IN THE COURT OF APPEALS OF THE STATE OF NEVADA

J. MILAN RUPEL,
Appellant/Cross-Respondent,
vs.
THERESA GALTEN,
Respondent/Cross-Appellant.

No. 84076-COA

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

J. Milan Rupel appeals from a decree of divorce and Theresa Galten cross-appeals. Eighth Judicial District Court, Family Division, Clark County; Bryce C. Duckworth, Judge.

Rupel and Galten were married in 2001. In July 2017, Galten filed a complaint for divorce. In the complaint, Galten only raised issues regarding the division of debts and assets.

Rupel and Galten each brought separate property assets with them into their marriage. The separate property at issue in this appeal are the two vehicles that Rupel owned as his separate property and a bank account in Galten's name. Rupel spent a total of $7,156.63 in community funds throughout the marriage to maintain and repair the vehicles. Galten contends she should be reimbursed for these expenses. Galten had a Nevada State Bank account, which had a balance of $63,789.67 before the marriage but community funds were added to it. Rupel contends this account became community property.

During the marriage, Rupel and Galten each pursued various investment opportunities. Some of these opportunities were pursued

individually even though community funds were used. One such investment was the Kai-Zen Plan which was opened by Rupel.[1] Because the plan is an investment plan, the cash surrender value of the plan can be estimated but not precisely ascertained in advance because of interest rates changing in unpredictable amounts.

After the divorce action was filed, Galten and Rupel planned to sell the marital residence. Galten moved out and Rupel continued to reside in the marital residence while looking for another place to live. During that time, Rupel made cash withdrawals from a community account. Rupel, a firefighter, asserts that he had to keep the residence ready to show potential buyers at all times, so he changed his eating habits and began eating out for meals that he did not eat at the fire station. He also had to pay for the meals he ate at the station and for other staples there. And he paid for haircuts and massages for his back pain. For all of these expenses he paid cash.

A bench trial was held over five days beginning in May 2019 and ending in September 2019. Several witnesses testified at trial including Galten and Rupel's financial experts and Rupel's tax preparer.

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[1]The Kai-Zen Plan is a premium financed retirement plan. This means that the bank splits the premium financing for the first five years of the plan with the client, so the bank and the client pay the same amount into the fund. After five years, the bank alone continues making the payments for another five years. After ten years, the bank stops making payments and the investment sits and compounds interest for another five years. After 15 years, the bank receives its contribution back plus interest because its contribution is treated as a loan. The money in the plan can be recovered before the end of the 15-year investment period, but the bank loan must be repaid before the cash surrender may be received.

During trial, Galten's financial expert described several transactions where Rupel transferred portions of money that he inherited from his mother into a community account. After hearing that testimony, Galten and Rupel stipulated that this was community property. Each party's financial expert testified about the cash surrender value of the Kai-Zen Plan. Galten's expert concluded that the cash surrender value was $405,531 as of January 2019, while Rupel's expert concluded that the value was $143,714 as of October 2018. Both experts significantly disagreed with the original projected value of the plan which was $554,902 and introduced as Exhibit 52. Galten also testified to the amount of money in her Nevada State Bank account before marriage, while Rupel testified to his use of community funds to maintain his vehicles, his cash withdrawals to cover his living expenses, and an error in his 2016 income tax return that made it appear like he earned an additional $100,246 in 2016.

The district court issued an unsigned minute order in February 2020 finding that Rupel conceded to "marital waste" on the first day of trial by testifying that he transferred his separate property into a community account, so the district court awarded Galten half of the amount transferred ($45,275 of the $90,550 transferred). The district court also found that the cash surrender value of the Kai-Zen Plan was $554,902 based upon the original projected value from four years before and ordered Rupel to either cash out the plan and equally divide the assets or to buy out Galten by paying her half of the value of the plan. Regarding Galten's claims of marital waste against Rupel, the district court found that Rupel did not commit waste by using community funds to fix and maintain his separate vehicles, nor did he commit waste when he withdrew cash to cover his living expenses after the separation. Regarding the Nevada State Bank account,

the district court found that Galten had $63,789.67 in the account before marriage but awarded her $67,789.67 as her separate property. The district court found that Rupel did not make an additional $100,246 in 2016. The district court also ordered that any remaining assets and debts be equally divided between the parties. Finally, the district court ordered Galten to prepare and submit a decree of divorce incorporating its findings and orders.

