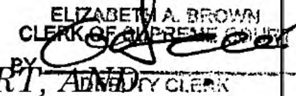
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SMADAR ORGAD,
Appellant/Cross-Respondent,
vs.
DAVID ORGAD,
Respondent/Cross-Appellant.

No. 84545-COA



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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

Smadar (Sam) Orgad appeals, and David Orgad cross-appeals, from a district court's findings of fact, conclusions of law, and orders in a divorce matter. Eighth Judicial District Court, Family Division, Clark County; Stacy Michelle Rocheleau, Judge.

Sam and David Orgad were married in 1983 in Israel. The parties relocated to the United States in 1990, and in 2003, started a heating and air conditioning business known as Temperature Control Services (TCS).[1] During the marriage, David primarily worked for the business, while Sam raised the parties' children and occasionally assisted with managerial duties for TCS. Over time, the parties' relationship deteriorated, and in August 2019, Sam filed a complaint for divorce in Las Vegas.[2] In August 2021, the parties were granted a decree of divorce, but the district court reserved the issues of property division, alimony, and attorney fees for trial. At trial, the parties presented evidence as to the value of TCS in order to determine Sam's respective community property interest. David retained an expert, David Nash, and offered his report

[1]We do not recount the facts except as necessary to our disposition.

[2]During the pendency of the litigation, Sam was primarily residing in Poland, but she relocated to Las Vegas before the trial began.

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indicating that TCS had a fair market value of $260,000 as of December 31, 2020. However, David's expert did not testify at trial. Sam's retained expert, Michelle Lynn Salazar, testified in accordance with her report indicating that TCS had a value of $663,000.

The parties also testified regarding their assets, debts, Sam's request for alimony, allegations of marital waste, and attorney fees. Sam testified that she primarily raised the parties' children, while David worked at TCS. Sam also testified that her health issues prevented her from being able to work and to engage in certain activities of daily living. Sam testified that her vision is so poor that she cannot read from her phone and relies on her adult children for assistance with basic tasks of daily living. While Sam's Financial Disclosure Form (FDF) reflected her living expenses in Poland, she acknowledged that she now has different living expenses in Las Vegas.

David testified that he could no longer work at TCS because of his inability to continue to perform physical labor. David further testified that while he reported a gross annual income of $90,000 on his FDF, he takes home approximately $7,600 per month from TCS as his salary, which is substantially in line with his reported income in the FDF. When asked about personal items he purchased during the litigation, David acknowledged that he traded in certain vehicles for new ones, despite a joint preliminary injunction prohibiting such activity. David conceded that he engaged in marital waste and argued for an amount of $150,000 to be attributed to waste. Sam acknowledged that the parties agreed that there was marital waste and that she would accept the district court's finding with regard to the amount. The district court determined that it would take the amount of marital waste under advisement and issue a written decision.

Subsequently, the district court issued its findings of fact, conclusions of law, and orders. The district court found, after reviewing the parties' bank statements, federal income tax returns, and TCS's 2020 income statement, that David wasted $167,354.56 of community funds over a period of 27 months, from August 2019 through October 2021 during the time the preliminary injunction was in place. The district court also found that David spent funds in excess of his self-reported monthly expenses and thus these expenditures constituted waste.

With respect to David's business, the district court found that Salazar's report more accurately reflected the value of TCS than David's expert, Nash, who did not testify at trial. The court then valued the business at $629,967. Accordingly, the district court applied the value of TCS, the value of other community assets, and the marital waste calculation to a marital balance sheet which resulted in David owing Sam an equalization payment for her share of the community property in the total amount of $407,660.78 that the court reduced to judgment and ordered interest to accrue at the legal rate. Finally, the district court ordered David to pay Sam her share of the community property in monthly installments of $1,500. The court further noted that "[a]t her election, [Sam] shall have the option of securing payment of this sum with a life insurance policy on David's life, at her expense." The district court also awarded Sam $8,000 per month in alimony for 11 years.

On appeal, Sam argues that (1) the district court abused its discretion in awarding her alimony for 11 years rather than for her or David's lifetime, (2) the award of $8,000 per month in alimony is insufficient to meet her needs, (3) the district court erred in failing to consider all instances that David committed marital waste in violation of the joint preliminary injunction, (4) the district court abused its discretion by

requiring Sam to purchase life insurance to secure her community property equalization payment,[3] and (5) the district court abused its discretion by ordering David to pay Sam her share of the community property ($407,660.78) in monthly payments.[4]

David disagrees with Sam's assignments of error and in his cross-appeal argues that the district court abused its discretion in (1) ordering him to pay alimony for 11 years and in the amount of $8,000 per month, (2) ordering him to continue to operate TCS,[5] (3) making its own

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[3]Sam fails to cogently argue this point, as the district court did not order her to obtain a life insurance policy, but rather gave her the *option* to do so, and thus, she fails to demonstrate an abuse of discretion under these circumstances. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2000). We recognize, however, that the Nevada Supreme Court has concluded that under certain circumstances a district court abuses its discretion when requiring a party to purchase a life insurance policy. *Wolff v. Wolff*, 112 Nev. 1355, 1361, 929 P.2d 916, 920 (1996).

