IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD R. SCHRICKER; AND DONALD R. SCHRICKER RECOVERABLE TRUST DATED FEBRUARY 11, 2002,
Appellants/Cross-Respondents,
vs.
CHERYL JOY SCHRICKER N/K/A CHERYL JOY EUSE; AND CHERYL JOY EUSE RECOVERABLE TRUST DATED FEBRUARY 11, 2002,
Respondents/Cross-Appellants.

No. 87984-COA



*ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING*

Donald R. Schricker and his trust appeal from a district court decree of divorce. Cheryl Joy Schricker and her trust cross-appeal from the district court's amended decree of divorce. Second Judicial District Court, Family Division, Washoe County; Tamatha Schreinert, Judge.

Donald and Cheryl began dating in the spring of 1998 and purchased property on the shore of Lake Almanor in northern California in October of that year. The Almanor property contained a large home and a smaller cabin. Just prior to the purchase, Cheryl took out a home equity line of credit (HELOC) on a home she owned in Carson City and deposited approximately $122,000 into a joint bank account she held with Donald. She intended to use these funds to contribute to the purchase of the Almanor property, but the purchase documents reflect only a $6,000

contribution from Cheryl's separate funds going toward the $12,000 down payment.

In April 1999, approximately six months after Cheryl deposited the HELOC funds in the joint account, Donald executed and recorded a deed of trust on a separate property he owned in Reno for $119,000, with Cheryl named as the beneficiary. However, Cheryl would later testify that she did not learn about the deed of trust until after she filed for divorce and that she did not possess a promissory note nor knew who possessed it. Cheryl believed that the money she deposited in the joint account from the HELOC is reflected in the deed of trust, with Donald using that money to pay off a loan on a separate rental property he owned in Reno. Donald testified that he never borrowed any money from Cheryl and stated in his closing argument that "there is no [promissory] note" accompanying the deed of trust.

In 2001, Donald and Cheryl formed a partnership with a friend, Lorri Wharton, for the purpose of "holding, improving, and us[ing]" the Almanor property.[1] Donald subsequently recorded new title with the three partners designated as tenants in common. The division of the property, coupled with discrepancies between the partnership agreement and the title documents as to the interest held by each partner, complicated the district court's approach to its disposition in the divorce proceedings.

Donald refinanced the Almanor property three times—in 2004, 2008, and 2013—apparently to secure a lower interest rate and borrow

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[1]Wharton married Todd Whittenburg after the partnership agreement but before Donald refinanced the Almanor property in 2004. With each subsequent refinance, Donald temporarily transferred title solely to himself, secured the loan, then transferred title back to himself, Cheryl, and the Whittenburgs as a married couple.

against the Almanor property to pay off debt on other properties he owned. Prior to the first refinance, Donald and Cheryl paid equally on the mortgage, and the remaining balance on the mortgage was only $39,010 in 2004.[2] They also maintained a joint bank account for the purpose of paying expenses and maintenance on the property.

Donald and Cheryl married in 2005. Cheryl's father died in 2010, leaving her with a $350,000 inheritance. Cheryl used that money to purchase a home on Tapadero Trail in Reno in 2010 for exactly $350,000, although the original asking price was $450,000. The offer and acceptance agreement for the Tapadero property lists the source of payment as "Family Trust." Cheryl testified that she intended for the Tapadero property to be her sole and separate property, but Donald's name is also included on the purchase documents and deed to the property. Cheryl stated that Donald added his name to these documents surreptitiously, and she only found out after the fact. Donald countered that Cheryl was in the room and fully observed the signing of the purchase documents.

The deed to the Tapadero property also listed Donald and Cheryl as tenants in common, in Times New Roman typeface (i.e., not handwritten). While Cheryl would pay most expenses relating to the Tapadero property, some expenses were paid from a joint account, and the parties occupied the home together from the date of purchase until Cheryl filed for divorce in 2019. Cheryl stated that Donald had earlier told her that he would deed the Tapadero property back to Cheryl alone, but he added

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[2]Although Donald alone paid on the mortgage after the first refinance in 2004, he does not argue on appeal that Cheryl owes him half of the $39,010 balance remaining on the mortgage at the time of the first refinance.

conditions to this promise, such as a demand that she pay off his separate debts before he would do so. Donald never executed a deed or other written document to transfer the Tapadero property to Cheryl.