Galten never submitted a decree of divorce incorporating the findings and orders from the minute order. However, in November 2020, Galten emailed Rupel and proposed that the community be ended on December 31, 2019. Rupel agreed to end the community on the specified date if Galten provided a copy of the decree of divorce to Rupel within seven days for review and signing. Galten failed to provide a copy of the decree within seven days, but informed Rupel via email about the delay nine days later.

After receiving Galten's draft of the decree of divorce, Rupel expressed several concerns with the draft, so the decree was never approved by Rupel and never entered as an order by the district court. The original district court judge retired in the beginning of 2021 and the case was reassigned. The new district court judge issued a decree of divorce, which was entered February 4, 2021. The decree essentially repeated the findings and orders made in the February 2020 minute order.

After the decree of divorce was entered, Rupel filed a motion for reconsideration and a motion for a stay. Galten filed a "Motion for Rule 52 and 59 Relief" a month after the status check hearing. Finally, Rupel filed

a notice of appeal in Docket No. 82636 and a proposed *Honeycutt*[2] order days after Galten filed her motion.

The district court held a hearing on all the motions filed by the parties in April 2021. The court found that it had the authority to grant a stay but did not have jurisdiction to entertain relief based on NRCP 52, NRCP 50, a motion for reconsideration, or *Honeycutt* because the notice of appeal had already been filed. In July 2021, the parties stipulated to dismiss the appeal in Docket No. 82636 without prejudice because the decree of divorce was not a final order as it did not dispose of all the parties' issues.

Rupel filed re-notices of the motions that he had previously filed in the district court. The district court held a hearing regarding these motions in December 2021 and denied Rupel's motions, but ordered the enforcement of the decree of divorce stayed until any appellate proceedings were finished. Rupel appeals the district court's final order, and Galten cross-appeals.

On appeal, Rupel argues that the district court abused its discretion when it found marital waste for the separate funds he deposited into the community account and in its determination of the valuation of the Kai-Zen Plan. Rupel also contends that the district court erred when it did not uphold the stipulated date for the valuation and division of community property and found that a portion of the Nevada State Bank account was Galten's property. Finally, that the district court erred by not awarding Rupel reimbursement for a portion of the community bills that he allegedly

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[2]*Honeycutt v. Honeycutt*, 94 Nev. 79, 575 P.2d 585 (1978).

paid with separate funds.[3] We agree that the district court abused its discretion when it found marital waste and in its valuation of the Kai-Zen Plan. We also agree that the district court erred when it awarded Galten $67,789.67 from the Nevada State Bank account, but we disagree with Rupel's remaining arguments.

On cross-appeal, Galten argues that (1) this court has no jurisdiction to hear this appeal, (2) the district court abused its discretion when it found that Rupel did not commit waste when he repaired and maintained his vehicles from cash withdrawals from a community account, and (3) the district court abused its discretion when it did not award Galten a portion of Rupel's disputed 2016 income. We disagree with all of her contentions. We first address Galten's claims regarding jurisdiction.

This court has jurisdiction

Galten primarily argues that this court does not have jurisdiction because the decree of divorce was not a final judgment. Galten specifically argues that the district court failed to dispose of all issues in its decree of divorce and that a stipulation to dismiss a previous appeal shows that the decree of divorce was not a final judgment. Rupel responds that

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[3]Rupel did not raise this issue at trial. Therefore, this argument is waived. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal"). Rupel additionally failed to include citations to the record to support this argument, so we need not consider it. NRAP 28(a)(10)(A). Rupel also failed to provide any legal support or citations to the record to support his argument that he used separate funds to pay for the Kai-Zen Plan, thus we need not consider this argument either. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

the decree of divorce resolved all issues and that it is not possible to stipulate to a matter of law, such as whether an order is a final judgment. Galten also contends that judicial estoppel prevents Rupel from arguing that the decree is a final judgment because he stipulated that it was not in the prior appeal.

