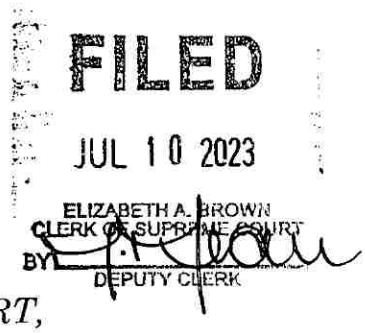
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LINGYING HE,
Appellant,
vs.
ZUYU SU,
Respondent.

No. 85068-COA



ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Lingying He appeals from a post-divorce decree district court order in a family matter. Eighth Judicial District Court, Family Division, Clark County; Charles J. Hoskin, Judge.

In April 2017, the district court granted Lingying and respondent Zuyu Su a decree of divorce that incorporated the terms of their joint petition for divorce. As relevant here, the decree awarded the parties equal interests in their marital residence and any associated debt and required Zuyu to pay Lingying $1,700 per month in alimony from May 1, 2017, through April 30, 2027. After Zuyu failed to make his alimony payments for several years, Lingying moved to enforce the decree or for an order to show cause why Zuyu should not be held in contempt, and Zuyu opposed that motion, seeking modification of his alimony obligation. Following a hearing, the district court entered an order in April 2021 in which it determined that Zuyu owed Lingying $98,600 in alimony arrears and reduced his ongoing alimony obligation to $300 per month.

Shortly thereafter, Zuyu moved for the district court to adjust the arrearages amount, and Lingying, in turn, filed an opposition and countermotion in which she sought an order directing the sale of the parties' marital residence with the proceeds to be split equally between the parties. Following a hearing at which Lingying conceded that she remarried in July 2017, the district court entered an order setting aside its prior April 2021 order pursuant to NRCP 60(b)(3). In particular, the district court determined that Lingying committed fraud upon the court in procuring the April 2021 order because Zuyu's alimony obligation terminated in July 2017 upon Lingying's remarriage under NRS 125.150(6), which states that "[i]n the event of . . . the subsequent remarriage of the spouse to whom specified periodic [alimony] payments were to be made, all the payments required by the decree must cease, unless it was otherwise ordered by the court." However, the district court concluded that Zuyu still owed Lingying $3,400 in alimony arrears for the payments that he failed to make prior to her remarriage. As to the parties' marital residence, the district court directed that it be listed for sale if Zuyu was unable to buy Lingying out of her interest in the home within a specified period, and further indicated that Lingying's net equity in the property was to be calculated based on its fair market value in April 2017, when the divorce decree was entered. This appeal followed.

On appeal, Lingying first challenges the district court's decision to set aside the April 2021 order pursuant to NRCP 60(b)(3) and to recalculate Zuyu's arrears based on its determination that Zuyu's alimony

obligation terminated in July 2017 upon her remarriage.[1] This court reviews district court orders granting NRCP 60(b) relief for an abuse of discretion. *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018). Likewise, we review the district court's decision to modify an alimony obligation for an abuse of discretion. *Gilman v. Gilman*, 114 Nev. 416, 422, 956 P.2d 761, 764 (1998).

In this respect, Lingying first argues that the district court improperly determined that Zuyu's spousal obligation terminated pursuant to NRS 125.150(6) since it was the product of a valid agreement between the parties, as reflected in their joint petition for divorce, and required Zuyu to pay alimony for a definite term. However, although we agree with Lingying that the parties' agreement was valid, *see* NRS 123.080(1)

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[1]Although Lingying contends that Zuyu waived any challenge to her argument because he did not address it in his answering brief or cite relevant legal authority, we disagree. At a minimum, Zuyu's answering brief at least raises Lingying's remarriage as an event affecting his alimony obligation, and pro se parties are not required to cite legal authority in their informal briefs. *Cf.* NRAP 28(k) (authorizing pro se appellants to file the informal brief form provided by the clerk of the court, which does not require citations to legal authority, in lieu of the brief described in NRAP 28(a)). While Lingying has also moved for this court to strike Zuyu's answering brief on grounds that it contains irrelevant, immaterial, and scandalous matter, *see* NRAP 28(j) (requiring appellate briefs to be "free from burdensome, irrelevant, immaterial or scandalous matters," and authorizing Nevada's appellate courts to strike or disregard briefs that are not in compliance with the foregoing rule), we discern nothing in Zuyu's answering brief that is sufficiently objectionable to warrant striking the document. Nevertheless, we have reviewed the issues raised in Zuyu's answering brief with due circumspection.

(providing that spouses may contract with each other concerning support during a legal separation), the mere fact that the agreement was valid and provided for alimony payments over a definite term does not preclude termination of the alimony obligation by operation of NRS 125.150(6). Indeed, nothing in the parties' joint petition for divorce, the terms of which were expressly incorporated in the divorce decree, indicated that the alimony provision was not modifiable or subject to termination upon remarriage pursuant to NRS 125.150(6). Moreover, given that the divorce decree used words of merger, the parties' agreement merged with the decree. *See Day v. Day*, 80 Nev. 386, 390, 395 P.2d 321, 323 (1964) (explaining that an agreement merges with the decree when the district court uses words of merger such as adopt, incorporate, approve, and ratify). And in such circumstances, the rights of former spouses generally rest upon the decree, which is subject to modification, rather than the agreement. *See Mizrachi v. Mizrachi*, 132 Nev. 666, 675 n.9, 385 P.3d 982, 988 n.9 (Ct. App. 2016) (recognizing that, generally, once the parties' agreement is adopted by the district court, the agreement merges into the decree and the parties' rights rest solely upon the decree, "unless both the decree and the agreement contain a clear and direct expression that the agreement" survives the decree); *Gilbert v. Warren*, 95 Nev. 296, 300, 594 P.2d 696, 698 (1979) (concluding that the agreement at issue was not subject to modification by the district court absent the parties' consent since it was not merged into the divorce decree), *superseded on other grounds as recognized in NC-DSH, Inc. v. Garner*, 125 Nev. 647, 651-52, 218 P.3d 853, 857 (2009).

