

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS A. PICKENS,
INDIVIDUALLY AND AS TRUSTEE OF
THE LV BLUE TRUST,
Appellant,
vs.
DR. DANKA K. MICHAELS,
INDIVIDUALLY AND AS TRUSTEE OF
THE MICH-MICH TRUST,
Respondent.

No. 83491-COA

FILED

SEP 22 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Thomas A. Pickens appeals from a district court's findings of fact, conclusions of law, and judgment in a domestic matter. Eighth Judicial District Court, Clark County; Cynthia Dianne Steel, Senior Judge.

The parties met in 2000, when respondent Dr. Danka K. Michaels treated Pickens as a patient; later the two began a romantic relationship.¹ In April 2002, the parties held a Catholic wedding or commitment ceremony in Slovakia. While the parties disagree on the nature of the ceremony, it was discovered during the underlying proceedings that the parties were not legally married in Slovakia, as no formal documentation was registered with the government of Slovakia. Despite this, the parties referred to themselves as husband and wife, primarily in social situations. During their relationship, the parties purchased two real properties, which were titled in both Thomas and Danka's names as husband and wife. The parties also formed Patience One, LLC (Patience One) for the purpose of purchasing a commercial building.

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

In September 2016, Danka learned that Thomas was having an affair with another woman. Subsequently, Thomas and Danka met with attorney Shannon Evans, who had represented both parties individually in the past for estate-planning matters. Thomas agreed that his interest in the two real properties and in Patience One be assigned to Danka. In October 2017, Thomas filed a complaint for divorce and requested that the court set aside the deeds of real property reissued in Danka's name only, as well as the assignment of his interest in Patience One to her. In October 2018, Thomas filed an amended complaint for equitable relief under the putative spouse doctrine and pursuant to an express or implied agreement between himself and Danka to hold property as if the parties were legally married.

The case proceeded to a non-jury trial. The parties' CPA, Robert Semonian, testified that Thomas advised him that Thomas and Danka were *not* legally married, and Thomas acknowledged this to Semonian during tax season every year, when discussing his marital status. Semonian testified that the parties filed their federal income tax returns as "single" individuals every year. Evans testified at trial that "[a]t the meeting there was a discussion about [Thomas] transferring the assets to her because he was going to move to Florida and be with another family, and [the assets] were primarily financed by her medical practice and that seemed like the fair thing to do since he was going to start a different life." Evans also testified that "[t]here was a discussion that since they were not married, they could voluntarily gift or change title to assets between them without a divorce." During Thomas's testimony, he explained that the reason he executed the transfer documents was "because I was trying to make amends." He confirmed in his testimony at trial that he was not coerced, threatened, or forced into signing any document, and that he did so voluntarily. Specifically, Thomas testified that he and Danka each owned their own

separate businesses—Danka ran her medical practice and Thomas ran his construction management business—and maintained separate business accounts. Thomas also testified that he had no control over Danka’s business bank accounts. The district court ultimately found that Danka would receive the deeds to the two real properties in her name only and affirmed the assignment of Thomas’s interest in Patience One to Danka, finding that the parties were not married and that the transfers of real property and the assignment of interest in Patience One were valid and would not be set aside.

On appeal, Thomas argues that the district court abused its discretion by finding: (1) that community property by analogy under *Michoff*² did not apply despite the parties’ pooling of assets and implied and actual partnership; (2) that Thomas’s guilt over the affair resulting in his release of his interest constituted sufficient consideration in transferring his interest in the properties and assignment of interest in Patience One to Danka; (3) that there was not a fiduciary or confidential relationship between the parties; (4) that Thomas was not under undue influence when he transferred the assets in question to Danka; (5) that the assignment of interest in Patience One was valid when it erroneously listed Thomas’s trust as the grantor rather than Thomas personally; and (6) that Danka was not unjustly enriched.

Conversely, on appeal, Danka argues that Thomas knowingly and voluntarily transferred the assets over to her, and that substantial evidence supports the district court’s findings that community property by analogy did not apply. She further contends that there was valid consideration in the assignment of interest, and that Thomas voluntarily

²*Western States Constr. v. Michoff*, 108 Nev. 931, 840 P.2d 1220 (1992).

signed the real properties over to Danka because of his affair. Danka also argues that the district court did not abuse its discretion in finding that there was no fiduciary relationship between the parties as Thomas failed to prove that Danka held an authoritative position in a professional relationship that she exploited at the time of signing the deeds and assignment of interest. She further contends that Thomas was not under undue influence during the signing of the deeds and assignment of interest because he freely signed the transfer documents. She argues that the district court properly ordered the correction of the clerical error in the assignment of Thomas's interest in Patience One to her. Finally, she further argues that the district court did not abuse its discretion in finding no unjust enrichment because Thomas testified that he believed the deal was fair.