Final Judgment

"Parties may stipulate to facts but they may not stipulate to the law." *Ahlswede v. Schoneveld*, 87 Nev. 449, 452, 488 P.2d 908, 910 (1971). Whether an order is a final judgment is a question of law. *Ormachea v. Ormachea*, 67 Nev. 273, 291, 217 P.2d 355, 364 (1950) ("The legal operation and effect of a judgment must be ascertained by a construction and interpretation of it." (internal quotation marks omitted)). This court reviews questions of law de novo. *Nev. Dep't of Corrs. v. York Claims Servs.*, 131 Nev. 199, 203, 348 P.3d 1010, 1013 (2015).

"This court determines the finality of an order or judgment by looking to what the order or judgment actually *does*, not what it is called." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994). A final judgment is one that adjudicates "the rights and liabilities of all parties" and disposes "of all issues presented in the case." *Lee v. GNLV Corp.*, 116 Nev. 424, 427-28, 996 P.2d 416, 418 (2000). While Galten is correct that not every bank account, line of credit, or investment was explicitly addressed by the decree of divorce, the decree of divorce stated that all community assets and debts not specifically discussed were to be equally divided. Accordingly, the decree disposed of all issues and is a final judgment.

Judicial Estoppel

Whether judicial estoppel applies is also a question of law that we review de novo. *Deja Vu Showgirls v. Nev. Dep't of Tax'n*, 130 Nev. 711,

716, 334 P.3d 387, 391 (2014). Judicial estoppel applies "when (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position . . .; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." *Id.* at 717, 334 P.3d at 391 (quoting *S. Cal. Edison v. First Judicial Dist. Court*, 127 Nev. 276, 285-86, 255 P.3d 231, 237 (2011)). "[J]udicial estoppel should only be applied when a party's inconsistent position arises from intentional wrongdoing or an attempt to obtain an unfair advantage." *Marcuse v. Del Webb Cmty's., Inc*, 123 Nev. 278, 287-88, 163 P.3d 462, 469 (2007) (internal quotation marks omitted). A stipulation is "[a] voluntary agreement between opposing parties concerning some relevant point." *Stipulation*, *Black's Law Dictionary* (11th ed. 2019). Agreements between parties that do not require or imply judicial endorsement "[do] not provide the prior success necessary for judicial estoppel." *See Mainor v. Nault*, 120 Nev. 750, 766, 101 P.3d 308, 319 (2004) (explaining that a settlement agreement does not provide the prior success necessary for judicial estoppel because it does not require or imply judicial endorsement), *abrogated on other grounds by Delgado v. Am. Family Ins. Grp.*, 125 Nev. 564, 570, 217 P.3d 563, 567 (2009).

Since a stipulation does not require or imply judicial assent, it is not possible for a party to successfully assert a position when its only proof of success is the stipulation. Therefore, we conclude the third

requirement of judicial estoppel has not been met in this case. *See Deja Vu Showgirls*, 130 Nev. at 716, 334 P.3d at 391.[4]

The district court abused its discretion when it found Rupel committed "marital waste" with the transfer of $90,550 into a community bank account and awarded half of that value to Galten separate from the division of community property

Rupel argues that the trial transcript does not support the district court's finding that he conceded committing marital waste totaling $90,550. Galten responds that Rupel's argument is moot because it essentially disputes the label applied to the property.

We review district court decisions in divorce proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). We will not disturb a district court's decisions that are supported by substantial evidence, which is evidence that "a sensible person may accept as adequate to sustain a judgment." *Id.* Additionally, a district court abuses its discretion when its decision is clearly erroneous. *See Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018).

Rupel transferred $90,550 of his separate property that he inherited from his mother into a community bank account. During trial, the parties stipulated that this money became community property. However, in the decree of divorce, the district court described this as "marital waste" and awarded Galten $45,275. Galten argues that,

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[4]Galten also argues that the filed docketing statement provides that not all issues have been adjudicated, which would mean the decree is not a final judgment. First, the third requirement of judicial estoppel is still not met via the statement in a docketing statement. Second, the docketing statement appears to refer to the district court's December 2021 order not the Decree of Divorce. Therefore, asserting that the decree is a final judgment is not taking an opposite position to the docketing statement.

functionally, the district court awarded her half of the transferred money, as the parties had stipulated, even if the district court mischaracterized the stipulation.

