

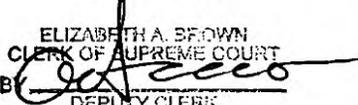
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SANDRA SHALA STEWART,
Appellant,
vs.
CURTIS ROY STEWART,
Respondent.

No. 83750-COA

FILED

FEB 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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

Sandra Shala Stewart appeals from a district court decree of divorce. Eleventh Judicial District Court, Lander County; Jim C. Shirley, Judge.

Sandra and respondent Curtis Roy Stewart were married in April 2010 and have three minor children. During the marriage, Curtis worked in the mining industry while Sandra was a stay-at-home mom. In 2018, Curtis filed a complaint for divorce seeking sole physical and legal custody of the children on the basis that Sandra was unfit to care for them due to mental health issues, addiction to narcotics and alcohol, and erratic behavior. Sandra thereafter retained counsel and filed an answer and counterclaim seeking joint physical and legal custody of the children, child support, and alimony.

After several years of contentious custody litigation, this case proceeded to trial in January 2021. Following trial, the district court entered a decree of divorce wherein it awarded sole legal and primary physical custody of the children to Curtis, while Sandra had supervised parenting time with the children. The court further determined, in the context of child support, that Sandra had been willfully underemployed in

the three years following the parties' separation, and imputed an income of \$780 a month, which would equate to a child support obligation of \$138 per month after the appropriate calculations. And because Curtis had sole custody of the children in the months prior to trial, the court also determined that Sandra owed Curtis \$1,242 in arrears. The court further awarded alimony to Sandra in the amount of \$1,000 a month for six months, and awarded Curtis \$37,419.25 in attorney fees under NRS 125.150(4).

Finally, in dividing the community assets, the district court primarily relied upon the values listed in Curtis' financial disclosure, including a three-year old assessment for the value of the parties' real property. Including the marital residence and other property, the parties' community estate totaled \$347,682.91.¹ The parties also had a substantial amount of community debt, including medical bills and the mortgage on the marital residence, which totaled \$233,037.29.

In dividing the community property, the district court awarded Curtis certain tools, guns, and vehicles, and the marital residence, which constituted approximately \$310,098.89 of the community. However, the court also ordered Curtis to assume all of the community debt, which reduced the net portion of his share to \$78,961.60. Sandra, meanwhile, was awarded the balance of Curtis' retirement accounts, and one handgun, for a total of \$36,744.00. As explanation for the unequal distribution of property,

¹The district court included both a written analysis and a table reflecting its property distributions in the decree of divorce. However, the table appears to value the marital residence at \$280,000, while the written portion of the order lists the value at \$290,000. Additionally, the calculations in the table do not contain several of the parties' debts listed in the order. Accordingly, this court will use the totals from the text of the district court's order rather than those contained in the table in resolving this matter.

the district court explained that, in light of the COVID-19 pandemic, it would be best for the three minor children in this matter to remain in the marital residence with Curtis. The district court then attempted to offset the award of a larger share of the community to Curtis by stating that Sandra did not have to pay the \$37,419.25 in attorney fees or the \$1,242 in child support arrears it had awarded to Curtis. As set forth in the divorce decree, the district court concluded that, with these amounts factored in, and including the \$6,000 alimony award, Sandra's total award was \$81,405. This appeal followed.

On appeal, Sandra challenges almost every aspect of the district court's decree of divorce.² The court will first address Sandra's challenges to the district court's custody determination.

The district court did not abuse its discretion when awarding sole legal and primary physical custody to Curtis

We review a district court's custody determinations for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 984 (2022). When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1). Moreover, the district court's "order must tie the child's best interest, as informed by specific, relevant findings respecting the [best interest factors] and any other relevant factors, to the custody determination made." *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015).

²Notably, Sandra failed to challenge the district court's child support determinations on appeal. And because—for the reasons outlined below—we affirm the custody determination, we also affirm the child support award. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).

On appeal, Sandra argues that the district court abused its discretion by failing to provide adequate findings related to the best interest of the child factors set forth in NRS 125C.0035(4). Specifically, she argues that the district court failed to make factual findings demonstrating that Sandra's actions created an adverse impact on the children. Although the best interest factors are nonexhaustive, *see* NRS 125C.0035(4); *Nance v. Ferraro*, 134 Nev. 152, 158, 418 P.3d 679, 685 (Ct. App. 2018) (explaining that the statutory best interest factors provide a nonexhaustive list for the district court's consideration), Sandra presents no authority demonstrating that the district court was required to make such a finding. As a result, Sandra has not demonstrated that relief is warranted on this basis. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued or supported by relevant authority).