Standard of Review

Generally, this court reviews district court decisions in divorce or dissolution proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Likewise, we review the district court's decision in awarding a quasi-community property interest as though the parties were married for an abuse of discretion. *Castillo v. Castillo*, No. 69691-COA, 2016 WL 4737167, at *2 (Nev. Ct. App. Sept. 6, 2016) (Order Affirming in Part, Reversing in Part, and Remanding). "Rulings supported by substantial evidence will not be disturbed on appeal." *Williams*, 120 Nev. at 566, 97 P.3d at 1129 (quoting *Shydler v. Shydler*, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998)).³ However, a trial court abuses its discretion when it makes a factual finding or order that is not supported by

³See also *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 919 (1996) ("This court's rationale for not substituting its own judgment for that of the district court, absent an abuse of discretion, is that the district court has a better opportunity to observe parties and evaluate the situation.").

substantial evidence. *See Real Estate Division v. Jones*, 98 Nev. 260, 645 P.2d 1371 (1982). “Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment.” *Williams*, 120 Nev. at 566, 97 P.3d at 1129. Relevant to this appeal, and specific to Thomas’s arguments, we review whether substantial evidence supports a finding of a breach of a fiduciary duty. *Pub. Employees’ Ret. Sys. v. Harper*, No. 64987, 2016 WL 3257895, at *3 (Nev. June 10, 2016) (Order Affirming in Part, Reversing in Part, and Remanding). We also review whether substantial evidence supports a district court’s findings as to whether one party exerted undue influence over the other. *McCabe v. Pearson*, 89 Nev. 177, 178, 510 P.2d 875, 875-76 (1973). We also review whether substantial evidence supports a district court’s unjust enrichment determination. *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981). Finally, we conduct a de novo review of the district court’s conclusions of law. *Kilgore v. Kilgore*, 135 Nev. 357, 359-60, 449 P.3d 843, 846 (2019). We now address each of Thomas’s arguments on appeal in turn.

The district court did not abuse its discretion in finding that community property by analogy did not apply

Thomas argues that the district court abused its discretion when it ordered that the doctrine of community property by analogy did not apply. The community property by analogy doctrine allows unmarried parties to agree to acquire and hold property as if the couple is married, and the community property laws of this state will apply by analogy to those agreements. *See Hay v. Hay*, 100 Nev. 196, 199, 678 P.2d 672, 674 (1984); *Michoff*, 108 Nev. at 937-38, 840 P.2d at 1224. This doctrine is rooted in the concept that unmarried persons involved in a domestic relationship can lawfully contract with each other regarding property as do other unmarried persons, and courts will respect the parties’ reasonable expectations

concerning their property rights through either an implied or express contract. *Hay*, 100 Nev. at 199, 678 P.2d at 674. In *Hay*, the appellant alleged that she and her partner had held themselves out as husband and wife, even though they were not married. *Id.* at 198, 678 P.2d at 673. She further alleged that they had pooled their money as though they were a “marital community or a general partner.” *Id.* In its holding, the Nevada Supreme Court ruled that unmarried cohabitants may sue to enforce contracts concerning property rights. *Id.* at 199, 678 P.2d at 674.

Here, the parties held themselves out as married in social settings, and the deeds to the properties identified the parties as “married.” However, substantial evidence supports the district court’s conclusion that while some of the property was maintained jointly, the parties also made efforts to keep separate businesses and accounts, and filed individual income tax forms. Additionally, Thomas testified that when he required money for his businesses, he would borrow money from Danka, rather than treating these loans as part of community debt. Thus, substantial evidence supports that the parties did not pool all their assets together as husband and wife, nor did they universally hold themselves out as husband and wife such that community property by analogy should apply. *Cf. Michoff*, 108 Nev. at 938, 840 P.2d at 1224 (stating that “[a]s stated in *Marvin*, adults who voluntarily live together “may agree to pool their earnings and to hold *all* property acquired during the relationship in accord with the law governing community property” (citing to *Marvin v. Marvin*, 557 P.2d 106, 116 (Cal. 1976) (emphasis added))).⁴ Therefore, the district court did not abuse its discretion in finding that community property by analogy did not apply.