Galten's argument, however, fails to consider that the funds were in a community bank account and should have been divided equally between the parties. A district court must "make an equal disposition of the community property" unless the court finds a compelling reason not to do so. NRS 125.150(1)(b). Marital waste may provide a compelling reason for the unequal disposition of community property. *Lofgren v. Lofgren*, 112 Nev. 1282, 1283, 926 P.2d 296, 297 (1996) ("[I]f community property is lost, expended[ ] or destroyed through the intentional misconduct of one spouse, the court may consider such misconduct as a compelling reason for making an unequal disposition of community property and may appropriately augment the other spouse's share of the remaining community property.").

However, the parties stipulated that the $90,550 transferred was community property, not marital waste. By awarding Galten $45,275 as reimbursement for marital waste as a separate award, and then equally dividing the balance, Galten received an extra $45,275. Accordingly, to the extent the account was to be divided in part as marital waste, or a separate award was made for marital waste, the district court abused its discretion by mischaracterizing the stipulation and then making an unequal distribution of community property based on that mischaracterization. Therefore, the award of $45,275 to Galten is reversed with a direction to divide the entire account equally as community property and to strike the award of $45,275.

The district court did not abuse its discretion when it found Rupel did not commit marital waste with expenditures on vehicle maintenance or post-complaint cash withdrawals

Galten argues that the district court abused its discretion when it determined that there was no marital waste regarding community funds spent on Rupel's vehicles' maintenance during marriage or his post-complaint cash withdrawals because there was no community benefit and the district court failed to consider that the timing of the withdrawals was suspicious. Rupel responds that the community received a benefit from maintaining his separate vehicles because he drove them to work and on vacations instead of putting mileage on community property vehicles. Rupel also argues that the withdrawals after their separation were used to cover routine "day-to-day costs and services."

"Generally, the dissipation which a court may consider refers to one spouse's use of marital property for a selfish purpose unrelated to the marriage in contemplation of divorce or at a time when the marriage is in serious jeopardy or is undergoing an irretrievable breakdown." *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75-76, 439 P.3d 397, 406-07 (2019) (internal quotation marks omitted).

The district court found that Rupel did not commit intentional misconduct when he spent community funds on his vehicles and denied Galten's claim of marital waste. Galten argues that intentional misconduct is not the standard for marital waste and argues instead that waste occurs when an expenditure does not benefit the community. Galten is correct that intentional misconduct is not necessarily a requirement for marital waste, but it can be as it is a compelling reason for the unequal disposition of community property. *See Lofgren*, 112 Nev. at 1283, 926 P.2d at 297 (stating that intentional misconduct may be basis for an unequal disposition

of community property). But Galten provides no authority to support an argument that Rupel's conduct amounted to marital waste and substantial evidence supports the district court's finding that there was no marital waste. First, the funds were spent to repair the vehicles in 2016, a year before the complaint for divorce was filed. Additionally, Rupel testified that he utilized the vehicles to drive himself to work and that he drove the vehicles on vacation. He also testified that this use reduced the mileage on the community vehicle, which benefited the community. *Cf. Putterman v. Putterman*, 113 Nev. 606, 609, 939 P.2d 1047, 1049 (stating that "misappropriating community assts for personal gain may indeed provide compelling reasons for unequal distribution of community property"). Galten offered no rebuttal. This testimony is more than sufficient evidence to support the district court's finding of a lack of proof of waste regardless of the challenged legal statement. Accordingly, the district court did not abuse its discretion when it concluded that no marital waste occurred in Rupel maintaining the vehicles. *See Williams*, 120 Nev. at 566, 97 P.3d at 1129.

Galten argues that Rupel's cash withdrawals totaling $23,000, all of which occurred after the complaint for divorce was filed, were marital waste. Rupel responds that these withdrawals were used to cover his living expenses after the divorce was filed and were not waste. The district court found that these withdrawals were not marital waste because this money was used to pay for legitimate expenses such as haircuts, massages, tips, and meals.