Cheryl filed for divorce in 2019, citing incompatibility and requesting that the Tapadero property be awarded as her sole and separate property. She amended her complaint to add, inter alia, claims of fraudulent misrepresentation and breach of fiduciary duty by Donald with respect to the Tapadero property. Settlement efforts failed and several years of litigation ensued. At the case management conference, the district court determined that attorney fees would be a community debt to be split equally between the parties. Neither party objected to this determination. The district court awarded Cheryl exclusive possession of the Tapadero property but reserved the issue of its characterization until trial. Recognizing that the division of the Almanor property made it difficult to appraise, the parties stipulated to the district court deciding its valuation based upon their submitted briefs.

Well before trial, after no appraisal had been obtained for the Almanor property, the district court adopted Cheryl's valuation approach, which utilized average listing prices per square foot of seven other shoreline homes in Lake Almanor, over Donald's approach, which only used two recently sold homes near the Almanor property as comparators. The court accordingly valued the Schrickers' interest in the property at $1,031,540.08. The court ultimately ordered Donald to buy out Cheryl's interest in the property, which was precisely the relief he had originally requested. Nonetheless, Donald moved for reconsideration of the order, arguing that it was error for the court to adopt Cheryl's method of valuation because listing

prices often differ significantly from sale prices. The district court denied the motion.

On the discovery deadline, Donald produced over 1,600 pages of documents, although he had still not responded to many of Cheryl's discovery requests from almost a year prior. Nor had Donald filed tax returns for 2017-2020 in contravention of the district court's order. Cheryl then moved to compel discovery, extend discovery, continue the trial date, and for an award of attorney fees. The district court granted her motion in part by extending the discovery deadline and continuing trial but reserved the issues of sanctions and attorney fees until the next status conference. The court issued an interim order following that status conference, ordering Donald to disclose bank statements of accounts used to deposit rental income and to hire an accountant to finalize his tax returns from 2017 to 2021.

A week prior to trial, Cheryl moved in limine to restrict Donald from introducing any non-disclosed evidence during the trial and for discovery sanctions and attorney fees, as Donald had still not responded to Cheryl's interrogatories and requests for admission, nor had he provided any bank statements or tax returns. Donald did not oppose the motion, and the district court orally granted it on the first day of the bench trial. It specifically ruled that Donald could not refer to or present any documents not previously disclosed, but exhibits to his previous motions were potentially admissible. It also ruled that Cheryl's requests for admission were deemed admitted, since Donald failed to answer or object to them. The court could also make negative inferences based on his lack of responses to interrogatories. The district court reiterated this decision in a written order issued post-trial, as well as in the original and amended divorce decrees.

Following the six-day trial, during which the parties testified to the above facts, the district court entered the divorce decree. It reiterated its prior findings regarding the Almanor property, ordering Donald to buy out Cheryl's community interest valued at $515,770.04. It determined that the Tapadero property was community property, as Cheryl did not overcome the presumption that property acquired during the marriage is community property. It found that the use of her inheritance to purchase the Tapadero property and her separate funds to maintain it were gifts to the community. The district court valued the Tapadero property at $407,000, despite testimony during trial that both parties agreed to a valuation of $704,000.

The district court found that Donald owed Cheryl $119,000 pursuant to the deed of trust on his separate property in Reno, as the deed had not been canceled or rescinded, notwithstanding the absence of any promissory note. The district court also found, consistent with its prior determination at the case management conference, that attorney fees were a community debt to be equalized and accordingly ordered Donald to pay Cheryl $125,256.29 from his separate funds.

Both parties moved to amend or alter the divorce decree. The district court denied Donald's motion in its entirety, rejecting his arguments that it improperly characterized and valued the Almanor property, improperly valued the Tapadero property at $407,000 despite contrary evidence from both parties, improperly found that Donald owed Cheryl a debt of $119,000 pursuant to the deed of trust, and improperly found that attorney fees were a community debt to be equalized. The district court granted Cheryl's motion in part by agreeing to address her claims of fraud and breach of fiduciary duty in an amended decree but otherwise denied the motion. These appeals followed.

*Jurisdiction of the district court*

Donald argues that the district court did not have subject matter jurisdiction over the Almanor property. However, he specifically argues that because the property is located in California, a Nevada district court does not have in rem jurisdiction over the property, even though in rem jurisdiction is a sub-category of personal jurisdiction, not subject matter jurisdiction. Cheryl argues that the district court had jurisdiction over the property, as Nevada district courts adjudicate interests in foreign real property incidental to divorce on a regular basis. Regardless of whether Donald argues subject matter jurisdiction or personal jurisdiction, his argument fails.