⁴Even assuming the parties intended to hold all property acquired during the relationship as community property, Thomas’s argument is

Thomas has not demonstrated the district court abused its discretion when it determined there was adequate consideration for the property transfers

Thomas argues that the district court abused its discretion in finding that his guilt over the affair was sufficient consideration to release his interest in the real properties and Patience One to Danka. It is long established Nevada law that consideration may be any benefit conferred or any detriment suffered, and the law will not inquire as to its adequacy. *Nyberg v. Kirby*, 65 Nev. 42, 51, 188 P.2d 1006, 1010 (1948); *see also Fair v. Howard*, 6 Nev. 304, 308 (1871) (“The question is not whether the consideration is adequate, but whether it is valuable.”). In circumstances where the consideration agreed upon has been accepted, the acceptance constitutes a waiver of any claim of inadequacy. *Nyberg*, 65 Nev. at 51, 188 P.2d at 1010. Further, “if the consideration be embraced in the terms of the notes, so as to constitute a part of the agreement knowingly entered upon, it cannot be disputed or denied that the promise as made was based upon the consideration thus expressed.” *Charleston Hill Nat. Mines, Inc. v. Clough*, 79 Nev. 182, 188, 380 P.2d 458, 461 (1963).

unpersuasive. Property acquired after marriage is presumed to be community property unless the presumption is overcome by clear and convincing evidence. *Forrest v. Forrest*, 99 Nev. 602, 604-05, 668 P.2d 275, 277 (1983). However, property acquired during marriage, through a spouse-to-spouse conveyance, creates the presumption the property is a gift, and becomes the receiving spouse’s separate property unless the presumption is rebutted by clear and convincing evidence. NRS 123.130; *Todkill v. Todkill*, 88 Nev. 231, 237-38, 495 P.2d 629, 632 (1972). Here, Thomas willingly executed his interests in the real properties and Patience One to Danka. *See Todkill*, 88 Nev. at 237, 495 P.2d at 632 (“When a husband transfers title to his separate property from his name into his wife’s name, he is presumed to intend a gift to her, even though his original intent was to defraud creditors.”). Thus, even applying community property by analogy, Thomas fails to show that the district court abused its discretion in upholding the transfers of the assets to Danka.

Here, the assignment of interest also relieved Thomas of any obligations or debts associated with Patience One. Notably, Thomas was divested of any debt and could not be held legally responsible for Patience One. Accordingly, independent of his alleged guilt, there was valuable consideration to support the transfer of Thomas's interest in Patience One to Danka. *See In re United Energy Corp.*, 944 F.2d 589, 595 (9th Cir. 1991) (finding that a proportionate reduction in rights or liability constituted an exchange of reasonably equivalent value); *see also Mayer Hoffman McCann, P.C. v. Barton*, 614 F.3d 893, 903 (8th Cir. 2010) (“[M]utual promises imposing some legal duty or liability on each promisor . . . [are] sufficient consideration to form a valid, enforceable contract” (quoting *Sumners v. Serv. Vending Co.*, 102 S.W.3d 37, 41 (Mo. Ct. App. 2003))).

With respect to the real properties, substantial evidence supports that Thomas's agreement to transfer his interest in the real properties to Danka could be treated as gifts. In Nevada, a valid inter vivos gift or donative transfer requires a donor's intent to voluntarily make a present transfer of property to a donee without consideration, the donor's actual or constructive delivery of the gift to the donee, and the donee's acceptance of the gift. *See In re Irrevocable Tr. Agreement of 1979*, 130 Nev. 597, 603, 331 P.3d 881, 885 (2014). Here, the elements of a gift were met, as Thomas voluntarily transferred his interest in the real properties over to Danka, without consideration, by executing the transfer documents; he delivered the transfer documents to Evans; and Danka accepted the transfer documents. In executing the transfer documents, Thomas divested himself of his interest in the real properties. *See Edmonds v. Perry*, 62 Nev. 41, 61, 140 P.2d 566, 575 (1943) (noting that a gift is valid when the donor “intends to and does divest himself of dominion and control over the [gift]”). Further, substantial evidence supports that Thomas transferred his interest in the

real property to Danka because he believed it was fair to do so and that he proceeded to sign the transfer documents because he was trying to make amends. Accordingly, Thomas's transfer of his interest in both real properties constituted valid donative transfers. Thus, we are not persuaded that the district court abused its discretion in awarding Danka the deeds for the real properties in her name only as gifts, as well as Thomas's interest in Patience One based on valuable consideration, being relieved of any debt associated with the company.