Next, Sandra argues that the district court abused its discretion in awarding Curtis sole legal and primary physical custody of the children because the court's custody determination was made to punish Sandra. *See Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993) (noting that the supreme court "has made it clear that a court may not use changes of custody as a sword to punish parental misconduct"). But this assertion is belied by the record.

In its decree, the district court set forth detailed factual findings and analysis wherein it discussed Sandra's actions and how they relate to the best interest factors. Of particular concern to the district court were allegations of domestic violence against Sandra and the children allegedly perpetrated by Sandra's partner. The court also noted that Sandra had been arrested for driving under the influence of alcohol and crashed her vehicle during her parenting time with the children. In light of the

testimony at trial and the evidence presented across several evidentiary hearings in this case, the district court found that eight out of the twelve best interest factors weighed in favor of Curtis and found that the remaining four factors were either neutral or inapplicable. Notably, the district court found that: (1) Curtis was more likely to foster communication and cooperation between himself and Sandra; (2) although the children loved both parties, Curtis would be able to provide a more stable living environment for the children; and (3) Curtis' stable home would better foster relationships between the children.

As to the domestic violence and parental abuse factors, the court stated that it was highly concerned about the children continuing to reside with Sandra's partner while in Sandra's care and that it cannot abide placing minor children in a home with a man who has physically and mentally abused the children and (allegedly) their mother. Additionally, the court voiced concerns regarding Sandra's own history of domestic violence but noted that those allegations were not proven by clear and convincing evidence. *See* NRS 125C.0035(4)(k), (5) (creating a rebuttable presumption that joint custody is not in the best interest of the child if the court, after a hearing, finds by clear and convincing evidence that the parent or any other person residing with the child has committed an act of domestic violence). Accordingly, it did not apply the domestic violence presumption but nevertheless weighed the domestic violence factor in favor of Curtis.

Thus, contrary to Sandra's assertions, the district court's custody determination was not made to punish Sandra, but was instead based upon an express and careful analysis of the best interest factors. Moreover, the record demonstrates that the findings which the district court concluded favored an award of sole legal and physical custody to Curtis are supported by substantial evidence. We therefore affirm the district court's

custody determination. *See Rivero*, 125 Nev. at 428, 216 P.3d at 226. We now turn to the district court's award of alimony.

The district court abused its discretion by failing to consider NRS 125.150(9) when determining the amount of alimony to award

This court reviews a district court's decision to award alimony for an abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 66, 439 P.3d 397, 400 (2019). When determining if alimony is just and equitable, a district court must consider the eleven factors listed in NRS 125.150(9). *See Devries v. Gallio*, 128 Nev. 706, 711-13, 290 P.3d 260, 264-65 (2012). "Where the trial court does not indicate in its judgment or decree that it gave adequate consideration to the [appropriate] factors in failing to award any alimony . . . , this [c]ourt shall remand for reconsideration of the issue." *Forrest v. Forrest*, 99 Nev. 602, 606, 668 P.2d 275, 278 (1983).

On appeal, Sandra argues that the district court abused its discretion by arbitrarily awarding her only \$6,000 in alimony without express consideration of the eleven factors listed in NRS 125.150(9).³ Curtis counters by arguing that the record reflects that the district court appropriately considered the factors when compensating Sandra for her economic loss during the marriage. We agree with Sandra.

In the decree, the district court awarded Sandra \$1,000 per month in alimony for six months, but failed to include any analysis of the relevant factors to facilitate this court's appellate review of the alimony award. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142 ("Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may

³In its divorce decree, the district court referred to this award as both an award of alimony and as an equalization payment. But on appeal, Curtis concedes that the \$6,000 award was actually an alimony award.

mask legal error.” (internal citations omitted)); *In re Parental Rights as to C.C.A.*, 128 Nev. 166, 169, 273 P.3d 852, 854 (2012) (noting whether in writing or orally on the record, all the necessary factual findings should be on the record for proper appellate review because without specific findings, this court cannot determine whether the district court’s conclusions are supported by substantial evidence). Indeed, contrary to Curtis’ argument, there is nothing in the record to suggest that the district court performed an analysis of the necessary factors set forth in NRS 125.150(9). Accordingly, we reverse the district court’s award of alimony and remand for the court to perform the required statutory analysis, including making findings in accordance with NRS 125.150(9) to support any award of alimony. *Forrest*, 99 Nev. at 606, 668 P.2d at 278.

