IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE ENRIQUE VALLES FAVELA,
Appellant,
vs.
ISAURA LIZETTE VALLES JIMENEZ,
Respondent.

No. 86405-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Jose Enrique Valles Favela appeals from a decree of divorce and award of attorney fees in a family law matter. Eighth Judicial District Court, Family Division, Clark County; Nadin Cutter, Judge.

Jose and respondent Isaura Lizette Valles Jimenez were married in Mexico in 1999. The parties share four minor children and two adult children. In July 2020, Jose initiated divorce proceedings. In December 2020, following a hearing, the district court ordered Jose to pay $800 per month in child support retroactive to when he left the marital home and $7,500 per month in spousal support, although the spousal support award was stayed pending trial. Following further litigation primarily pertaining to financials and community property, the district

court conducted an evidentiary hearing on the issues of asset division, child support, and alimony in early 2022.[1] Both parties testified at the hearing.

Relevant to the instant appeal, the evidentiary hearing revealed that the parties were undocumented immigrants and therefore did not have social security numbers. Nevertheless, they operated a successful tax business (JC101 Tax Services) that was licensed using Jose's father's name and social security number and earned up to $150,000 per month during tax season, obtained a home (marital residence) in 2007 for $940,000 using a fake social security number, and obtained various vehicles. Isaura helped with the tax business from 2003 until 2017 when she became a stay-at-home mother following the birth of the parties' twin children. The parties utilized a Bank of America business account that was in the name of JC101 and was used to purchase four Raiders season tickets totaling $110,515.44.

Isaura testified that they had earned a substantial income from JC101. However, she testified that not long before filing for divorce, Jose transferred the business to his family members and continued operating it under a new name, Fidelity Tax Services, which she believed was an attempt to hide assets. Isaura also claimed that Jose gave away community vehicles to hide assets. She was the primary custodian of the parties' four minor children, had not worked in years, and Jose was in arrears and inconsistent with making child support payments. Jose acknowledged that

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[1]The parties stipulated to a custody arrangement for the minor children, so custody is not at issue on appeal.

he earned $13,500 per month in 2007 and had earned a substantial income in previous years but testified that he faced economic challenges and, despite his historical income, was unable to earn as much as he once had due to not having a social security number. He denied owning the tax businesses (JC101 and Fidelity Tax Services). His financial disclosure forms (FDFs) showed that he was unemployed in 2020 earning $0 per month and was later employed as a "laborer" earning $2,080 per month but he did not submit paystubs and had expenses of over $7,000 per month.

Isaura contended that all of the aforementioned assets were community property subject to division. She requested a lump sum alimony payment of $300,000 from the sale of the marital residence, to have a monthly income of at least $10,000 imputed to Jose for the purposes of calculating child support, to be reimbursed for her half of the Raiders tickets, and to keep three of the parties' six vehicles. Isaura also requested $30,000 in attorney fees. Jose contended that the tax businesses, which were closed, were not community property. Regarding the vehicles, Jose asserted that the community owned only three vehicles, which he requested be sold, and claimed that they had given away two vehicles to his parents and adult son. He also requested that the marital residence be sold with the proceeds used to satisfy community debts and then split between the parties. Jose asserted that the Raiders tickets were purchased from the Bank of America business account in which Isaura had no ownership interest. Finally, Jose contended that he could not afford alimony on top of

the child support payments he was making for $800 per month plus $80 in arrears.

Following the evidentiary hearing, the district court entered a divorce decree ordering that (1) each party was to keep two season tickets to the Raiders, which were community property purchased with community assets from a joint business bank account that they both used but was in JC101's name; (2) the marital residence was to be sold; and (3) the parties be awarded three cars each. The court found that it did not have jurisdiction over the tax businesses, as the parties were not the legal owners of either business. The court awarded Isaura a lump sum alimony payment of $50,000 and imputed an income of $8,600 per month to Jose for purposes of determining child support, which it calculated at $2,044 per month. Regarding credibility, the court found that Jose and his FDFs were not credible and further found that the aforementioned assets and lifestyle were not that of a laborer and "instead, it is clear that [Jose] is actively deceiving the court about his income and earning capacity."

