

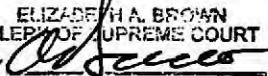
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY JOHN COE,
Appellant,
vs.
VONDA KAY COE,
Respondent.

No. 79513-COA

FILED

NOV 25 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Timothy John Coe appeals from an award of alimony in a divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

Timothy James Coe and Vonda Kay Coe married in 2011.¹ During the marriage, Timothy was employed full-time as a "Site Lead" for a military contracting company, and spent the majority of each year working outside of the United States.² Vonda worked part-time in the insurance industry, but was primarily responsible for maintaining the household and caring for their seven children from previous relationships. Later, Timothy provided financial support to Vonda that enabled her to obtain a medical assistant certificate and real estate license. However, she never found employment as a medical assistant, and at the time of trial had not received any real estate commissions or found alternative employment.

Vonda filed for divorce pro se in September 2018 and in her complaint requested alimony in the amount of \$3,500 per month for five years. The district court awarded her temporary spousal support of \$5,000

¹We do not recount the facts except as necessary to our disposition but we do note the parties lived together for several years prior to their marriage.

²We reference the parties by their first names for clarity.

per month. In her pretrial memorandum and at trial, Vonda requested an alimony award that was greater than the amount she pleaded in her complaint and also greater than the amount she was receiving in temporary alimony.

Following trial, the district court issued a divorce decree, dissolving the Coes' marriage, distributing property between the parties, and awarding Vonda alimony. Relevant to this appeal, in awarding alimony, the district court made findings pursuant to the factors contained within NRS 125.150(9). Ultimately, the court found that Vonda had an economic need for alimony, including maintaining her marital standard of living, and ordered Timothy to pay Vonda alimony in the amount of \$6,800 per month for 36 months followed by \$5,000 per month for 24 months. Thus, the district court ordered five years of alimony for an eight-year marriage. Timothy appeals.

Timothy makes two primary arguments on appeal. First, he argues that the district court erred in awarding Vonda alimony in an amount greater than what she pleaded in her complaint. Second, he argues that the district court abused its discretion by awarding alimony to Vonda, as this was a "short term marriage," and that the award was excessive as to its amount and duration. Vonda, on the other hand, argues that the district court did not abuse its discretion in issuing its alimony award.

A district court has broad discretion in deciding whether to award alimony. *Buchanan v. Buchanan*, 90 Nev. 209, 215, 523 P.2d 1, 5 (1974). Under NRS 125.150, a judge may award alimony "as appears just and equitable." NRS 125.150(1). In deciding the amount and duration of an alimony award, the court should consider what is "just and equitable" based on the circumstances of each case. *Shydler v. Shydler*, 114 Nev. 192, 199, 954 P.2d 37, 41 (1998). The supreme court has recognized that an award of

alimony can be considered just and equitable when alimony is necessary to support the economic needs of a spouse, equalize post-divorce earnings, or maintain a spouse's marital standard of living. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 68, 439 P.3d 397, 401 (2019). Further, the district court must consider the factors enumerated in NRS 125.150(9) in addition to any other factors the district court considers relevant. NRS 125.150(9). NRS 125.150(9) lists 11 factors that a district court must consider when awarding alimony.

This court reviews the district court's award of alimony for abuse of discretion. "In reviewing an award of spousal support, this court extends deference to the discretionary determination of the district court and withholds its appellate power to modify or reverse except in instances where an abuse of the trial court's discretion is evident from a review of the entire record." *Gardner v. Gardner*, 110 Nev. 1053, 1055-56, 881 P.2d 645, 646 (1994). Additionally, "[r]ulings supported by substantial evidence will not be disturbed on appeal." *Shydler*, 114 Nev. at 196, 954 P.2d at 39. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004).

On appeal, Timothy argues that Vonda's alimony award should have been limited to the \$3,500 requested in her complaint. We disagree. First, we note that Timothy has waived this argument as it was presented for the first time on appeal. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."); see also *Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) ("[P]arties may not

raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below.” (internal quotation marks omitted)).