During trial, Rupel testified that before the complaint for divorce was filed, he regularly received massages and paid for them in cash. This testimony was not disputed. Rupel also testified that he regularly used

cash to pay for haircuts. No testimony indicated that he changed his haircut habits after the complaint was filed. Rupel also habitually paid in cash for fire station meals and staples. Finally, Rupel testified that he changed his eating habits and began eating out once the complaint was filed because the marital residence had to be kept in pristine condition since Rupel and Galten were trying to sell the house. Eating out allowed Rupel to keep the house in a better showable condition. These uses of the cash withdrawals do not demonstrate that the district court abused its discretion in not finding the use of marital property for a selfish purpose unrelated to the marriage in contemplation of divorce. *See Kogod*, 135 Nev. at 75-76, 439 P.3d at 406-07. Accordingly, substantial evidence supports the district court's finding that Rupel's $23,000 cash withdrawals do not constitute marital waste. *See Williams*, 120 Nev. at 566, 97 P.3d at 1129.

The district court abused its discretion when it valued the Kai-Zen Plan

Rupel argues that the district court abused its discretion when it determined the valuation of the Kai-Zen Plan. Galten responds that Rupel failed to make an adequate appellate record to support his argument and that the district court correctly valued the Kai-Zen Plan.[5]

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[5]Galten argues that Rupel failed to make an adequate record on appeal because Rupel did not supply this court with the trial exhibit relied on by the district court. Therefore, Galten argues that this court should construe the missing document to support the decree of divorce even though the experts reviewed and testified about the exhibit. Rupel does not dispute the contents of the trial exhibit; instead, Rupel's argument is that substantial evidence does not support the district court's order because it differs so greatly from the testimony of the experts and because of the disclaimer on the trial exhibit that the cash value at the time of investment is not guaranteed. Regardless of Rupel's oversight, we have enough information to evaluate the arguments even if we do not consult the exhibit

The district court determined that the Kai-Zen Plan had a value of $554,902 in 2019 based on the estimate listed in Plaintiff's Trial Exhibit 52. The district court then equally divided this community asset, so each party received $277,451. Rupel argues that this valuation is significantly larger than the valuation arrived at by the experts who testified at the trial and points out that this valuation is approximately $150,000 higher than the estimate provided by Galten's expert and more than $400,000 higher than his expert opined. Rupel also argues that the trial exhibit relied upon by the district court states that the cash value listed in the document is not guaranteed.

Both experts testified that the value of the plan was significantly lower than the valuation stated by the district court in the decree of divorce. Galten's expert testified that the plan had a cash surrender value of $405,531 in January 2019. Rupel's expert testified that the plan had a net cash value of $143,714 in October 2018. The trial exhibit, which the district court apparently relied upon, states that, at the rate assumed at the time of purchase, the policy would have an estimated cash surrender value of $554,902 in policy year five.[6] The estimated future valuation on the exhibit relied upon by the district court is clearly erroneous because it was only an estimate of projected value made many years before the trial using an interest rate that was not set for the duration of the plan, and thus we conclude the district court abused its discretion. *See Bautista*, 134 Nev. at 336, 419 P.3d at 159. Further, the district court only made

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which was provided by Galten. We also note that the document used as a trial exhibit was also used a motion exhibit which was provided by Rupel.

[6]This document states that the rate is assumed and subject to change.

summary findings, so we cannot determine their accuracy or that they were made for proper reasons. *See Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011) ("Without an explanation of the reasons or bases for a district court's decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation."). Accordingly, we reverse this portion of the decree of divorce and remand for further fact finding.

The district court did not err in not upholding the stipulated date of division for community property

Rupel argues that the district court erred by not ending the community on December 31, 2019, because the parties stipulated to end the community on that date. Galten responds that there was no agreement to end the community at the end of 2019, and even if there was an agreement, the agreement failed to comply with EDCR 7.50.[7]

"A written stipulation is a species of contract." *DeChambeau v. Balkenbush*, 134 Nev. 625, 628, 431 P.3d 359, 361 (Ct. App. 2018) (quoting *Redrock Valley Ranch, LLC v. Washoe County*, 127 Nev. 451, 460, 254 P.3d 641, 647 (2011)). "However, the question of whether a contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous." *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005).

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[7]EDCR 7.50 requires a stipulation to be entered in the court minutes in the form of an order or be written by the party "against whom the same shall be alleged." We note that EDCR 5.101 has been revised and now states that the rules set out in EDCR 7 are inapplicable to family court. This new rule went into effect in June 2022 after the events that gave rise to the issue on appeal.