To the extent Donald argues that the district court does not have subject matter jurisdiction, we review the issue de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). "Subject matter jurisdiction is the court's authority to render a judgment in a particular category of case." *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011) (internal quotation marks omitted). The category of this case, at least with respect to the Almanor property, is the disposition of community property pursuant to NRS 125.150(1)(b), which requires the court to "make an equal disposition of the community property of the parties." Thus, the district court has subject matter jurisdiction to render a judgment involving property in a divorce action under NRS 125.0150(1)(b). *Cf. Senjab v. Alhulaibi*, 137 Nev. 632, 634, 497 P.3d 618, 619 (2021) (holding that NRS 125.020(1) provides a district court with subject matter jurisdiction in a divorce action).

To the extent Donald is arguing that the district court did not have personal jurisdiction because it did not have in rem jurisdiction over

the Almanor property, his argument fails on procedural grounds. Lack of personal jurisdiction is a defense that a defendant may assert during the pleadings stage to dismiss the lawsuit. NRCP 12(b)(2). If a defendant does not address the defenses listed under NRCP 12(b)(2)-(4) (which includes lack of personal jurisdiction) either in its initial pleadings or in an early motion, the district court views the matter as waived and the defendants are barred from later bringing that defense. NRCP 12(h)(1). Donald never raised the lack of personal jurisdiction in the pleading stage, in an early motion, or on appeal, so he waived any such argument. *See* NRCP 12(h)(1); *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").

*Joinder of the Whittenburgs as a necessary party to the action*

Donald argues that the Whittenburgs were a necessary party to this divorce action because of their joint ownership interest in the Almanor property. Cheryl points out that the Whittenburgs were aware of the case and never intervened in the action or attempted to partition the property or otherwise litigate their ownership interest.

Although Donald did not raise this argument below, Nevada allows necessary-party challenges for the first time on appeal. *Rose, LLC v. Treasure Island, LLC*, 135 Nev. 145, 152, 445 P.3d 860, 866 (Ct. App. 2019). We review the failure to join a required party under Rule 19 for abuse of discretion, and we review any legal questions underlying that issue de novo. *Klamath Irrigation Dist. v. U.S. Bureau of Reclamation*, 48 F.4th

934, 943 (9th Cir. 2022).[3] "Whether a party is necessary does not depend upon broad labels or general classifications, but rather comprises a highly fact-specific inquiry." *Rose*, 135 Nev. at 153, 445 P.3d at 867. "If an entity required by NRCP 19 is not joined as a party, a district court should not enter a final order." *Las Vegas Police Protective Ass'n v. Eighth Jud. Dist. Ct.*, 138 Nev. 632, 636, 515 P.3d 842, 847 (2022).

Parties whose ownership interest in a property may be altered or modified by an action are necessary parties. *See Schwob v. Hemsath*, 98 Nev. 293, 294, 646 P.2d 1212, 1212 (1982) (holding that a corporation with legal title to a property was a necessary party); *Paso Builders, Inc. v. Hebard*, 83 Nev. 165, 170, 426 P.2d 731, 735 (1967) (holding that a trustee and beneficiary of a deed of trust were necessary parties); *Robinson v. Kind*, 23 Nev. 330, 338-39, 47 P. 1, 3-4 (1896) (stating that parties that executed a deed of trust were necessary parties).

Under NRCP 24, NRS 12.130, and NRS 65.030, a party with the required interest in the litigation may intervene in the litigation. "An intervener is, for all intents and purposes, an original party and interveners are treated as if they had been original parties to the suit." *State ex rel. Moore v. Fourth Jud. Dist. Ct.*, 77 Nev. 357, 363, 364 P.2d 1073, 1077 (1961). Thus, if a potential party to the litigation believed it was a necessary party due to its interest, it may move to be joined to the lawsuit. Thus, a potential party knowing that a suit involving real property is underway and voluntarily choosing not to join it suggests that it is not an interested party. *See Rose*, 135 Nev. at 151, 445 P.3d at 865. Waiting until after trial to raise

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[3]NRCP 19 is virtually identical to FRCP 19, and Nevada generally follows federal law when its procedural rules are similar. *Rose*, 135 Nev. at 151, 445 P.3d at 865.

this issue can suggest concealment or ignorance. *Id.* at 152, 445 P.3d at 866.

