

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KAREN SUTTON,
Appellant,
vs.
RICHARD SUTTON,
Respondent.

No. 81623-COA

FILED

SEP 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Karen Sutton appeals from a district court's decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

Karen and Richard Sutton were married for almost 22 years.¹ Karen worked during the first seven years of marriage but has been disabled and unable to work for the past 16 years. Since then, Karen's sole source of income has been her monthly social security disability benefits. Richard worked for the first five years of marriage before having a work-related accident. Richard then received workers' compensation, worked off and on, obtained loans from his parents, and attended school for three different trades before finally obtaining his nursing degree in 2013. During nursing school, the couple used Karen's disability benefits, a loan from Richard's parents, and income from Richard's part-time job to support the community.

With few exceptions, financial troubles plagued Karen and Richard's marriage. The couple moved often and lived in either trailer homes or apartments throughout their marriage. However, the couple

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

enjoyed a higher standard of living after Richard obtained his nursing degree and license until their separation in 2018.

After their separation, Richard filed for divorce and relocated to Tennessee. For 2020,² the year during which the trial took place, Richard was on track to earn a net monthly income of approximately \$4,225. This income level was the highest it had ever been. Richard's expenses were approximately \$2,971 per month. After expenses, Richard's monthly disposable income was approximately \$1,254. At the time of trial in June, Richard was 53 years old and had no health conditions that would prevent him from continuing to work as a nurse. At trial, Richard testified that his income included overtime pay. He testified that he wished to stop working overtime at some point in the near future, citing physical health concerns.

Karen was 59 years old at the time of the trial and testified that she was not able to work. Karen continues to rely on her social security disability benefits as her sole source of income. Karen's net monthly income was \$1,408. Her monthly expenses were approximately \$1,800. Thus, after expenses, Karen was left with a monthly deficit of approximately \$392. Karen lives in an income-assisted apartment in Las Vegas. Her apartment complex is frequented by homeless people and drug users. Karen's apartment has been broken into at least four times, and she testified that she wanted to move into a safer apartment. She further testified that she was currently unable to afford certain medical expenses (medical supplies, medical tests, dental, and eye care).

²The district court explained that Richard was on track to earn approximately \$64,896 in 2019. It appears that it actually meant 2020. Richard testified at trial that his 2019 income was \$54,059. Richard's 2019 tax return was admitted into evidence and it reflected the same.

Karen and Richard resolved all issues related to the division of their property prior to trial. Thus, the only issue before the district court at trial was the amount and duration of an alimony award, if any. In reaching its decision, the district court set forth findings as to each of the 11 factors listed in NRS 125.150(9). Such findings include, in part, that Richard had an ability to pay alimony and that Karen had a need for alimony. The court further found that Richard's income was likely to continue to increase over time while Karen's income would only increase if her government benefits increased. The court found that the overtime component of Richard's income was consistent enough to be included in his total monthly income. The court concluded that, overall, the couple had a low standard of living throughout the marriage, notwithstanding the five years during which Richard made more money as a nurse. The court also found that Richard's standard of living had increased since the separation while Karen's standard of living had decreased. The court noted that Karen should be able to live in a safer apartment as part of meeting her basic necessities. The court awarded Karen alimony in the amount of \$450 per month for a duration of eight years. This appeal followed.

Karen makes two arguments on appeal. First, she argues that the district court abused its discretion in awarding her only \$450 per month. Karen argues that this amount leaves her with a surplus of only approximately \$100 per month³ and that \$100 per month is not enough to

³The district court specifically found that Karen's monthly deficit was approximately \$392. Thus, the alimony award of \$450 per month appears to only leave her with a \$58 surplus. However, on appeal, Karen notes her monthly deficit is closer to \$350. As such, she states throughout her brief that the alimony award provides her with a \$100 surplus. Richard cites only to the \$392 deficit found in the district court's order.

pay the costs of living in a safer apartment or her outstanding and ongoing medical expenses. She requests that this court reverse and award her alimony at \$800 per month. Second, Karen argues that the eight-year duration of the alimony award is too short. She argues that because she is permanently disabled and has no marketable skills her financial situation will be the same after eight years as it is now. Therefore, she requests that this court award her lifetime alimony. Richard counters that the alimony award was not an abuse of discretion because the district court considered and set forth findings under NRS 125.150(9). Richard also notes that the parties can revisit both the amount and duration of alimony should the parties' financial situations change.

A district court may award alimony to either spouse as appears just and equitable. NRS 125.150(1)(a). To determine whether an alimony award is just and equitable, a district court must consider the 11 factors listed in NRS 125.150(9). *See DeVries v. Gallio*, 128 Nev. 706, 711-13, 290 P.3d 260, 264-65 (2012). This court reviews a district court's decision to award alimony for an abuse of discretion. *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996). However, "deference is not owed to legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015).