For a contract to be enforceable there must be "an offer and acceptance, meeting of the minds, and consideration." *Id.* at 672, 119 P.3d at 1257. "A meeting of minds exists when the parties have agreed upon the contract's essential terms." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012). "Which terms are essential depends on the agreement and its context and also on the subsequent conduct of the parties, including the dispute which arises and the remedy sought." *Id.* (internal quotation marks omitted).

Galten argues that there was no meeting of the minds, so there was no stipulation. Rupel responds that not only was there agreement about the stipulation, but Galten dictated the terms of the agreement. The district court found, in a hearing in December 2021, that there was no final contract accepting December 31, 2019, as the end of the community. This finding is not clearly erroneous. Emails between Galten and Rupel show that they agreed that the community would be ended on December 31, 2019. But one email from Rupel indicates that he believed the Kai-Zen Plan would be divided according to its surrender value in December 2019. Additionally, at the status check hearing both parties presented different understandings on whether the entire community would be divided using December 31, 2019, as the separation date, or just portions of it. Since the record supports the district court's finding of fact that no meeting of the minds occurred, we cannot conclude that the district court erred. Since there was no valid contract, we need not resolve the remaining issues put forth by the parties.

The district court did not err when it determined a portion of the Nevada State Bank account was Galten's separate property but did make a typographical error

Rupel argues that Galten's bank account, while originally her separate property, was comingled with community property funds and that

Galten failed to meet her burden proving that the original amount in the account is traceable to before the marriage. Rupel also argues the district court made a clerical error when it awarded Galten $67,789.67 in separate property from the bank account because the account had $63,789.67 in it when they got married. Galten responds that Rupel failed to provide trial exhibits to support his argument on appeal and that the bank statements provided by Galten, along with her testimony, are substantial evidence supporting the district court's decree of divorce. Galten also argues that the lack of trial exhibits prevents the acknowledged clerical error from being corrected.

We review "a district court's determination of the character of property" for an abuse of discretion. *Waldman v. Maini*, 124 Nev. 1121, 1128, 195 P.3d 850, 855 (2008) (stating that "this court will uphold the district court's decision if it was based on substantial evidence").

Property acquired before marriage is separate property. NRS 123.130; *see also Verheyden v. Verheyden*, 104 Nev. 342, 344, 757 P.2d 1328, 1330 (1988). It is undisputed that Galten had $63,789.67 in a Nevada State Bank account at the time she married Rupel. It is also undisputed that this was her separate property. The parties do not dispute that a portion of the money in the bank account are community funds. The main dispute between the parties revolves around the lack of several years of bank records demonstrating whether $63,789.67 was in the account at all times during the marriage. While the bank records are not available, because the bank no longer has the records for some of the years, Galten testified that the money in her account never dipped below the initial amount. Rupel failed to provide any evidence disputing Galten's testimony. Accordingly,

substantial evidence supports the district court's decree of divorce; therefore, the district court did not abuse its discretion.

Turning now to the alleged clerical error, the record supports that Galten had $63,789.67 in her bank account when she got married, which we confirmed by our careful review of the record. The record does not support the district court's finding that Galten is entitled to $67,789.67 from the bank account. Therefore, we reverse and remand this portion of the decree to correct this clerical error, which is unsupported by evidence in the record. *See* NRCP 60(a).

The district court did not abuse its discretion when it did not award Rupel's disputed additional 2016 income to the community

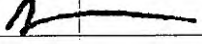
Galten argues that the district court abused its discretion when it declined to award her half of the side income that she claims Rupel earned in 2016. Rupel responds that he did not actually receive that income because he received an incorrect 1099 form, which was corrected by his CPA resulting in an amended 2016 tax return.

The district court found that Galten failed to prove that Rupel earned $100,246 in additional income in 2016 and that both Rupel and his CPA testified that he did not earn this amount as side income. Both Rupel and his CPA testified that this income was reported in error, so business expenses were added to his 2016 tax return to avoid tax liability for income that he did not receive. Both at trial and on appeal, Galten failed to provide any testimony proving that Rupel received this income. Therefore, substantial evidence supports the district court's finding. *See Williams*, 120 Nev. at 566, 97 P.3d at 1129.

Accordingly, 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.[8]

_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division
Barnes Law Group, LLC
Law Offices of F. Peter James, Esq.
Eighth District Court Clerk

[8]Insofar as the parties have raised 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.