With respect to Isaura's request for attorney fees, the court concluded that an award of fees and costs was proper under NRS 18.010(2)(b) because Isaura prevailed on nearly all of her claims and because Jose needlessly multiplied the proceedings per EDCR 7.60, was noncompliant with child support and other orders, was untruthful regarding his income and earning capacity, had repeatedly gifted or transferred cars to various third parties, had used third parties' social

security number for financial gain, and the "simple division of the marital assets and debts was not possible" without a two-day hearing. The court analyzed the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), considered the parties' disparity in income under *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998), and awarded Isaura $10,000 in attorney fees and costs. This appeal followed.

On appeal, Jose first contends that the district court lacked jurisdiction to treat as community property and adjudicate the marital residence, the Raiders tickets, "some vehicles," and the JC101 Bank of America account because those assets were owned by nonparties to the divorce. Jose argues that the actual owners of those assets were required to be joined under NRCP 19 and the failure to do so deprived them of due process.

Subject matter jurisdiction is reviewed de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). NRS 123.220 defines community property, subject to certain exceptions, as "[a]ll property . . . acquired after marriage by either or both spouses." In order to render a complete decree in any civil action, "all persons materially interested in the subject matter of the suit [must] be made parties so that there is a complete decree to bind them all." *Gladys Baker Olsen Fam. Tr. ex rel. Olsen v. Eighth Jud. Dist. Ct.*, 110 Nev. 548, 553, 874 P.2d 778, 781 (1994). For that reason, our supreme court has held that the failure to join

a necessary party to a case is "fatal to the district court's judgment." *Id.* at 554, 874 P.2d at 782.

"NRCP 19 requires that all necessary parties be joined in an action, so long as the party's joinder does not deprive the court of subject matter jurisdiction. A necessary party includes a party without whom the court cannot accord complete relief and a party that claims an interest relating to the subject of the action and whose interest in the action is such that the party's ability to protect its interests will be impeded if that party is not joined." *Lopez v. Lopez*, 139 Nev., Adv. Op. 54, 541 P.3d 117, 123 (Ct. App. 2023); NRCP 19(a)(1). Individuals who own legal title to a subject property are indispensable parties to an action concerning ownership rights over the property. *See Schwob v. Hemsath*, 98 Nev. 293, 294-95, 646 P.2d 1212, 1212-13 (1982).

Here, Jose did not raise a joinder argument below but did dispute the ownership of certain vehicles and the Raiders tickets. None of the alleged owners of the subject assets came forward before the district court or attempted to join or intervene in the proceedings. However, NRCP 19 challenges may be raised for the first time on appeal as long as the parties raise the challenges in good faith and not merely in response to an adverse ruling. *Rose, LLC v. Treasure Island, LLC*, 135 Nev. 145, 152, 159-60, 445 P.3d 860, 866, 871 (Ct. App. 2019).

First, we are not persuaded by Jose's contention that the district court lacked jurisdiction to order the sale of the parties' marital

residence because "[t]he mortgage" on the marital residence is in the name and social security number of a nonparty. Jose never asserted that another party owned the marital residence before the district court and, on appeal, he fails to identify the purported nonparty owner to support his argument. To the contrary, below, Jose repeatedly requested that the district court order the sale of the marital residence. Given these circumstances—where Jose actively sought the sale of the marital residence below only to change positions on appeal and contend that the court lacked jurisdiction to sell the residence, we conclude Jose has not raised this joinder challenge in good faith or demonstrated that a necessary party was required to be joined under NRCP 19. *See Rose, LLC*, 135 Nev. at 152, 159-60, 445 P.3d at 866, 871; *see also Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) ("Parties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below." (internal quotation marks and alteration omitted)). Thus, we affirm the court's decision regarding the sale of the residence.