A district court's decision in a family law proceeding must be supported by both specific findings and an adequate explanation for the district court's ultimate ruling. *See, e.g., id.* at 453, 352 P.3d at 1144 (reversing a custody determination because the district court failed to tie its factual findings to its final ruling); *see also Miller v. Miller*, 134 Nev. 120, 124-25, 412 P.3d 1081, 1085-86 (2018) (reversing a child support determination because the district court failed to make sufficient factual findings making it unclear how the district court arrived at the amount it

did); *Manuela H. v. Eighth Judicial Dist. Court*, 132 Nev. 1, 7-8, 365 P.3d 497, 501-02 (2016) (granting a petition for a writ of mandamus because the district court failed to make factual findings as to why petitioner should submit to drug testing and admonishing the district court to make relevant findings *and* provide an adequate explanation of the reasons for its order). Without such, this court cannot say with assurance whether the district court's determination was made for appropriate legal reasons. *Davis*, 131 Nev. at 452, 352 P.3d at 1143. It is not enough to simply process a case through a list of statutory factors and then announce a ruling. *Id.* at 451, 352 P.3d at 1143. Rather, the district court's decree or order must be tied to the underlying factual findings. *Id.* Here, while the district court made specific findings as to the factors listed in NRS 125.150(9), it did not explain *how* the factual findings supported its alimony award in amount and duration.

Like in *Davis*, the district court's final determination here is not entirely consistent with its factual findings. *See id.* at 453, 352 P.3d at 1144 (noting that the district court made observations that, if anything, supported the party against whom it ruled). Specifically, the district court found that Richard's income will likely increase over time while Karen's income will only increase if the government increases her disability benefits. Richard has no health issues restricting his working ability while Karen is incapable of working. Karen supported Richard while he obtained his nursing degree and license, thereby allowing him to have a substantial and increasing income. Karen's additional medical needs are unsatisfied.

The district court recognized that Karen ought to have the resources to be able to move into a more suitable apartment as part of her basic necessities.⁴

The district court, however, provided insufficient justification for the actual amount awarded or the duration considering the above stated findings. Additionally, considering that this was a 22-year marriage, the parties have a notable difference in age, and there was a lack of other assets awarded in the decree, the award must be tied to these underlying factual findings. See NRS 125.150(9)(d), (e), (h), (j), (k).

In *Kogod v. Cioffi-Kogod*, the supreme court held that justice and equity require alimony to achieve more parity in post-divorce income levels where (1) there is economic need, (2) the marriage and then divorce contributed to the parties' disparate income levels, or (3) one spouse is not able to maintain the marital standard of living while the other spouse maintains or exceeds the marital standard of living. 135 Nev. 64, 72-73, 439 P.3d 397, 404-05 (2019). Here, each of these three situations appear to apply. First, Karen demonstrates an economic need because she cannot afford to move to a more suitable apartment, and she has medical expenses that she cannot afford. Second, the couple's marriage contributed to the

⁴See NRS 125.150(9)(a) (stating the court may award a principal sum as alimony, which here, could be used for Karen to relocate). We also note that the district court may have omitted from its order certain findings that could have impacted the final alimony award. Specifically, Richard testified at trial that he is providing rent-free accommodations to his roommate and thus the roommate's portion of rent is included in Richard's monthly expenses. Also included in Richard's expenses is rent for a mobile home that was not included in his financial disclosure, although the testimony was unclear if this is a current expense. See NRS 125.150(9)(a), (b). Finally, Richard claims to have paid \$6,400 in "alimony" to Karen while the couple was separated but not yet divorced. Karen disputes receiving any support after the separation.


parties' disparate income levels because Karen's disability benefits supported the community while Richard obtained his nursing degree, which has resulted in his much higher income-earning capacity. Third and finally, Karen is unable to maintain the marital standard of living while Richard exceeds it. Even if we do not take into account the five-year period during which the couple enjoyed a higher standard of living, at no point during the marriage does the record suggest that the couple lived in apartments frequented by homeless people and criminals as Karen does now. Richard currently pays for an apartment for both himself and a roommate, has a car, and enjoys a significantly greater standard of living. As such, justice and equity may require more parity in the parties' disparate income levels.

We are unable to determine how the alimony award, which provides Karen with a surplus of approximately \$58 per month, is designed to enable her to pay her excess medical expenses and to move into more suitable accommodations. We are also unable to determine whether the eight-year duration of the award is tied to some expected circumstance which will alleviate Karen's need for alimony or affect Richard's ability to pay.⁵ Without an explanation as to how the district court arrived at the amount and duration of the alimony award, we cannot say with assurance that the award was made for appropriate legal reasons. *See Davis*, 131 Nev. at 452, 352 P.3d at 1143. Accordingly, we

⁵The parties' respective retirement ages may be an appropriate factor in evaluating the duration of the alimony award. Indeed, some states have statutes related to retirement age and alimony obligations. *See, e.g.*, Mass. Gen. Laws Ann. ch. 208, § 49(f) (West 2012); N.J. Stat. Ann. § 2A:34-23(j)(1) (West 2014); *see also* NRS 125.150(9) (stating that the listed factors are to be considered along with "any other factors the court considers relevant").

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further findings and an explanation as to how those findings support its conclusions.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Lansford Levitt, Settlement Judge
Hutchison & Steffen, PLLC
The Law Offices of Frank J. Toti, Esq.
Eighth District Court Clerk