

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMR HOSNY,
Appellant,
vs.
HURIYEH HOSNY,
Respondent.

No. 82388-COA

FILED

DEC 22 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Amr Hosny appeals from a district court's findings of fact, conclusions of law, and decree of divorce.¹ Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

Amr and Huriyeh Hosny were married in July 1989 in Macau.² The parties moved to the United States in 2004, and Amr, along with Huriyeh's brother-in-law, opened a management and construction business. During the marriage, the parties held multiple businesses and assets as husband and wife. In 2018, the parties separated, and Huriyeh filed a complaint for divorce. In 2020, the district court held a trial to resolve the remaining contested issues of alimony, debt, expert witness fees, and attorney fees. At trial, Huriyeh testified as to her financial condition. She stated that she was primarily a homemaker during the marriage. She further testified that she took out a \$38,000 promissory note from her sister as a loan to pay her attorney and expert witness fees in the divorce proceedings. Next, Amr testified as to his financial condition. Amr testified that he primarily develops buildings and real estate projects at his business.

¹The Honorable Jerome T. Tao, Judge, did not participate in the decision of this matter.

²We do not recount the facts except as necessary to our disposition.

He also testified that his business profits were largely based on rental income generated from various properties. When asked about how the COVID-19 pandemic affected his income, Amr testified that he had multiple projects cancelled because of the pandemic and was unsure of what projects he would have in the future.

The district court entered a divorce decree, ordering Amr to pay Huriyeh \$5,000 per month in lifetime alimony. The court also ordered Amr to reimburse Huriyeh for her expert witness fees in the amount of \$6,000, although the expert did not testify at trial. The court indicated that it was awarding the expert fees due to the expert's apparent creation of demonstrative exhibits 5 and 14, which the court relied on in making its findings. The court further ordered Amr to pay Huriyeh's \$38,000 promissory note debt to her sister, which she borrowed, in part, to pay her attorney fees, and ordered him to pay the entirety of the U.S. Bank Credit Card on the basis that Amr made payments in support of the parties' adult children without Huriyeh's permission. Finally, the district court's order provided that Huriyeh could seek recovery of her attorney fees by filing a memorandum of fees and costs. Based on the record, the court has not yet awarded attorney fees and costs.³ In January 2021, Amr filed a motion for stay of that portion of the order requiring him to pay additional alimony and certain of Huriyeh's debts pending the resolution on appeal, which was granted. However, Amr currently pays Huriyeh \$3,200 per month in spousal

³However, we note that some of Huriyeh's attorney fees were paid on a Bank of America card, and that the promissory note incurred by Huriyeh was in part to pay her attorney fees and costs as well as expert fees. The decree did not reference that certain of the debts Amr was required to pay also included attorney fees, expert fees and costs.

support, an amount that he agreed to pay and continues to pay pending this appeal.

On appeal, Amr argues that the district court (1) abused its discretion when it awarded Huriyeh lifetime alimony based on findings not supported by the record; (2) abused its discretion in relying on the demonstrative exhibits in its determination to award alimony and distribution of community debt where the exhibits were purely demonstrative and contained mathematical errors; and (3) abused its discretion in ordering Amr to pay Huriyeh expert witness fees. Conversely, Huriyeh contends that the district court's award of alimony was supported by substantial evidence. With respect to the demonstrative exhibits, Huriyeh argues that any errors in the demonstrative exhibits were harmless. She further contends that the court did not abuse its discretion in awarding expert fees because the expert was not required to testify for her to recover such fees.

The district court abused its discretion in awarding alimony without properly accounting for the entire division of community property and debt

This court reviews a district court's factual findings for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009); *see also Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142-43 (2015) (“[D]eference is not owed to legal error.”). This court also reviews a district court's alimony determination for an abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 66, 439 P.3d 397, 400 (2019). This court will not interfere with the district court's alimony award unless “it . . . appear[s] on the entire record in the case that the discretion of the trial judge has been abused.” *Wolff v. Wolff*, 112 Nev. 1355,

1359, 929 P.2d 916, 918-19 (1996) (internal citation and quotation marks omitted).

“Alimony is financial support paid from one spouse to the other whenever justice and equity require it.” *Rodriguez v. Rodriguez*, 116 Nev. 993, 999, 13 P.3d 415, 419 (2000); *see also* NRS 125.150(1)(a) (providing that the alimony award must be “just and equitable”). In a divorce suit, the district court may award alimony for a specified period of time or in a lump sum. NRS 125.150(1)(a). NRS 125.190 allows an award of permanent or lifetime alimony. When determining if alimony is just and equitable, a district court must consider the eleven factors listed in NRS 125.150(9). *See generally Devries v. Gallio*, 128 Nev. 706, 711-14, 290 P.3d 260, 264-65 (2012). “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.