Second, even if Timothy had raised the argument below, his argument fails. A district court is not limited in awarding alimony based on the amount a party pleads or prays for in its complaint, rather the district court is charged with awarding 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).³ Therefore, we conclude that the district court did not abuse its discretion in awarding alimony that exceeded the amount set forth in Vonda’s pleadings.⁴

³*Cf. Midwest Supply, Inc. v. Waters*, 89 Nev. 210, 213, 510 P.2d 876, 878 (1973) (“[T]he prayer for relief, except in the case of a judgment by default, does not limit recovery; and is not a part of the claimant’s cause of action.” (internal quotation marks omitted)).

⁴Timothy also argues that he was denied due process because he was not on notice that the alimony award could be greater than what was contained in Vonda’s complaint. We decline to address this issue as it is not cogently argued. *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); *see also Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (finding that a “bare or naked claim . . . unsupported by any specific factual allegations” is not entitled to relief (internal quotation marks omitted)).

We next address Timothy's argument that the district court abused its discretion by awarding "excessive" alimony to Vonda. Timothy challenges the award of alimony on two grounds: the length of the marriage and the amount and duration of the alimony awarded.

Timothy first argues that the alimony award is excessive due to the length of the marriage being only eight years. Specifically, Timothy contends that the purpose of alimony—equalizing post-divorce earnings or maintaining a spouse's marital standard of living—only applies to long-term marriages, and not to short-term marriages, like his and Vonda's. To support this argument, Timothy primarily relies on cases from Florida and suggests that this court adopt their reasoning.⁵ We decline to do so, concluding that Nevada law is sufficient to address this matter.

We are also not persuaded because Timothy was in fact on notice that an alimony award could exceed the amount pleaded in Vonda's complaint. Indeed, at the time of trial Timothy was already paying a greater amount in temporary spousal support than what Vonda had initially requested. Further, Vonda's trial statement requested alimony in an amount that greatly exceeded the amount stated in the complaint. Finally, Timothy's counsel at trial was free to argue against Vonda's need for an increase in monthly alimony, but declined to do so.

⁵For example, Timothy cites to two Florida cases which provide the presumptive lengths of short, moderate, and long-term marriages in determining the amount of alimony to be awarded. *See Dickson v. Dickson*, 204 So. 3d 498 (Fl. Ct. App. 2016); *see also Jaffy v. Jaffy*, 965 So. 2d 825 (Fl. Ct. App. 2007). Florida's statutory scheme specifically incorporates these distinctions. *See Fla. Stat. § 61.08(4)* ("[A] short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater."); *see also Fla. Stat. § 61.08(8)* ("Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage

Nevada's statutory scheme does not make the distinction between a short or long-term marriage; rather, duration of the marriage is just one of many factors a district court must consider when awarding alimony. NRS 125.150(9). Importantly, NRS 125.150(9)(d), which directs the district court to consider the "duration of the marriage," does not act as a limitation or a barrier in awarding a specific amount of alimony based on the length of marriage. Further, the Nevada Supreme Court has affirmed alimony awards for "short-term" marriages. See *Winn v. Winn*, 86 Nev. 18, 19-20, 467 P.2d 601, 602 (1970) (affirming an alimony award for a marriage that lasted only two and a half years); *Adler v. Adler*, 80 Nev. 364, 365-66, 394 P.2d 350, 350-51 (1964) (finding no abuse of discretion in denying a motion to modify alimony, which had been ongoing for ten years at the time of the modification request, even though the marriage had only lasted for six years). Thus, we conclude that the length of the marriage in and of itself does not preclude or limit an alimony award under Nevada law.

Next, Timothy argues that the alimony awarded to Vonda is excessive in both amount and duration. We disagree. Below, the district court, after a one-day trial, awarded Vonda monthly alimony of \$6,800 for three years followed by \$5,000 per month for an additional two years, totaling five years of alimony payments. Timothy argues that this award was excessive because for the first three years following the divorce, the monthly alimony payment will be approximately 51 percent of his monthly annual

of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances." Nevada's statutory scheme, however, does not make such distinctions. See NRS 125.150(9).

income. Additionally, he argues that the duration is excessive because it extends over half of the length of the marriage.