Thomas has not demonstrated the district court abused its discretion when it determined there was no breach of a fiduciary or confidential relationship

Thomas argues the district court abused its discretion in finding no fiduciary or confidential relationship between the parties during the relevant time frame. We discuss this issue in several contexts. In Nevada, "a breach of fiduciary duty claim seeks damages for injuries that result from the tortious conduct of one who owes a duty to another by virtue of a fiduciary relationship." *Stalk v. Mushkin*, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009). A fiduciary relationship exists between two parties "when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." *Id.* (internal quotations omitted).

Here, Thomas was being treated by another healthcare provider in Danka's office beginning in 2008. He failed to provide evidence that Danka was continuing to treat him during the time the transfer documents were executed. He also failed to demonstrate that he was suffering from any illness that made him vulnerable at the time the transfer documents were executed. *See Hoopes v. Hammargren*, 102 Nev. 425, 432, 725 P.2d 238, 243 (1986) (holding that to prevail in a claim of a breach of a fiduciary duty that arises out of a physician-patient relationship, the patient must prove that

the physician “held a superior authority position in the professional relationship and that, as a result of [their] illness, [the patient] was vulnerable”). Substantial evidence supports the district court’s finding that there was no fiduciary duty impeding the transfers, particularly since Thomas did not testify that he was emotionally unstable due to an illness that Danka was treating him for, and he did not have an expert witness testifying as to him suffering from any illness that would render him unable to execute the transfer documents. *Cf. id.* at 431, 725 P.2d at 242 (holding that a physician would violate the fiduciary duty owed to a patient when the physician takes advantage of the patient’s vulnerabilities). Moreover, Thomas testified that he understood his actions and freely signed the transfer documents, and he also was present when Evans discussed the legal aspects of the transfers with the parties. Therefore, the district court did not abuse its discretion in finding that there was no fiduciary duty owed to Thomas from Danka based on a physician-patient relationship.

To the extent Thomas argues that Danka owed him a fiduciary duty based on their relationship and as business partners, we are not persuaded. “The fiduciary duty among partners is generally one of full and frank disclosure of all relevant information” *Clark v. Lubritz*, 113 Nev. 1089, 1095, 944 P.2d 861, 865 (1997) (internal quotations omitted). Here, Thomas fails to establish that Danka was dishonest or did not proceed in good faith during the time the transfer documents were executed. Thomas testified that he willingly went to Evans’s office to sign the deeds and transfer documents, understood the provisions of the documents, declined to hire independent counsel, and signed a waiver of conflict. Therefore, the district court did not abuse its discretion in finding that there was not a breach of a fiduciary duty based on the parties’ business relationship. *Cf. id.* (concluding that there was sufficient evidence to support the jury’s award

for breach of fiduciary duty where the evidence indicated the appellants reduced the plaintiff's share of earnings and did not tell him about the reduction).

Thomas has not demonstrated the district court abused its discretion when it determined he was not under undue influence when he transferred his interest in the assets

Thomas argues that the district court abused its discretion in finding that he was not under undue influence when he transferred the assets to Danka. To establish undue influence, "it must appear, either directly or by justifiable inference from the facts proved, that the influence . . . destroy[ed] the free agency of the testator." *In re Estate of Bethurem*, 129 Nev. 869, 874, 313 P.3d 237, 241 (2013) (quoting *In re Estate of Hegarty*, 46 Nev. 321, 326, 212 P. 1040, 1042 (1923)). Moreover, the fact a beneficiary merely possesses or is motivated to exercise influence is insufficient to establish undue influence. *Hegarty*, 46 Nev. at 326, 212 P. at 1042.

Here, substantial evidence supports the district court's findings that Danka did not exert undue influence over Thomas. The evidence shows that Thomas was the one who offered to transfer the real properties to Danka while he was in Florida. Several days after returning to Nevada, Thomas signed the transfer documents as he had initially offered to do. Thomas acknowledged at trial that he was not threatened, harmed, or misled, and that he chose not to seek the advice of independent counsel before making the transfers. Thomas did not testify that Danka destroyed his free will or that she exercised influence over him such that it prevented him from making his own decisions regarding the transfers. *See, e.g., Bethurem*, 129 Nev. at 874, 313 P.3d at 241 (stating that influence does not amount to undue influence unless the influence destroys the testator's free agency). Therefore, the district court did not abuse its discretion in finding

that Thomas was not under undue influence at the time he signed the transfer documents.