We are also unpersuaded by Jose's contention that the Raiders tickets were owned by a necessary party who was not joined to the underlying proceedings.[2] Below, Jose did not testify about the Raiders tickets and during his closing argument he contended that no evidence was

[2]Jose presumably means that JC101 owned the tickets as the evidence showed that JC101 owned the Bank of America account that was used to purchase the tickets, although he does not identify a purported owner in his brief on appeal.

presented regarding who authorized the purchase of the tickets. Ultimately, he maintained that they were purchased from a business account in which Isaura had no ownership interest. Isaura acknowledged that the tickets were purchased using the JC101 Bank of America business account that the parties utilized, but contended that the tickets were community property in Jose's possession. The tickets themselves were presented as an exhibit and the district court, after finding Jose's assertions not credible, ultimately concluded they were community assets subject to division.

Despite challenging the court's determination regarding ownership of the tickets, and its division of the same, Jose has not included the tickets in the record on appeal, and the record before us does not otherwise reveal what name is on the tickets. Under these circumstances, we necessarily presume that the missing portion of the record—specifically the tickets—support the district court's determination that the tickets were community property. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 600, 172 P.3d 131, 133 (2007) (explaining "that appellant bears the responsibility of ensuring an accurate and complete record on appeal and that missing portions of the record are presumed to support the district court's decision"). Because we will not disturb the district court's determinations regarding credibility and the weight of the evidence, *see Quintero v. McDonald*, 116 Nev. 1181, 1184, 14 P.3d 522, 524 (2000) ("The credibility of witnesses and the weight to be given their testimony is within

the sole province of the trier of fact."), we conclude that the district court's determination that the tickets were community property is supported by substantial evidence, *see Waldman v. Maini*, 124 Nev. 1121, 1128, 195 P.3d 850, 855 (2008) (providing that we will uphold a district court's property characterization if it is supported by substantial evidence), and we affirm that determination.

With respect to the division of the vehicles, Jose has failed to present cogent argument on this issue as he did not specify which vehicles awarded to Isaura he is challenging on appeal, and he failed to identify the owners he purports are necessary parties required to be joined. He likewise failed to support his argument regarding the vehicles by including the vehicle titles, which were admitted as exhibits in the district court, in the record on appeal, further impeding our review. *See Cuzze*, 123 Nev. at 600, 172 P.3d at 133. Consequently, we need not address this argument and affirm the district court's division of the parties' vehicles. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument).

Turning to the district court's determination that the JC101 Bank of America account was community property, while the court found that Jose and Isaura were authorized signors on the account and routinely used the account as their own, the court nevertheless determined that it did not have jurisdiction over the JC101 tax business and that Jose and Isaura

were not the legal owners of the business. Without jurisdiction over JC101, or its owners, the court lacked jurisdiction to designate the Bank of America account owned by JC101 as the parties' community property, and characterizing that account as such in the absence of the owner of the account would not accord complete relief among the parties. *See Johnson v. Johnson*, 93 Nev. 655, 658, 572 P.2d 925, 927 (1977) (recognizing that a third party would not be legally bound by an order entered in an action to which the third party had not been joined); *Univ. of Nev. v. Tarkanian*, 95 Nev. 389, 397-98, 594 P.2d 1159, 1164 (1979) (concluding that complete relief could not be afforded among existing parties where resolution in the absence of a third party would not "completely and justly" determine the rights and obligations presented by the action). Indeed, despite determining that the account was community property, the district court did not actually divide the Bank of America account between the parties.

Under these circumstances, we conclude that the court's determination that the JC101 Bank of America account was community property must be reversed and remanded for further proceedings to properly determine ownership of the account in light of the concerns outlined above, whether any necessary party should be joined, and if appropriate, determine how the account should be divided.