Here, the Whittenburgs had no property interest at issue in the divorce proceeding because the property subject to division in the divorce was the ownership interest held by Donald and Cheryl and was not intended to affect the Whittenburgs' interest in the Almanor property. We note that the district court did not resolve a dispute over the percentages of ownership in that property as this potential issue was not presented to it. Rather, the court was only determining the division of the Schrickers' interest in that property. Further, it is clear that there was no concealment here as the Whittenburgs knew about the litigation and Lorri actually provided deposition testimony which is similar to what happened in the *Rose* case where this court refused to reverse the judgment over a Rule 19 joinder issue raised for the first time on appeal. *See id.* at 153, 445 P.3d at 866-67.

Donald's argument that the Whittenburgs are necessary parties because they may want to buy the Schrickers out of their interest is irrelevant. They could have made an offer at any time, and once Donald buys out Cheryl's interest per the decree of divorce, he could certainly offer the property to the Whittenburgs; in fact, they have the right of first refusal per the partnership agreement. Still, they were not otherwise necessary parties in the interest of the property shared between the Schrickers and the internal transfer of ownership between the two. Thus, the district court did not err by not sua sponte joining the Whittenburgs to the litigation as necessary parties, and their non-participation was not fatal to the district court's judgment. Donald's argument therefore provides no basis for relief.

*Disposition of the Almanor property*

Donald argues that the district court abused its discretion in finding that the Almanor property was community property when it was actually his separate property; thus, he should not have had to buy out Cheryl's interest.[4] Cheryl responds that the district court properly found that each party equally contributed to the Almanor property and in ordering Donald to buy out her interest.

This court will uphold a district court's characterization of property as community property or separate property if its characterization is supported by substantial evidence. *Lopez v. Lopez*, 139 Nev., Adv. Op. 54, 541 P.3d 117, 125-26 (Ct. App. 2023). Generally, property acquired prior to marriage is separate property. NRS 123.130. Tenancy in common means that two or more owners hold the same real property by unity of possession but by separate and distinct titles, with each person having an equal right to possession of the property. NAC 375.128. "Transmutation from separate to community property must be shown by clear and convincing evidence." *Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284, 286 (1994). When granting a divorce, the district court has extensive discretion to dispose of not only community property, but separate property as well. *McCall v. McCall*, 70 Nev. 287, 289, 266 P.2d 1016, 1017 (1954).

The district court found that the Almanor property was community property, while simultaneously acknowledging that Donald and Cheryl acquired it prior to the marriage and held it as tenants in common. Donald and Cheryl originally purchased Almanor with separate funds, held it in their respective trusts, and titled it as tenants in common. They both

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[4]Donald does not argue the accuracy of the district court's finding that Cheryl had a one-third interest in the property on appeal.

paid on the mortgage until 2004, but did not marry until 2005, at which point Donald had already refinanced the property. While Cheryl did describe a joint bank account used to pay expenses on Almanor, that account was opened before the marriage. The evidence thus suggests that the Almanor property is separate property held in equal shares pursuant to a partnership agreement.

However, even if the district court's characterization of the Almanor property was erroneous, the property was covered by a partnership agreement which gave Donald and Cheryl equal ownership interests in the property, so this error does not affect the parties' substantial rights. *Cf.* NRCP 61 (providing that only errors affecting a party's substantial rights are grounds to set aside a judgment). The district court had the authority to order Donald to buy out Cheryl's interest in the Almanor property, regardless of its characterization of the property. *See McCall*, 70 Nev. at 289, 266 P.2d at 1017. Furthermore, even if the court did err in ordering the buyout, Donald asked the district court for precisely this relief multiple times during the proceedings. Under the doctrine of invited error, a party will not be heard on appeal to complain of so-called errors which that party urged the court to commit. *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 494 (Ct. App. 2023). Thus, because any error in ordering a buyout was invited by Donald, he may not now obtain relief based on his own conduct.

*Valuation of the Almanor property*

Donald argues that the district court abused its discretion in valuing the Almanor property because the houses it used as comparators were not sufficiently similar to the Almanor home and because no certified appraiser would use the district court's approach. Rather, Donald argues

an appraiser would use an "income capitalization" approach, which takes into account the income a piece of property generates in a given year relative to the amount invested in the property. *See Canyon Villas Apartments Corp. v. State*, 124 Nev. 833, 843, 192 P.3d 746, 753-54 (2008). Cheryl responds that Donald agreed to allow the district court to determine the Almanor property's value through briefing and did not argue the income capitalization approach below so the argument is waived.

