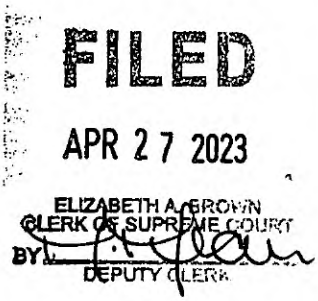
IN THE SUPREME COURT OF THE STATE OF NEVADA

SARAH JANEEN ROSE,
Appellant,
vs.
DAVID JOHN ROSE,
Respondent.

No. 84295



ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to modify a divorce decree. Eighth Judicial District Court, Clark County, Family Court Division; Cynthia Dianne Steel, Senior Judge. [1]

This matter arises from the parties' negotiation of a memorandum of understanding (MOU) and subsequent divorce decree. After a complex procedural history involving three different judges, Senior Judge Cynthia Dianne Steel entered an order modifying the decree to delete a provision related to respondent David Rose's retirement account.

Appellant Sarah Rose argues that the district court improperly modified the decree. Reviewing for an abuse of discretion, we disagree. *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018) (reviewing orders resolving NRCP 60(b) motions for an abuse of discretion); *Kramer v. Kramer*, 96 Nev. 759, 762, 616 P.2d 395, 397 (1980) ("Absent specific authorization for continuing jurisdiction over property rights,

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

23-13198

NRCP 60(b) governs motions to modify property rights established by divorce decrees."). We conclude that substantial evidence supports the district court's findings.[2] *See Vu v. Second Judicial Dist. Court*, 132 Nev. 237, 243, 371 P.3d 1015, 1019 (2016) (providing that when reviewing findings for clear and convincing evidence, this court reviews "the record and decision with a degree of deference, seeking only to determine whether the evidence adduced at the hearing was sufficient to have convinced the deciding body that [the issue to be determined] had been shown by clear and convincing evidence" (quoting *Gilman v. Nev. State Bd. of Veterinary Med. Exam'rs*, 120 Nev. 263, 274-75, 89 P.3d 1000, 1008 (2004))); *see also Fierle v. Perez*, 125 Nev. 728, 733 n.3, 219 P.3d 906, 909 n.3 (2009) (applying a clear-and-convincing-evidence standard to an NRCP 60(b)(3) motion), *overruled on other grounds by Egan v. Chambers*, 129 Nev. 239, 299 P.3d 364 (2013); *cf. State Farm Mut. Auto. Ins. Co. v. Wharton*, 88 Nev. 183, 186, 495 P.2d 359, 361 (1972) (explaining "that it is the nature of the grievance rather than the form of the pleadings that determines the character of the action" (internal quotation marks omitted)). And based on those findings,

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[2]The decree expressly provided that it "supersed[ed] any previous agreement between" the parties and did not contain "a clear and direct expression" that the MOU will survive the decree. *Day v. Day*, 80 Nev. 386, 389-90, 395 P.2d 321, 322-23 (1964) (holding that a previous agreement merges into a later divorce decree unless both documents explicitly state otherwise). Thus, the MOU merged into the decree and the district court's application of contract principles, if any, was improper. *See id.*; *Vaile v. Porsboll*, 128 Nev. 27, 33 n.7, 268 P.3d 1272, 1276 n.7 (2012) (holding that once an agreement is merged into a decree, it is improper to apply contract principles in resolving disputes under the later decree).

we conclude that the district court did not abuse its discretion in modifying the decree.

We further reject Sarah's argument that the district court erred by not finding that the SBP was community property. As this court has previously held, "unless specifically set forth in the divorce decree, an allocation of a community property interest in the employee spouse's pension plan does not also entitle the nonemployee spouse to survivor benefits." *Henson v. Henson*, 130 Nev. 814, 815-16, 334 P.3d 933, 934 (2014); *see also id.* at 820, 334 P.3d at 937 (noting that "the only pension benefit the nonemployee spouse is guaranteed to receive is his or her community property interest in the unmodified service retirement allowance calculated pursuant to NRS 286.551 and payable through the life of the employee spouse"). For this reason, and because the district court found that the parties discussed assigning the SBP at the MOU mediation, with David rejecting it, the district court also did not err in finding that the SBP was not an omitted asset. *See Amie v. Amie*, 106 Nev. 541, 542, 796 P.2d 233, 234 (1990) (holding that an ex-spouse may bring an equitable action to recover her share of unadjudicated community property assets that had been omitted from a divorce decree and never came "within the field" of the divorce litigation); *Doan v. Wilkerson*, 130 Nev. 449, 456, 327 P.3d 498, 503 (2014) (holding that the relevant inquiry concerning purportedly omitted assets is whether the asset was litigated and adjudicated; and stating that the asset had been litigated and adjudicated where it was mentioned in court documents, disclosed, and considered),

superseded by statute on other grounds as recognized by Kilgore v. Kilgore, 135 Nev. 357, 449 P.3d 843 (2019). We therefore

ORDER the judgment of the district court AFFIRMED.[3]

Stiglich, C.J.

Lee, J.

Bell, J.

cc: Chief Judge, Eighth Judicial District Court
Hon. Cynthia Dianne Steel, Senior Judge
Department I, Eighth Judicial District Court, Family Court Division
Kainen Law Group
Law Office of Shelley Lubritz, PLLC
Eighth District Court Clerk

[3]Additionally, we disagree with Sarah's arguments regarding the denial of her motion for judgment on partial findings under NRCP 52(c). The permissive rule explicitly grants the district court discretion to "decline to render judgment until the close of the evidence," and, given the procedural history of the case and the parties' arguments below, we cannot conclude that the district court abused its discretion by denying the motion.