“In determining whether alimony should be paid, as well as the amount thereof, courts are vested with a wide range of discretion.” *Id.* at 66, 439 P.3d at 400 (citing *Buchanan v. Buchanan*, 90 Nev. 209, 215, 523 P.2d 1, 5 (1974)). After considering the factors listed in NRS 125.150(9), and any other relevant fact, a district court may award alimony to support the economic needs of the recipient. *See Gilman v. Gilman*, 114 Nev. 416, 423-24, 956 P.2d 761, 765 (1998) (“The Nevada legislature created spousal support awards to, inter alia, keep recipient spouses off the welfare rolls.”). Additionally:

The principles underlying permanent alimony do not contemplate an award for a spouse who is, after

the community is divided, capable of supporting him or herself, able to maintain the marital standard of living on his or her own, and not economically disadvantaged in his or her earning capacity as a result of the marriage.

Kogod, 135 Nev. at 75, 439 P.3d at 406.

Here, the district court applied NRS 125.150(9)(a)-(k) and analyzed all the factors when evaluating whether to award alimony. Problematically though, the district court's factual findings are contradictory, unclear, and not supported by substantial evidence. Although the court made findings that Amr's income from 2017 was \$120,000 and acknowledged that Amr's income in 2019 decreased to \$72,000, the court did not specifically determine the amount of income that it was ultimately using to determine the alimony award. The court appears to have concluded that Amr was able to continue earning the same amount as he historically had been but failed to account for the economic downturn of his business due in part to the COVID-19 pandemic. *See Ramacciotti v. Ramacciotti*, 106 Nev. 529, 533, 795 P.2d 988, 990 (1990) (reversing and remanding for "a more complete factual analysis" where "the district court's factual determination as to the parties' incomes was based on substantial evidence," but referenced the wrong time period and where there was a disparity between the respondent's income in 1987 and 1989). The lack of specific findings as to Amr's income complicates analysis of this issue, as the distributions from his business were based in part on rental income from assets, which the district court divided between the parties. As such, Amr will be earning less passive income from these assets since part of the income will now be distributed to Huriyeh. In other words, because of the division of the rental properties, and therefore the income related thereto, the assets will no longer generate income for Amr only. *See Kogod*, 135 Nev. at 68, 439 P.2d

at 401 (stating that alimony “is based on the receiving spouse’s need and the paying spouse’s ability to pay”).

With respect to Huriyeh’s financial condition, although the court summarily stated that Huriyeh would receive minimal amounts from the rental properties, the district court did not account for the entire award of property Huriyeh would be receiving after divorce, including all passive income, when determining the amount of alimony required to maintain Huriyeh’s standard of living. *See id.* at 72, 439 P.3d at 404 (“While a district court may generally award alimony to narrow large post-divorce gaps in income and to maintain the parties’ marital standard of living, the nature, and value of the community property [respondent] received in the divorce obviated any basis for awarding alimony.”).

Further, in this case, the district court’s alimony determination is not entirely consistent with its factual findings. Although the district court made findings as to the factors contained in NRS 125.150(1)(a), it is not enough for the district court to simply process a case through a list of statutory factors and then announce a ruling. *See generally Davis*, 131 Nev. at 452, 352 P.3d at 1143 (noting, albeit in the context of a custody determination, that “[s]pecific findings and an adequate explanation of the reasons for the . . . determination” are needed to enforce an order and facilitate appellate review”). The district court must tie the underlying factual findings to support its alimony award in amount and duration. *Devries*, 128 Nev. at 712-13, 290 P.3d at 265 (explaining that this court cannot adequately review a spousal support issue when the district court does not explain its reasons for awarding or denying spousal support).