A district court's decisions in a divorce proceeding are reviewed for abuse of discretion. *Shydler v. Shydler*, 114 Nev. 192, 196, 954 P.2d 37, 39. And district courts enjoy broad discretion in distributing community property. *Forrest v. Forrest*, 99 Nev. 602, 606, 668 P.2d 275, 278 (1983). Although not real property, the supreme court has held that trial courts have wide latitude in determining the value of personal property. *Alba v. Alba*, 111 Nev. 426, 427, 892 P.2d 574, 574 (1995). A court's method of valuation "is not an abuse of discretion, so long as the value placed on the property falls within a range of possible values demonstrated by competent evidence." *Id.* at 427, 892 P.2d at 574-75.

Donald and Cheryl decided before trial that the district court could value the Almanor property based on briefs submitted by the parties. The parties agreed to this somewhat unorthodox procedure and the court adopted Cheryl's method after considering the briefs because it found it more consistent with a typical comparative market analysis. Donald did not argue for a valuation based on the income capitalization method—not in his brief regarding the valuation of the Almanor property, not in his motion for reconsideration regarding the district court's order on the value of the Almanor property, and not at any point during the six-day trial. Thus, this court need not consider his newly raised argument for the income

capitalization method. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983. And the argument Donald made below—that the properties used by the district court as comparators were not sufficiently similar to the Almanor property—is not cogently argued on appeal such that we need not consider it. *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). Regardless, the only homes Donald presented to the district court as comparators consisted of two printouts from "Realtor.com" showing the listing prices of those properties with his own handwritten notes of the purported sale prices. Assuming this was competent evidence, Donald has not shown that Cheryl's option, which was chosen by the district court, was an abuse of discretion. *See Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014) ("An abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances.").

The parties stipulated that the district court would determine the value of the property through their briefs because multiple professional appraisers refused to appraise the property. That fact, combined with Donald's failure to provide meaningful evidence to help the court make its determination, forced the court to use its discretion and adopt Cheryl's valuation method for a lack of any better alternative. Donald fails to demonstrate that the district court abused its discretion in adopting Cheryl's method of valuation and his argument thus provides no basis for relief.

*The deed of trust*

Donald argues the district court abused its discretion by finding that he owed money to Cheryl based on the deed of trust. Specifically, he

contends the deed of trust on his separate Reno property is not evidence of a debt he owes to Cheryl as he never actually borrowed $119,000 from her, and because Cheryl did not possess a promissory note. Cheryl argues that the promissory note is not necessary because she is not trying to nonjudicially foreclose on Donald's property and the deed of trust was simply proof of the existence of the debt.

This court reviews a district court's decisions concerning a divorce proceeding for abuse of discretion and will affirm the district court's rulings when they are supported by substantial evidence. *Shydler*, 114 Nev. at 196, 954 P.2d at 39. A "deed of trust is a lien on . . . property to secure the debt under [a] promissory note." *Facklam v. HSBC Bank USA*, 133 Nev. 497, 499, 401 P.3d 1068, 1070 (2017). "Separation of the note and security deed creates a question of what entity would have authority to foreclose, but does not render either instrument void." *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 520, 286 P.3d 249, 259 (2012) (internal quotation marks omitted).

The district court concluded that the deed of trust was evidence that Donald owed Cheryl a debt. While finding that Cheryl did not prove what happened with the HELOC funds that went into the joint bank account, it still found that the deed was not canceled or rescinded, thus Donald owed Cheryl $119,000 under the deed of trust.

Because Cheryl presented the deed of trust only as evidence of an existing debt, the lack of a promissory note is not dispositive. *See id.*; *see also Johnson v. Steel, Inc.*, 94 Nev. 483, 485-86, 581 P.2d 860, 861-62 (1978) (holding that district courts have broad discretion in disposing of community debts). Even though the district court did not explicitly find that the funds Cheryl placed in the joint bank account meant to go toward

the purchase of the Almanor property were borrowed by Donald and reflected in the deed of trust, it considered the evidence presented by both parties and made findings based on that evidence.[5] The district court is in the best position to determine witness credibility and we will not reweigh credibility on appeal. *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007). The district court found no evidence of the deed of trust being canceled or rescinded, which is sufficient reason under the facts of this case to conclude that the deed was a valid indicator of Donald's debt to Cheryl. Thus, substantial evidence supports the district court's finding of a $119,000 debt owed to Cheryl by Donald.

