IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS PENA,
Appellant,
vs.
DEBORAH ESPINOZA,
Respondent.

No. 83862-COA

ORDER OF AFFIRMANCE

Jesus Pena appeals from a district court divorce decree. Eighth Judicial District Court, Family Division, Clark County; Dawn Throne, Judge.

Jesus and respondent Deborah Espinoza married in September 2018. Prior to the marriage, both parties resided in a home located at 3364 Epson Street, purchased in 2015. Although both parties dispute the amount of involvement they had in the purchase, Jesus ultimately applied for a home loan through the Veterans Administration, which allowed him to purchase the Epson property with no down payment for $154,246. The loan and title documents from the purchase reflected that Jesus was the sole owner of the property.

Both Deborah and Jesus lived in the Epson property prior to the marriage, with Jesus making the mortgage payments, and Deborah paying for insurance and utility bills. Eventually, the parties married, but they separated shortly thereafter, leading Deborah to move out of the Epson property approximately three months after the marriage. Over a year later, in 2020, Deborah filed for divorce.

During the divorce proceedings, the parties were able to agree on the division of the majority of their assets, with the exception of the Epson property, which was first appraised in October 2020 and valued at $245,000. Both parties provided arguments to the court regarding their respective interests in the property, with Deborah contending that she should receive half of the property as her community share, and Jesus arguing that the property should be awarded to him in full as separate property.[1]

At trial in May 2021, the district court found that Deborah would be entitled to a pro rata share of the community's interest in the appreciation of the property under *Malmquist v. Malmquist*, 106 Nev. 231, 792 P.2d 372 (1990). However, the district court determined that the October 2020 appraisal was outdated and directed the parties to obtain a new appraisal and submit *Malmquist* briefs accordingly. The new appraisal valued the home at $285,000—a $40,000 increase from the previous valuation.

In their respective briefings, Jesus argued for the application of an alternative valuation method noted in footnote one of *Malmquist*, *see* 106 Nev. at 240 n.1, 792 P.2d at 378 n.1, and argued that the district court should attribute all of the premarital appreciation in value (approximately $76,500) to his separate property share of the Epson property, while Deborah advocated that the court should simply follow the *Malmquist* formula without modification.

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[1]At trial, Jesus' counsel later indicated that Deborah should be entitled to her community interest in the property for the time the parties were married.

At the hearing, the district court rejected Jesus' request to modify the *Malmquist* approach, stating that his calculations were flawed as he used the value of the property at the date of the marriage as the purchase price of the property. The court also rejected Deborah's calculation, and, after making its own calculations, ultimately found that the community property share of the appreciation on the home would be $70,368.86, or $35,184.43 per person. The court also awarded Deborah her attorney fees and costs and deducted $300 (half of the home appraisal fee) from Deborah's award for a total award of $39,353.93. Jesus now appeals.

On appeal, Jesus argues that the district court abused its discretion and ignored the equites of this case when it declined to apply the alternate formula identified in the footnote in *Malmquist*, thereby depriving him of $76,500 in premarital appreciation in the property. Jesus therefore urges this court to reverse the district court's order and to direct it to apply the formula used in *In re Marriage of Marsden*, 181 Cal. Rptr. 910, 916-17 (Cal Ct. App. 1982), to award him the full value of the premarital appreciation on the property prior to conducting the *Malmquist* calculation to determine the remaining community interest. Jesus argues that the facts of this case, including that Deborah only resided in the property for three months after marriage, and the fact that Jesus was responsible for the mortgage payments prior to and during the marriage, supports a deviation from the formulae stated in *Malmquist*. Deborah counters, arguing that the district court properly applied *Malmquist* as written and advocates for affirming the district court's decree of divorce.[2]

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[2]Jesus also argues that the district court abused its discretion when it ordered an updated appraisal of the property by purportedly negating a verbal agreement between the parties to use the initial October appraisal.

An appellate court reviews a district court's disposition of community property deferentially for an abuse of discretion. *See Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 919 (1996) ("This court's rationale for not substituting its own judgment for that of the district court, absent an abuse of discretion, is that the district court has a better opportunity to observe parties and evaluate the situation."). We will not disturb the district court's decisions on appeal when they are supported by substantial evidence, which is evidence that "a sensible person may accept as adequate to sustain a judgment." *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004).

Having reviewed the parties' arguments and the record on appeal, we conclude that the district court did not abuse its discretion when determining the community interest in the Epson property under *Malmquist*. In *Malmquist*, the supreme court adopted two formulae for calculating separate and community property interests in the appreciation of real property obtained prior to marriage. *Malmquist*, 106 Nev. at 240, 792 P.2d at 377. In doing so, the supreme court recognized in a footnote that "in most cases, the formulae stated above are the proper mode of apportionment of these interests." *Id.* at 240 n.1, 792 P.2d at 378 n.1. However, the supreme court nonetheless indicated that "when the vast bulk of the appreciation occurs before marriage, it may be appropriate to award the separate property the entire amount of pre-marriage appreciation; then

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But Jesus failed to present any argument regarding this alleged verbal agreement or object to obtaining a new appraisal during the proceedings in the district court, and thus, this argument is waived. *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, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

the court can use these formulae to calculate the additional separate and community property shares in appreciation occurring after the marriage," citing to *In re Marriage of Marsden*, the California case on which Jesus relies. *Id.*

Here, Jesus argues that the district court abused its discretion when it declined to apply the formula set forth in *Marsden*. However, Jesus did not cite, nor could this court find, any Nevada cases actually applying the *Marsden* analysis, and the *Malmquist* decision itself indicates that this alternative analysis is a discretionary determination left to the district courts, that "may" be applied in circumstances when "the vast bulk" of appreciation occurs prior to marriage. *Id.*

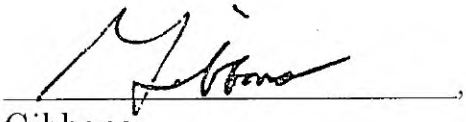
Additionally, Jesus has failed to demonstrate that the facts of this case warrant the application of this alternative discretionary formula. Indeed, he provides no analysis on this point other than bare assertions that he owned the home for a longer period of time than the parties were married, that the premarital appreciation amount is "larger" than the amount accrued following the marriage, and that "more than half" of the appreciation was prior to the marriage. Jesus notably does not, however, assert that this premarital appreciation constituted the "vast bulk" of the property's appreciation. These limited arguments are insufficient to demonstrate that a deviation from the *Malmquist* formula was warranted. *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 lack relevant authority).

Moreover, the record in this case demonstrates that the district court evaluated the equitable considerations presented by Jesus and determined that a deviation from *Malmquist* was not warranted here. And

other than arguing that the $76,500 in premarital appreciation should be awarded outright to his separate property share, Jesus does not challenge the district court's calculation or the values it adopted when applying the formula. Under these circumstances, we conclude that substantial evidence supports the district court's division of property in this case, *see Williams*, 120 Nev. at 566, 97 P.3d at 1129, and that the district court did not abuse its discretion in making this determination, *Wolff*, 112 Nev. at 1359, 929 P.2d at 919.

Accordingly, we

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



_____, C.J.
Gibbons

_____, J.
Bulla

cc: Hon. Dawn Throne, District Judge, Family Division
Israel Kunin, Settlement Judge
Nevada Defense Group
Kelsey L. Bernstein
McFarling Law Group
Eighth District Court Clerk

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[3]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 the disposition of this appeal.

The Honorable Deborah L. Westbrook, Judge, voluntarily recused herself from participation in the decision of this matter.