Next, Jose argues that the district court abused its discretion by imputing income to him for the purpose of determining child support.[3] He asserts that the court failed to make specific findings regarding his employment barriers (his status as an undocumented immigrant and his inability to work due to not having a social security number), there was no evidence to show he was offered other employment which demonstrates that his underemployment was not willful, and the imputed income was based on his 2007 income without regard to his more recent earnings. Jose contends that his child support payment should have been calculated based on a monthly income of $2,080, which is the amount he reported on his most recent FDF.

This court reviews child support orders for an abuse of discretion. *Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). We will not disturb the factual findings underlying a child support order if they are supported by substantial evidence, *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018), "which is evidence that a reasonable person may accept as adequate to sustain a judgment," *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). This court "leave[s] witness credibility determinations to the district court and will not reweigh

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[3]Jose also made this assertion with regard to alimony, albeit in a summary fashion, without developing any cogent argument as to that award. Because he failed to provide any cogent argument concerning the alimony award, and we need not address this issue. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Thus, we affirm the alimony award.

credibility on appeal." *Id.* at 152, 161 P.3d at 244. District courts are authorized to impute income to an obligor if the court determines the obligor is underemployed or unemployed without good cause. NAC 425.125(1); *Rosenbaum v. Rosenbaum*, 86 Nev. 550, 554, 471 P.2d 254, 256-57 (1970) (holding that a district court may impute income to a party that "purposefully earns less than his reasonable capabilities permit").

Here, the district court imputed a monthly income of $8,600 to Jose after determining that he was willfully underemployed. Contrary to Jose's contentions, the divorce decree demonstrates that the district court considered his specific circumstances when it imputed income to him as required by NAC 425.125(2). The court noted that NAC 425.125(2) was applicable and set forth findings relevant to those factors. Specifically, the court discussed Jose's ability to pay the parties' $3,600 mortgage and other monthly expenses; his gifting of cars to other family members; his substantial assets, which included the martial residence; his earning history; his job skills as a tax preparer; his young age; and his good health. The court found that Jose submitted FDFs showing he was unemployed in 2020 and earned $2,080 as a laborer in 2022, but that his FDFs were not credible, and he failed to submit paystubs in violation of EDCR 5.507. The court further found that Jose's income "suddenly dropped" when he filed for divorce, despite his earning history of $13,500 per month, as he reported on his mortgage application, and the substantial income he earned as a tax preparer. Based on this evidence, the court determined that Jose was

willfully underemployed and had an earning capacity greater than what he was purporting to earn during the pendency of the divorce proceedings.

In reaching this conclusion, the court also found that the parties' substantial assets and the income Jose earned to afford their lifestyle demonstrated that he could earn more than the $12 per hour he claimed to be earning and that he was "actively deceiving the court about his income and earning capacity for purposes of a divorce." The court then calculated Jose's child support payment for the parties' four minor children at $2,044 in conformance with NAC 425.140 based on his imputed income. Although the district court did not specifically mention Jose's undocumented status or his lack of a social security number with respect to imputing income, the parties testified extensively as to these facts and the decree acknowledges these circumstances elsewhere when discussing the division of property and the tax businesses where Jose earned his income.

Additionally, while Jose testified that he was not able to earn as much as he once earned, the district court explicitly found that Jose's testimony and FDFs were not credible. This court will not second guess a district court's resolution of factual issues involving conflicting evidence, *Primm v. Lopes*, 109 Nev. 502, 506-07, 853 P.2d 103, 106 (1993), or reconsider a lower court's credibility determination, *Ellis*, 123 Nev. at 152, 161 P.3d at 244. Thus, to the extent that Jose challenges the decision to impute income to him on these grounds, his arguments do not provide a basis for relief. Under the facts of this case, a reasonable mind could accept

that there was sufficient evidence presented to support the court's findings regarding Jose's income and its decision to impute income to him. *Id.* at 149, 161 P.3d at 242 (providing that substantial evidence is evidence that a reasonable person would accept to sustain a judgment). Thus, we conclude that the child support award was supported by substantial evidence. *See Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (providing that district court determinations that are supported by substantial evidence will not be disturbed on appeal).