*The preclusion order*

Donald argues that the district court abused its discretion when it orally granted Cheryl's motion in limine at trial, which prohibited him from testifying about documents not disclosed during discovery, deemed unanswered requests for admission as admitted, and allowed negative inferences based on interrogatories Donald did not respond to. He further argues that this court should apply the heightened standard of review for case-concluding sanctions as articulated by the supreme court in *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 92-93, 787 P.2d 777, 779-80 (1990), due to the seriousness of these sanctions. He finally argues that these sanctions precluded him from calling key witnesses whose testimony

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[5]Donald explained that a title officer recommended that he execute a deed of trust so that Cheryl would have some money to collect in the event of his death. Donald did not elaborate on precisely why he followed this recommendation or how this would work if he never actually borrowed money from Cheryl, nor did he explain why he did not simply establish a will or trust to provide financial security for his wife should he pre-decease her, nor why his heirs would be bound by the allegedly invalid deed of trust and Cheryl would be protected.

would have altered the outcome of the trial, even though he did not disclose those witnesses before trial.

A "district court enjoys broad discretion in imposing discovery sanctions." *Blanco v. Blanco*, 129 Nev. 723, 729, 311 P.3d 1170, 1174 (2013). But when the sanction strikes the pleadings, resulting in a dismissal with prejudice, a "heightened standard of review applies" such that the district court abuses its discretion if the sanctions are not just and do not relate to the claims at issue in the discovery order that was violated. *Id.* (citing *Young*, 106 Nev. at 92, 787 P.2d at 779-80). Here, the district court imposed sanctions based on Donald's failure to provide discovery, but those sanctions did not result in a dismissal of the case with prejudice. Rather, the trial lasted for six days and Donald was permitted to litigate his case on the merits and present testimony. Thus, this court reviews the district court's sanction order for an abuse of discretion and does not apply the heightened *Young* standard.

Moreover, a district court has the power to "issue further just orders" following a party's noncompliance with a discovery order, NRCP 37(b)(1), and it enjoys broad discretion in fashioning discovery sanctions, *see Blanco*, 129 Nev. at 729, 311 P.3d at 1174. The record reflects that, while Donald did properly respond to Cheryl's first set of requests for production, he failed to properly respond to her many subsequent discovery requests. Following a review hearing, the district court ordered Donald to produce tax returns and bank statements before the extended discovery deadline. He never complied with those orders. Based on Donald's failure to properly respond to the discovery requests, the district court issued the aforementioned sanction order. The district court's decision in this regard is supported by the record. The district court thus did not abuse its

discretion when it granted Cheryl's motion in limine and imposed discovery sanctions, as its findings were supported by NRCP 37 and substantial evidence. Additionally, Donald has not cogently argued what improperly excluded evidence would have altered the outcome of the trial. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. We therefore reject Donald's request for relief.

*Characterization of the Tapadero property*

On cross-appeal, Cheryl argues that the district court erred in finding that the Tapadero property was community property because: (1) the use of her inheritance to purchase the Tapadero property was not a gift to the community; (2) the court made other erroneous factual and legal findings, including that Donald did not commit fraud or breach his fiduciary duty; and (3) the requests for admissions deemed admitted establish that the Tapadero property was her separate property.

Donald responds that the district court did not err, as he did not owe his wife a fiduciary duty either as a spouse or as a realtor, nor could he have committed fraud as there was no conflict of interest between the parties at the time of the purchase. He further responds that the requests for admission do not establish that the Tapadero property is Cheryl's separate property and, at any rate, Cheryl has not produced clear and convincing evidence to overcome the presumption that property acquired during the marriage is community property subject to equal division upon divorce.

A district court's determination of the character of property will be upheld if it is based on substantial evidence. *Waldman v. Maini*, 124 Nev. 1121, 1128, 195 P.3d 850, 855 (2008). With limited exceptions, all property acquired after marriage by either or both spouses is community

property. NRS 123.220. "[T]he spouse claiming such property as their separate property must prove their interest by clear and convincing evidence." *Draskovich v. Draskovich*, 140 Nev., Adv. Op. 17, 545 P.3d 96, 99 (2024). Property held as tenants in common during the marriage is compatible with the concept of community property. *Peters v. Peters*, 92 Nev. 687, 690, 557 P.2d 713, 715 (1976). While an inheritance is a spouse's separate property, NRS 123.130, separate property may be given as a gift to the community, *Schmanski v. Schmanski*, 115 Nev. 247, 249, 984 P.2d 752, 754 (1999). A gift to the community is presumed when a spouse consciously uses their separate property to pay community expenses. *Cord v. Cord*, 98 Nev. 210, 214, 64 P.2d 1026, 1029 (1982).