The district court properly corrected a clerical error

Thomas argues that the district court abused its discretion in finding that the transaction transferring his interest in Patience One was valid, when Thomas signed in his capacity as Trustee of his Trust as opposed to signing in his individual capacity. An error is clerical in nature when it did not occur as a consequence of the exercise of a judicial function. *Marble v. Wright*, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961). Nevada courts recognize a remedy of reformation of contract when one party is mistaken as to the writing's contents or effect, and the other party, although aware of the mistake, says nothing to correct the mistake. See *NOLM, LLC v. County of Clark*, 120 Nev. 736, 740, 100 P.3d 658, 661 (2004).

Here, when executing the assignment of interest in Patience One, Thomas erroneously signed as a Trustee of LV Blue Trust, rather than in his individual capacity. This error was clerical in nature and the district court was within its discretion to correct it. See *McKissick v. McKissick*, 93 Nev. 139, 560 P.2d 1336 (1977) (concluding that a misdescription of a life insurance policy in a property settlement agreement resulted from a mistake by a party and was deemed by the court to be clerical in nature and could be corrected by the district court at any time). The district court noted that there was no way for Danka to have known of this mistake during the time the assignment of interest was executed, as she relied on the representation by Thomas, through his signature on the assignment, that he had placed his 50% interest in Patience One in his LV Blue Trust. To the extent the paperwork erroneously listed his trust and not Thomas individually as the transferor, said error was clerical in nature and the district court did not abuse its discretion in ordering reformation to correct the documentation.

Thomas has not demonstrated the district court abused its discretion when it determined that Danka was not unjustly enriched

Thomas contends that the district court abused its discretion in finding that Danka was not unjustly enriched. Unjust enrichment has three elements: (1) the plaintiff confers a benefit on the defendant, (2) the defendant appreciates the benefit, and (3) there is acceptance and retention by the defendant of the benefit under circumstances where it would be inequitable for her to retain it without payment. *Nautilus Ins. Co. v. Access Med., LLC*, 137 Nev. 96, 101, 482 P.3d 683, 688 (2021).

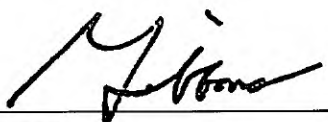
Here, the district court found that Thomas voluntarily executed the documents transferring the deeds to the two real properties to Danka such that they could be considered gifts. *See In re Irrevocable Tr. Agreement of 1979*, 130 Nev. 597, 603, 331 P.3d 881, 886 (2014) (citing to *Simpson v. Harris*, 21 Nev. 353, 362-63, 31 P. 1009, 1011 (1893) (noting that a donor giving a gift may not reclaim or expect repayment for the gift)). This was supported by Thomas's testimony at trial when he testified that he understood that he was voluntarily transferring his interests in the assets over to Danka to make amends with her, and therefore, could not have expected to retain any benefit in the properties. *Cf. Koebke v. Koebke*, 80014-COA, 2020 WL 6955291 (Nev. Ct. App. Nov. 25, 2020) (Order of Affirmance) (concluding that the district court did not abuse its discretion in finding that unjust enrichment would occur when the respondent expected to receive a reciprocal ownership benefit in the real property, where the appellant's testimony indicated he would add the respondent's name to the title). Further, Thomas failed to present any evidence of any benefit he expected to receive because of the transfer.

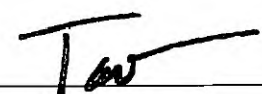
Finally, the district court also found that Thomas voluntarily transferred his interest in Patience One to Danka, who would then also be

responsible for all debts or outstanding obligations in Patience One. Thomas failed to present evidence of any unjust enrichment to Danka that she received as a result of the transfer. In determining that it was not inequitable for Danka to retain the full benefit of the transfers, the court also noted that Thomas failed to support his allegations of unjust enrichment by failing to present a forensic accounting expert at trial. Therefore, because substantial evidence supports the district court's findings, it did not abuse its discretion in denying Thomas's unjust enrichment claim.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Presiding Judge, Eighth Judicial District, Family Court Division
Stephen E. Haberfeld, Settlement Judge
Jones & LoBello
The Abrams & Mayo Law Firm
Goldstein Law Ltd.
Eighth District Court Clerk

⁵Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.