Additionally, the court made erroneous factual findings as to the amount Amr paid to his adult children and the amount that Amr was paying

Huriyeh in support during the pending litigation when making its alimony determination. *See MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016) (stating an abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination). Therefore, the district court abused its discretion in awarding alimony without considering Amr's and Huriyeh's respective financial conditions based on the division of community property, as well as any change to Amr's financial condition due in part to COVID-19, when determining the appropriate amount of alimony to be awarded and the duration of the award.⁴

The district court abused its discretion in relying on the demonstrative exhibits when awarding alimony and dividing community debts

This court reviews the district court's admission of evidence for an abuse of discretion. *Abid v. Abid*, 133 Nev. 770, 772, 406 P.3d 476, 478 (2017). Under NRS 52.275, the contents of "voluminous writings" may be presented "in the form of a chart, summary or calculation" if the writings themselves "cannot conveniently be examined in court." This appears to be somewhat analogous to what the demonstrative exhibits in this case were intended to do. In *Allred*, the supreme court affirmed the use of demonstrative exhibits where the district court indicated that the exhibits

⁴On remand, the district court will need to assess the entire division of community property and debt, including Huriyeh's promissory note, the Bank of America credit card, and U.S. Bank credit card, in determining an award of alimony. *See Heim v. Heim*, 104 Nev. 605, 609, 763 P.2d 678, 680 (1988), *superseded by statute on other grounds as stated in Rodriguez v. Rodriguez*, 116 Nev. 993, 994-1000, 13 P.3d 415, 416-20 (2000) ("The judge must, in making a decision in alimony and property matters, form a judgment as to what is equitable and just, having regard to the respective merits of the parties and to the condition in which they will be left by the divorce.").

were consistent with testimony and the exhibits contained pictures that had already been admitted into evidence. *Allred v. State*, 120 Nev. 410, 419, 92 P.3d 1246, 1252-53 (2004); *United States v. Poschwatta*, 829 F.2d 1477, 1481 (9th Cir. 1987) (noting that charts or summaries of testimony or documents already admitted into evidence are not evidence themselves but rather “testimonial aids”), *overruled on other grounds as recognized by United States v. Powell*, 936 F.2d 1056, 1064 n.3 (9th Cir. 1991).

Here, demonstrative exhibits 5 and 14 were admitted into evidence, despite the fact that the expert did not testify to establish the foundation for the financial information contained in the exhibits, which was clearly erroneous on the part of the district court. *See Burroughs Corp. v. Century Steel, Inc.*, 99 Nev. 464, 470, 664 P.2d 354, 358 (1983) (holding that a district court determination which was based upon an exhibit not admitted into evidence was clearly erroneous); *see also* NRS 52.015 (requiring that evidence be authenticated “by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims”). Additionally, the exhibits contained mathematical errors and contained information that was not consistent with other admitted evidence. Therefore, the court abused its discretion by admitting the demonstrative exhibits into evidence and relying on the exhibits when making its alimony determination and in dividing debts and this error was prejudicial.

The district court abused its discretion in awarding Huriyeh expert witness fees to be paid by Amr

A district court’s decision to award more than \$1,500 in expert witness fees is reviewed for an abuse of discretion. *Frazier v. Drake*, 131 Nev. 632, 644, 357 P.3d 365, 373 (Ct. App. 2015). NRS 18.005(5) provides for the recovery of “[r]easonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court

allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee." A district court abuses its discretion when it fails to explain "by an express, careful, and preferably written explanation of the court's analysis of factors pertinent to determining the reasonableness of the requested fees and whether the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee." *Frazier*, 131 Nev. at 650, 357 P.3d at 377 (internal quotation marks omitted). The Nevada Supreme Court has held that while an expert does not need to testify to recover costs less than \$1,500, an "expert must testify to recover more than \$1,500 in expert fees." *Pub. Emps.' Ret. Sys. of Nev. v. Gitter*, 133 Nev. 126, 134, 393 P.3d 673, 681 (2017).

Here, although the district court evaluated the factors contained in *Frazier* in awarding the expert fee award, generally the expert must testify in order to be paid more than \$1,500, pursuant to NRS 18.005(5).⁵ Accordingly, the district court abused its discretion in awarding the expert witness fees over \$1,500. Therefore, the district court will need to vacate this award of expert fees and determine what amount, if any, Huriyeh is entitled to under Nevada law. In doing so, the district court will need to ensure that Huriyeh does not receive a double recovery for fees and costs incurred in the court's assignment of certain debts to Amr.

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 our disposition of this appeal. To the extent the district court is inclined to award Huriyeh attorney fees, the court will necessarily need to ensure that Amr does not overpay on Huriyeh's attorney or expert witness fees, given that he will already be paying a portion of those fees via payment of the promissory note.

Therefore, we

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Family Division, Department J
Larry J. Cohen, Settlement Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Naimi & Cerceo
Radford J. Smith, Chartered
Eighth District Court Clerk