The district court found that Cheryl did not provide clear and convincing evidence to overcome the presumption that the Tapadero property was community property. Specifically, it found that the titling of the property as tenants in common did not overcome the community property presumption by clear and convincing evidence. It interpreted *Peters* to mean that property obtained during the marriage and titled as tenants in common is community property pursuant to NRS 123.220. It found that Donald's alleged oral promises to deed the Tapadero property back to Cheryl were irrelevant as there was no signed contract to that effect. Finally, it found that Cheryl's contributions to the Tapadero property, such as paying bills and improvements, were gifts to the community, as there were community funds available that could have been used for such purposes. It is for the district court to determine whether the evidence offered by the party seeking to overcome the community property presumption is clear and convincing. *Todkill v. Todkill*, 88 Nev. 231, 236, 495 P.2d 629, 632 (1972). Considering the real estate purchase agreement

and deed did not create title solely in Cheryl's name or her trust's name, but rather as tenants in common between her and Donald, the court's finding that this was a normal transaction between married partners is entitled to deference. Therefore, we discern no abuse of discretion with respect to the district court's characterization of the Tapadero property as community property.

*Breach of fiduciary duty and fraud*

On cross-appeal, Cheryl argues that the district court erred in finding that Donald did not commit fraud or breach the fiduciary duty imposed on him by NRS 645.252. Donald responds that, as spouses acting with the same interest, NRS 645.252 did not apply to him in the Tapadero property purchase, thus there were no grounds upon which to allege fraud or breach of fiduciary duty.

We review the district court's legal conclusions de novo. *Iliescu v. Steppan*, 133 Nev. 182, 185, 394 P.3d 930, 933 (2017). But we will not disturb the district court's factual determinations if substantial evidence supports those determinations. *Id.*

NRS 645.252 imposes on real estate agents a fiduciary duty to disclose facts relevant and material to the transaction to each party to the transaction. If the real estate agent is acting for more than one party to the transaction, they must obtain the written consent of each party before continuing to act as their real estate agent. NRS 645.252(1)(d). NRS 645.257(1) allows a party to a real estate transaction to bring a cause of action against a real estate agent who has failed to perform their fiduciary duties under NRS 645.252. When a party who is relied upon as a fiduciary fails to fulfill their duties as a fiduciary and does not inform the

other party of their failure, the omission constitutes constructive fraud. *Golden Nugget, Inc. v. Ham*, 95 Nev. 45, 48, 589 P.2d 173, 175 (1979).

However, the fiduciary duties imposed by NRS 645.252(1)(d)(2) only apply to real estate agents representing parties with adverse interests. The district court determined that Cheryl and Donald did not have adverse interests with respect to the purchase of the Tapadero property *at the time of purchase* and thus no written waiver was required. It emphasized the unity of interest between the two parties, namely obtaining a home to live in together as spouses at a reasonable price.[6]

Cheryl's attempt to establish that Donald had adverse interests to hers at the time of purchase via his alleged clandestine addition of his name to the title of the Tapadero property as a tenant in common is unsupported by substantial evidence. Cheryl presented no evidence to support her claim that Donald dismissed the title officer and altered documents apart from her testimony that included speculation. She did not depose anyone from the title company, subpoena any documents from the title company, or call anyone from the title company as a witness during trial.

Cheryl's admission that she did not closely scrutinize the preprinted deed and closing documents, but merely initialed and signed things because she was told to do so, does not imply that Donald acted fraudulently. *See Gage v. Phillips*, 21 Nev. 150, 153, 26 P. 60, 61-62 (1891)

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[6]Cheryl correctly states that spouses also owe each other a fiduciary duty. *See Williams v. Waldman*, 108 Nev. 466, 472, 836 P.2d 614, 618 (1992). However, as discussed below, regardless of the basis for Donald's fiduciary duty to Cheryl, the district court found she was unable to establish adverse interests between herself and Donald at the time of the purchase or fraudulent behavior.

(holding that a party's ignorance of the terms of a contract does not establish fraud or mistake). The district court considered the evidence before it and framed the issue of fiduciary duty around the interests of the parties at the time of the transaction and found no conflict of interest imposing such a duty or requiring a waiver of conflict. While Cheryl disagrees, substantial evidence supports the district court's decision. We thus conclude that the district court did not err in finding no breach of fiduciary duty or fraudulent misrepresentation.[7]

*Valuation of the Tapadero property*

Donald argues that the district court abused its discretion in valuing the Tapadero property at $407,000 when the trial transcript reflects that Cheryl and Donald substantially agreed on a valuation of $704,000. Cheryl responds that a wide range of values for the Tapadero property were presented beyond the $704,000 figure Donald offered, and that the court had discretion to establish a value based on all the information presented to it.