The district court abused its discretion when it failed to adequately explain the unequal distribution of the parties’ community property

Turning to the division of property, a court must make an equal disposition of community property but may make an unequal disposition “as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition.” NRS 125.150(1)(b). This court reviews a district court’s disposition of community property for an abuse of discretion. *Kogod*, 135 Nev. at 75, 439 P.3d at 406.

On appeal, Sandra argues that the district court abused its discretion when it unequally divided the property without providing an adequate explanation or calculating Sandra’s interest in the marital residence. Curtis responds that the court disposed of the marital estate to the extent practicable and that there was a reasonably equal division between the parties, especially considering that the court also required him to take on the substantial amount of community debt. Moreover, Curtis argues that the court provided a compelling reason for the unequal

distribution when it found that Curtis keeping the home would be in the best interest of the parties' children.

Here, the district court articulated that it would award Curtis the marital residence to provide the three minor children with a stable home and a place to live during the COVID-19 pandemic. However, the district court did not explain why the award of the marital residence (along with the tools, vehicles and most of the guns) to Curtis could not be offset by other assets or future payments to ensure Sandra received an equal share of the community. Indeed, as Sandra correctly points out, the court failed to even calculate what her share of the marital residence would be. Thus, given the district court's failure to provide written findings that adequately explained why its award of the marital residence to Curtis necessitated an unequal disposition of property, we conclude the district court abused its discretion in making an unequal division of the community assets. See NRS 125.150(1)(b); *Kogod*, 135 Nev. at 75, 439 P.3d at 406.⁴

Moreover, to the extent the district court attempted to offset this unequal distribution by effectively crediting the \$38,661.25 in attorney fees and child support arrears it awarded to Curtis toward Sandra's share of the community property, that decision was improper, as these amounts were not part of the parties' community estate.⁵ We therefore reverse the

⁴In light of this conclusion, this court expresses no opinion on the district court's ultimate division of community property at this time. Nonetheless, nothing in this order should be construed to prohibit an award of the marital residence to Curtis upon proper reconsideration of the parties' respective community interests in that property on remand.

⁵As noted above, the court also included the \$6,000 alimony award to Sandra in its calculation of her share of the community. While the divorce decree inconsistently referred to this amount both as alimony and as an

district court's division of the parties' community assets and remand for further proceedings consistent with this order. *Kogod*, 135 Nev. at 75, 439 P.3d at 406.

The district court abused its discretion when it awarded attorney fees and costs to Curtis without consideration of the appropriate factors under Miller v. Wilfong

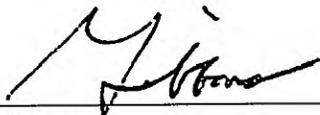
Finally, Sandra challenges the district court's award of attorney fees and costs under NRS 125.150(4), which permits the district court to "award a reasonable attorney's fee to either party to an action for divorce." Although this court may summarily reverse the award of attorney fees in this matter in light of our disposition, see *Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 571, 427 P.3d 104, 106 (2018) ("Because we reverse [the district court's order], we necessarily reverse the attorney fees and costs awarded to the [] parties."), we conclude that the district court abused its discretion in awarding attorney fees and costs to Curtis without complying with our supreme court's holding in *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005), which requires not only consideration of the factors in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), but also provides that the district court must "consider the disparity in income of the parties when awarding fees" in a divorce action. Because of the district court's failure to consider the appropriate factors, we reverse the district court's award of attorney fees for reconsideration on remand in light of our disposition.⁶

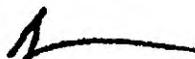
equalization payment, on appeal, the parties are in agreement that the \$6,000 award was alimony, as opposed to an equalization payment.

⁶We are further troubled by the fact that, while the district court primarily focused on the conduct of Sandra's counsel during the trial in

Accordingly, for the reasons set forth above, 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.⁷


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jim C. Shirley, District Judge
Margaret M. Crowley, Settlement Judge
Evenson Law Office
Dolan Law, LLC
Clerk of the Court/Court Administrator

deciding to award Curtis attorney fees, the court's ruling left Sandra solely responsible for the fees award.

⁷Insofar 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.