As indicated above, when considering whether to award alimony, both as to the amount and duration, the district court must consider those factors enumerated in NRS 125.150(9). In analyzing those factors, the Nevada Supreme Court has recognized that alimony may be awarded to compensate for one spouse's economic needs, such as one spouse's inability to pay for basic necessities, and also to maintain the marital standard of living, and for whatever amount of time is necessary to meet these needs. *Kogod*, 135 Nev. at 69-71, 439 P.3d at 402-03 (citing *Gardner*, 110 Nev. at 1058, 881 P.2d at 648 (increasing alimony by ten years because the wife's "contribution to the community over many years [was] not fairly recognized by the two-year alimony award"))).

Accordingly, "NRS 125.150, which authorizes alimony, directs a district court to consider several factors that help the court to understand the spouses' financial needs and abilities to pay." *Id.* at 69, 439 P.3d at 402. When considering a spouse's financial needs, a district court must consider: "[t]he financial condition of each spouse," NRS 125.150(9)(a); "[t]he nature and value of the respective property of each spouse," NRS 125.150(9)(b); "[t]he income, earning capacity, age and health of each spouse," NRS 125.150(9)(e); "[t]he award of property granted by the court in the divorce . . . to the spouse who would receive the alimony," NRS 125.150(9)(j); and "[t]he 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(9)(k).

Likewise, the district court should also pay equal attention to those factors relating to economic loss: "[t]he duration of the marriage," NRS 125.150(9)(d); "[t]he income, earning capacity, age and health of each

spouse,” NRS 125.150(9)(e); “[t]he standard of living during the marriage,” NRS 125.150(9)(f); the spouse’s career before the marriage, NRS 125.150(9)(g); specialized education or training obtained during the marriage, NRS 125.150(9)(h); and “[t]he contribution of either spouse as homemaker,” NRS 125.150(9)(i).

“After considering these factors, and any other relevant circumstance, the district court may award alimony under NRS 125.150(1)(a) to compensate a spouse for non-monetary contributions to the marriage and economic losses from the early termination of the marriage, such as lost income-earning potential or a decreased standard of living.” *Kogod*, 135 Nev. at 71, 439 P.3d at 404.

Here, the district court, after hearing Vonda’s trial testimony, reviewing the Coes’ financial disclosures, and viewing multiple bank and credit card statements, considered each of these factors in detail, finding, among other things: that Timothy earned \$160,000 to \$165,000 annually, whereas Vonda, at most, had made approximately \$5,000 in a given year; that Vonda had severe nerve damage in both of her ears, restricting the type of employment she would be able to obtain; that Vonda had been unable to obtain gainful employment because of her disability; and finally, that neither party would be leaving the marriage with significant income-producing assets or property, as at trial, the evidence demonstrated that each party would be leaving the marriage with nominal savings and a vehicle.

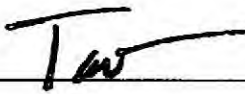
The district court considered the parties’ standard of living, finding that the parties’ standard of living and monthly expenses of \$11,000 were “above average” and funded entirely by Timothy. The district court also considered Vonda’s vocational training in the context of her disability, and concluded that Vonda would not be able to maintain her marital lifestyle, even when she eventually obtained employment. The district court also

found that before marriage, Vonda worked part-time and contributed to the household as the primary homemaker. The court further found that Vonda did not give up a significant career when she married Timothy, to which she could return after the divorce; thus, her premarital earning capacity was significantly less than that of Timothy's before marriage, and Timothy's earning capacity dwarfed her post-marital earning capacity.

Based upon these findings, the district court awarded Vonda monthly alimony of \$6,800 for three years followed by \$5,000 for an additional two years for a total of five years of alimony. We conclude that the district court did not abuse its discretion as to either the amount or duration of alimony awarded to Vonda as the district court properly considered all of the necessary factors pursuant to NRS 125.150(9) and made detailed findings in its order. Thus, we conclude that the court's decision to award alimony to Vonda was just and equitable and supported by substantial evidence presented at trial. *See Gardner*, 110 Nev. at 1055-56, 881 P.2d at 646; *Williams*, 120 Nev. at 565, 97 P.3d at 1129; *Winn*, 86 Nev. at 20, 467 P.2d at 602 (concluding that the district court is not bound by "mathematical certainty" in determining alimony awards). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Rena G. Hughes, District Judge, Family Court Division
Law Offices of F. Peter James, Esq.
Kainen Law Group
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Eighth District Court Clerk