Finally, Jose argues that the district court abused its discretion by awarding Isaura attorney fees pursuant to NRS 18.010(2) without distinguishing between attorney fees and costs, which has thwarted his ability to contest any specific portion of the award. Further, he claims that the court failed to make findings or provide analysis justifying the fee award pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

This court reviews a district court's award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). When awarding attorney fees in a family law case, the court must consider the factors set forth in *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, and must also consider the disparity in income pursuant to *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). *Miller*, 121 Nev. at 623-24, 119 P.3d at 730.

In this case, the district court awarded Isaura $10,000 in attorney fees and costs pursuant to NRS 18.010[4] and EDCR 7.60.[5] Because we reverse a portion of the district court's divorce decree and because the award of attorney fees was made at least in part based on Isaura's status as a prevailing party, we reverse the award of attorney fees and costs and remand this issue for further consideration should the court determine an award of attorney fees and costs is warranted following resolution of the issue of the ownership and division of the JC101 Bank of America account on remand.[6]

Nonetheless, there are several issues with the attorney fee and costs award that warrant further consideration if the court determines such

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[4]NRS 18.010(2)(b) allows attorney fees if the district court makes specific findings that the opposing party brought or maintained a claim "without reasonable ground or to harass the prevailing party."

[5]EDCR 7.60(b), in relevant part, allows the court to impose sanctions, including the imposition of fines, costs, or attorney fees, when a party without just cause "[s]o multiplies the proceedings in a case as to increase costs unreasonably and vexatiously."

EDCR 7.60 was amended effective June 25, 2024. In this case, we refer to the prior version in effect at the time of the evidentiary hearing. EDCR 7.60(b). Jose does not challenge the fee award under EDCR 7.60.

[6]In addition to citing EDCR 7.60 as a basis for the award of attorney fees, the district court also imposed a $750 sanction on Jose pursuant to that rule. On appeal, Jose fails to address the $750 sanction, and thus, we affirm that decision. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 160 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that "[i]ssues not raised in an appellant's opening brief are deemed waived").

an award is proper on remand. First, while the district court made findings regarding *Miller* and the *Brunzell* factors and addressed whether attorney fees were warranted under EDCR 7.60, to the extent it also awarded attorney fees under NRS 18.010(2)(b), it failed to make the necessary findings pursuant to that statute. *See Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 294 (Ct. App. 2023) (providing that, under NRS 18.010(2)(b), the court is required to make findings that the claims or defenses were either unreasonable or meant to harass, and the failure to make such findings renders the award unsupportable). Further, in awarding $10,000 in attorney fees and costs, the court failed to apportion the award between attorney fees and costs. Finally, it does not appear from the record before us that Isaura supported her request for attorney fees with an accompanying *Brunzell* affidavit or other evidence explaining the basis for the award. In family law cases, *Miller* establishes a burden not only to the district courts, but to litigants seeking attorney fees to "support their fee request with affidavits or other evidence that meets the factors in *Brunzell* and *Wright*." *Miller*, 121 Nev. at 623-24, 119 P.3d at 730. Without the requisite submissions, Isaura's fee request was insufficient. *See id.*

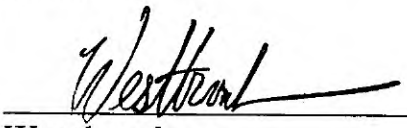
In sum, we affirm the district court's exercise of jurisdiction and division of property with respect to the marital residence, vehicles, and Raiders tickets. We also affirm the court's imputation of income to Jose for the purposes of determining child support and alimony. However, we reverse the court's determination that the Bank of America account was

community property and its award of attorney fees and costs to Isaura and remand for further proceedings on these issues consistent with this order.

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Bulla



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