[4]We are not persuaded by this argument as Sam acknowledged at trial that David could pay this amount gradually, and therefore, she fails to demonstrate an abuse of discretion. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) ("[A] party will not be heard to complain on appeal of errors which he himself induced . . . ." (quoting 5 Am. Jur. 2d *Appeal and Error* § 713 (1962))). Further, although this is a minimal amount considering the ages of the parties, the amount owed, and interest to be accrued, Sam fails to demonstrate an abuse of discretion in ordering payments of $1,500 a month. *See Reed v. Reed*, 88 Nev. 329, 331, 497 P.2d 896, 897 (1972) (holding that the district court has discretion to schedule payments of a judgment "in any manner the district court deems proper under the circumstances"). Nevertheless, on remand the district court will need to readdress the appropriate monthly payment amount and payment schedule in light of our disposition.

[5]We note that the district court's order does not require David to continue to operate TCS. Thus, David's argument on this issue is not

analysis of David's bank records to determine marital waste, (4) attributing $167,354.56 as David's marital waste, and (5) accepting Sam's expert's value of TCS.[6]

This court reviews a district court's alimony determinations and disposition of community property, including any underlying marital waste determinations, for an abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75, 439 P.3d 397, 406 (2019). Additionally, an appellate 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 (2015) (noting that "deference is not owed to legal error" or "findings so conclusory that they mask legal error").

The district court abused its discretion by failing to properly analyze alimony

As noted, Sam and David both argue that the district court abused its discretion in its award of alimony. Sam argues that the district court erred in awarding her alimony for 11 years rather than for her lifetime

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cogently argued, and we decline to address it further. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

[6]We are not persuaded by this argument as the district court's order contains specific findings supporting why it utilized Salazar's valuation of TCS, particularly as Salazar's report included potential unreported income for which David's expert's report did not account. *See Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). David also does not challenge the district court's determination that Salazar's value of TCS was appropriate based on the court's finding that Salazar conducted a complete forensic accounting analysis. Thus, because David fails to demonstrate any material flaws in the report and testimony, the district court did not abuse its discretion in relying on Salazar's report.

or David's. Specifically, Sam argues that her health issues, lack of earning capacity, and the parties' lifestyle during their 38-year marriage warrant an award of lifetime alimony. Sam also argues that the award of alimony is insufficient to support her because the district court failed to make specific findings as to her expenses and failed to consider her health-related expenses.

Conversely, David argues that ordering him to pay alimony in the amount of $8,000 per month for 11 years was unreasonable and an abuse of discretion because Sam's monthly expenses only amount to $3,700. David also contends that the alimony duration is excessive as he will soon reach the age of retirement, and thus he will not be able to pay alimony for 11 years.[7] David further argues that his gross monthly income is only $7,500, and thus the alimony award of $8,000 per month subsumes the entirety of his income.

"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 case, 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

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[7]We note that at the time of trial, David was 61 years old, and Sam was 60 years old.

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 (quoting *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.

Here, the district court awarded Sam alimony in the amount of $8,000 per month for a period of 11 years. However, the district court did not determine the amount of David's income on which it was relying to determine the alimony award, despite finding that David's financial needs were $5,000 per month after paying alimony. The lack of specific findings as to David's available income for alimony hamstrings our review, as he testified that he receives approximately $90,000 per year, as reflected on his FDF filed on January 4, 2022. *See Kogod*, 135 Nev. at 68, 439 P.3d at 401 (stating that alimony "is based on the receiving spouse's need and the paying spouse's ability to pay"). As this is approximately $7,500 a month, requiring David to pay $8,000 a month in alimony would leave him with no financial means to meet his own financial needs of $5,000 per month, which the district court agreed that he had.

With respect to Sam's financial needs, although the district court noted that Sam's FDF reflected monthly expenses of approximately $4,700, this is belied by Sam's testimony at trial. Specifically, Sam testified that her FDF reflected her living expenses in Poland, not Las Vegas, and the district court apparently noted this number to calculate alimony despite Sam's testimony that she intended to relocate and remain in Las Vegas with

different cost-of-living expenses.[8] Evidently, in light of Sam's testimony, the district court then approximated Sam's expenses at $8,000 per month, without any factual findings to support this amount. Thus, it is unclear how the court determined Sam's monthly living expenses. *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); *see generally Davis*, 131 Nev. at 452, 352 P.3d at 1143 (noting that "[s]pecific findings and an adequate explanation of the reasons for the . . . determination" are needed to enforce an order and facilitate appellate review).