To overcome the foregoing, Lingying points to the supreme court's decision in *Barbash v. Barbash*, which concerned a 1941 property settlement agreement and was governed by California law concerning integrated property settlement and support agreements, which arise when "the parties have agreed that the provisions relating to division of property and the provisions relating to support constitute reciprocal consideration." 91 Nev. 320, 321-22, 535 P.2d 781, 781-82 (1975) (internal quotation marks omitted). In particular, the supreme court applied the California law in effect at the time the parties entered into their settlement agreement, which provided that integrated agreements are not modifiable absent the parties' consent and that alimony obligations under such agreements do not terminate upon a spouse's remarriage unless the agreement so provides.[2] *Id.* at 323, 535 P.2d at 782-83.

Here, Lingying relies on the principles enunciated in *Barbash*, albeit without disclosing that the case applied California, rather than Nevada law, to argue that the parties' joint petition for custody constituted an integrated agreement and that, as a result, the district court improperly

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[2]After the parties in *Barbash* entered into their property settlement agreement, California law was modified, such that California courts no longer look to whether a settlement agreement was integrated to determine whether the provisions of a divorce decree are subject to modification. *See In re. Marriage of Vomacka*, 683 P.2d 248, 251 n.2 (Cal. 1984) (explaining that amendments to the California Code in 1967 eliminated the need for courts presiding over divorce proceedings to consider whether settlement agreements were integrated or the distinction between settlement agreements that were approved in a divorce decree and settlement agreements that merged with a divorce decree).

concluded that Zuyu's alimony obligation was terminable pursuant to NRS 125.150(6). Alternatively, Lingying contends that the district court should have conducted an evidentiary hearing to evaluate whether the joint petition for divorce constituted an integrated agreement. However, the record before this court demonstrates that Lingying did not argue that the joint petition for divorce constituted an integrated agreement or request an evidentiary hearing during the underlying proceeding, and as a result, she failed to preserve these issues for appellate review.[3] *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."). And regardless, although the supreme court has applied the principles enunciated in *Barbash* in evaluating the severability of provisions in an integrated postnuptial agreement, *see Cord v. Neuhoff*, 94 Nev. 21, 23-24, 573 P.2d 1170, 1171-72 (1978), and to resolve a breach of contract action concerning the enforceability of a provision in a divorce decree based on a non-merged settlement agreement, *see Renshaw v. Renshaw*, 96 Nev. 541, 542-43, 611 P.2d 1070, 1071 (1980), Nevada's appellate courts have not addressed whether those principles apply in the context of an agreement that merged with a divorce decree such as the one

[3]Insofar as Lingying failed to include materials that were filed below in her appellant's appendix, we presume that the missing materials supported the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (providing that it is appellant's burden to ensure that a proper appellate record is prepared and that Nevada's appellate courts presume that materials missing from the record support the district court's decision).

at issue here. And here, Lingying has not made any attempt to argue or explain how those principles should be reconciled with Nevada's law governing the merger of marital settlement agreements into the resulting decree of divorce.[4] *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that Nevada's appellate courts need not consider issues unsupported by cogent argument or relevant legal authority). Thus, given the foregoing, we conclude that Lingying has failed to demonstrate that the district abused its discretion in setting aside the April 2021 order and recalculating Zuyu's alimony arrearages based on its determination that his alimony obligation terminated upon Lingying's remarriage. *Rodriguez*, 134 Nev. at 656, 428 P.3d at 257; *Gilman*, 114 Nev. at 422, 956 P.2d at 764.

Turning to the marital residence, Lingying contends that the parties became tenants in common when the divorce decree awarded each of them a 50 percent interest in the property, and, therefore, Lingying maintains that her net equity in the property must be calculated based on its current fair market value rather than its fair market value in April 2017 when the decree was entered. Zuyu, however, makes no attempt to address this contention or otherwise even discuss the district court's equity calculation, and as a result, he has waived any challenge thereto. *See SFR*

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[4]In this respect, it is notable that, when the rule concerning integrated agreements was a relevant consideration for California courts in divorce proceedings, it applied when an integrated agreement had merely been approved in the decree, as opposed to merged into the decree. *See In re Marriage of Smiley*, 125 Cal. Rptr. 717, 718-19 (Ct. App. 1975) (explaining the same).

Invs. Pool 1, LLC v. U.S. Bank, N.A., 135 Nev. 346, 352 n.4, 449 P.3d 461, 466 n.4 (2019) (concluding that respondent waived an issue by failing to advance it on appeal). Thus, we necessarily reverse the portion of the challenged order directing that Lingying's equity in the marital residence be calculated based on its fair market value in April 2017, and we remand for the district court to determine the parties' equal shares in the property's equity based on its current fair market value, accounting for the parties' outstanding mortgage and any post-divorce contributions that the parties' made towards satisfaction of the mortgage.

It is so ORDERED.[5]

_____, C.J.
Gibbons

_____, J.
Westbrook

_____, Sr.J.
Silver

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

The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Charles J. Hoskin, District Judge, Family Division
Lin Law Group
Jericho L. Remitio
Zuyu Su
Eighth District Court Clerk