRS 125.150(6) ("In the event of the death of either party or the subsequent remarriage of the spouse to whom specified periodic payments [of alimony] were to be made, all the payments required by the decree must cease, unless it was otherwise ordered by the court."); *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (noting that "even though a case may present a live controversy at its beginning, subsequent events may render the case moot").

a sensible person may accept as adequate to sustain a judgment." *Id.* (internal quotation marks omitted).

While both parties presented conflicting testimony below as to the value of the business, we find no support in the record for the exact number the district court settled upon ($180,000). As best we can discern, the district court appears to have simply doubled the amount of annual revenue the business earned according to Frederick's testimony ($90,000), but this is mere guesswork. Because we cannot determine how the district court actually went about assigning a value to the business, and because substantial evidence in the record does not support the valuation, we must reverse the district court's decision and remand for further findings or proceedings.

Relatedly, we next consider whether the district court made an unequal distribution of property and failed to support it with adequate findings. Pursuant to NRS 125.150(1)(b), the district court "[s]hall, to the extent practicable, make an equal disposition of the community property of the parties," but it "may make an unequal disposition of the community property in such proportions as it deems just if [it] finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition."

Here, the Estate argues that the district court made an unequal distribution of the property without setting forth reasons for doing so in writing, whereas Frederick argues that the district court made an equal distribution. However, in light of the district court's seemingly arbitrary valuation of the business, as well as the lack of any findings with respect to the value of any of the other property disposed of in the decree, we cannot determine whether the distribution was actually equal in nature or whether

it was unequal such that the district court should have set forth compelling reasons for it in writing. Accordingly, we vacate this portion of the district court's decision and the district court must also address this issue on remand.

Next, we consider whether the district court erred by failing to join the business as a party to the action in light of the business holding title to one of the residential properties and one of the vehicles disposed of in the decree. Generally, "all persons materially interested in the subject matter of [a] suit [must] be made parties so that there is a complete decree to bind them all." *Olsen Family Tr. v. Eighth Judicial Dist. Court*, 110 Nev. 548, 553, 874 P.2d 778, 781 (1994); *see also Schwob v. Hemsath*, 98 Nev. 293, 294-95, 646 P.2d 1212, 1212-13 (1982) (remanding for joinder of a corporation holding title to real property in an action adjudicating title to that property). However, as the district court found below, and as substantial evidence in the record reveals, Brannan and Frederick were the sole owners of the business. Accordingly, unlike in *Olsen* and *Schwob*, the district court did not enter any order impacting the rights of third parties not participating in the proceedings below, and thus, it was not required to join the business—which itself was an asset subject to distribution—to the divorce. We therefore affirm the district court's decision as to this issue.

Finally, we consider whether the district court properly awarded attorney fees and costs under NRS 18.010 and whether that award was excessive. Because we reverse the district court's decree in part and remand for further findings or proceedings, we necessarily vacate the post-decree award of fees and costs, as it was premature. *See W. Techs., Inc. v. All-Am. Golf Ctr., Inc.*, 122 Nev. 869, 876, 139 P.3d 858, 862 (2006) (awards of fees and costs may be reconsidered on remand without reaching a decision

on their merits). Accordingly, without addressing the merits of the Estate's argument on this point, we vacate the award of fees and costs, but we note that a later award may still be warranted depending on how the case proceeds on remand.

Based on the foregoing, 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.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
McFarling Law Group
Radford J. Smith, Chartered
Eighth District Court Clerk

[3]Additionally, we vacate the stay the Nevada Supreme Court entered pending disposition of this appeal. *See Brannan v. Frederick*, Docket Nos. 74695 & 74815 (Order Granting Stay, November 5, 2018).