Further, the district court did not make the requisite factual findings to support the duration of the alimony award. Indeed, the district court failed to explain how a duration of 11 years was sufficient considering the parties' 38-year marriage where Sam was primarily a homemaker. The court made no determination as to how Sam would be expected to provide for herself beyond 11 years, particularly with her health issues, nor whether David would be able to pay the monthly amount of alimony for 11 years when he is approaching retirement age, and whether Sam would be able to collect social security based upon David's work history.[9]

Thus, although the district court summarily addressed the factors in NRS 125.150(9) when awarding alimony, it abused its discretion

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[8]In light of our disposition, we encourage the district court to order the parties to file updated FDFs in order to accurately determine the parties' income and expenses in making an alimony award.

[9]We note that the district court found that the parties were "probably not" able to receive social security benefits when they retire, but the court made no explicit determination as to this. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142. Thus, on remand, the district court should conduct further fact finding as to whether the parties are eligible for social security benefits.

in simply reciting the statutory factors in rote fashion and ruling without applying those factors to the relevant facts. As the district court must make specific factual findings supported by substantial evidence and explain how the findings support the alimony amount and duration, *see Devries*, 128 Nev. at 712-13, 290 P.3d at 265, the court abused its discretion in failing to do so. Therefore, we reverse and remand the alimony award for further proceedings consistent with this order.

The district court did not abuse its discretion in its determination of marital waste

As mentioned, Sam argues that the district court failed to account for all marital waste given that David violated the joint preliminary injunction numerous times throughout the pendency of the litigation. In response, David argues that the district court did not abuse its discretion because the court accounted for any alleged marital waste in its final award, but he does acknowledge that the district court did not provide a breakdown for its waste calculation in its order. Both parties appear to challenge the district court's calculation of marital waste based on the failure to make specific findings necessary to support that marital waste occurred in order to justify an unequal distribution of community property. We disagree.

A district court must make an equal disposition of community property in a divorce unless there is a "compelling reason" to make an unequal disposition. NRS 125.150(1)(b); *Lofgren v. Lofgren*, 112 Nev. 1282, 1283, 926 P.2d 296, 297 (1996) (explaining that when "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"); *see also Kogod*, 135 Nev. at 75-76, 439 P.3d at 406-407 ("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." (internal quotation marks omitted)).

In *Kogod*, the supreme court reversed a determination as to marital waste where the district court found that the husband spent in excess of his self-declared monthly expenses and failed to justify these expenses as a marital expense. *Id.* at 77-78, 439 P.3d at 408. The supreme court further held that "[a] district court must differentiate between ordinary consumption for higher-income earners such as [appellant], which is not necessarily dissipation, and misappropriation of community assets solely for personal gain, which can provide a compelling reason for an unequal disposition of community property when such expenditures redirect assets needed for basic community support." *Id.* at 78, 439 P.3d at 408-09.

Here, David concedes that he engaged in marital waste in the amount of $150,000 during the pendency of the proceedings. *See Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (treating a party's failure to respond to an argument as a concession that the argument is meritorious). Thus, we conclude that under the circumstances of this case, the district court appropriately shifted the burden of proof to David to explain his expenditures during the pendency of the litigation that were in excess of his monthly expenses because he agreed that he committed marital waste. *See Kogod*, 135 Nev. at 78, 439 P.3d at 408; *see also Putterman v. Putterman*, 113 Nev. 606, 609, 939 P.2d 1047, 1048 (1997) ("It should be kept in mind that the secreting or wasting of community assets while divorce proceedings are pending is to be distinguished from undercontributing or overconsuming of community assets during the

marriage."). Accordingly, the district court reviewed the financial records before it and properly determined that David engaged in marital waste in the amount of $167,354.56. To the extent Sam alleges that there remains unaccounted for waste, she fails to cogently argue this in light of the district court's findings, review of the record, and the court's decision to award more than the $150,000 in marital waste agreed to by David. *See Edwards v. Emperor's Garden Rest.,* 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument); *see also Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh the evidence on appeal). Therefore, we affirm the district court's marital waste determination.[10] 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.

_______________, C.J.
Gibbons

_______________, J.
Bulla

_______________, J.
Westbrook

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[10]We have considered David's additional arguments concerning marital waste in his cross-appeal and find them unpersuasive.

Insofar 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.

cc: Hon. Stacy Michelle Rocheleau, District Judge, Family Division
Israel Kunin, Settlement Judge
McFarling Law Group
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Eighth District Court Clerk