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[7]Cheryl also argues that Donald's lack of response to her requests for admission relating to the purchase of the Tapadero property establish the elements of fraud. Establishing the elements of fraud is ordinarily a question of fact. *Epperson v. Roloff*, 102 Nev. 206, 211, 719 P.2d 799, 802 (1986). While the allegations deemed admitted may establish certain facts, it is the district court's role to apply the law to those facts and to make its findings as a matter of law. *Fed. Ins. Co. v. Coast Converters, Inc.*, 130 Nev. 960, 967-68, 339 P.3d 1281, 1286 (2014). The district court weighed these facts and determined they fell short of establishing fraud. Given that this court owes deference to the district court's evidentiary determinations and is not at liberty to reweigh evidence on appeal, we conclude that the district court did not err in declining to find that the requests for admission conclusively established that Donald committed fraud. *See Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 285 (Ct. App. 2023).

This court will not disturb a district court's factual findings in a divorce proceeding if they are supported by substantial evidence. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment. *Id.* However, this court will set aside factual findings if they are clearly erroneous. *Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 285-86 (Ct. App. 2023) (stating "deference is not owed to legal error or findings that may mask legal error" (internal quotation marks omitted)). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). In addition, a district court may correct a clerical mistake. NRCP 60(a).

The divorce decree states that "Wife believes Husband's appraisal of $407,000 is fairly accurate" and ultimately found that "the Tapadero Property is community property, valued at $407,000, and is awarded to Wife." The amended decree retains this language. But the trial transcript reflects that Cheryl substantially agreed with Donald's appraisal of $704,000. Given that both parties generally agreed on that dollar figure at trial, no evidence of a valuation of $407,000 was presented, and the court made its finding that the property was worth the amount of Donald's appraisal because Cheryl testified it was accurate, the court's valuation of $407,000 is not supported by substantial evidence. *See Real Est. Div. v. Jones*, 98 Nev. 260, 264, 645 P.2d 1371, 1373 (1982) (holding that a trial court abuses its discretion when it makes a factual finding not supported by

substantial evidence). In light of the evidence presented, it appears that the court intended to value the Tapadero property at $704,000 and simply made what appears to be clerical error. We thus remand to the district court to correct this error and update the equalization payment in the divorce decree to reflect the correct valuation of the Tapadero property.

*Attorney fees*

Donald argues that the district court abused its discretion by ordering attorney fees to be equalized and thus requiring Donald to reimburse Cheryl from his separate funds for her portion of attorney fees. Cheryl responds that because there were no community funds from which Cheryl could pay her attorney fees, ordering the equalization of attorney fees using Donald's separate funds was a proper exercise of the district court's discretion.

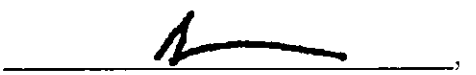
An award of attorney fees in a divorce proceeding is within the discretion of the district court. NRS 125.150(4); *see also Blanco*, 129 Nev. at 732, 311 P.3d at 1176. A district court may order a spouse in a divorce proceeding to pay an attorney fees award out of their separate property pursuant to NRS 125.150(4). *Culculoglu v. Culculoglu*, No. 67781, 2016 WL 3185998, at *1 (Nev. June 6, 2016) (Order of Affirmance).

The district court treated attorney fees as a community debt since the case management conference and thus ordered them equalized in the decree of divorce, resulting in Donald reimbursing Cheryl in the amount of $125,256.29 from his separate funds. As Donald did not object to the court's treatment of attorney fees at the case management conference but rather waited until moving to alter or amend the divorce decree, he is not

entitled to relief.[8] *See Rives v. Farris*, 138 Nev. 138, 142, 506 P.3d 1064, 1068 (2022) (explaining that a party preserves a claim of error only by making a timely objection).

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.[9]


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Tamatha Schreinert, District Judge, Family Division
Gabrielle Jeanne Carr, Settlement Judge
Richard F. Cornell
Bittner & Widdis Law
Washoe District Court Clerk

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[8]Cheryl argues that the district court erred by not adding the taxes and penalties she incurred when liquidating her separate property investment accounts to pay her attorneys into its attorney fees calculation in the divorce decree. However, she provides no relevant authority in support of this assertion, so we decline to consider her argument further. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

[9]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not provide a basis for further relief.