IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STEVEN DUKES,

Petitioner-Appellant,

v. **No. 33,844**

TRINA DUKES,

Respondent-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY
John F. Davis, District Judge

Steven Dukes
Stevensville, MD

Pro se Appellant

Matthew L. Sanchez
Albuquerque, NM

for Appellee

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Petitioner, a self-represented litigant, appeals from a final decree of dissolution of marriage. [RP 179-92] Unpersuaded by Petitioner's docketing statement, we entered a notice of proposed summary disposition, proposing to affirm. Petitioner has filed a memorandum in opposition to our notice. We remain unpersuaded and therefore affirm.

{2} On appeal, Petitioner articulates sixteen issues, which we consolidated into seven based on the assertions that Petitioner made. Our notice set forth the relevant facts for each issue and set forth the law that we believed controlled. We do not reiterate our analysis here; instead, we focus on Petitioner's arguments in his memorandum in opposition.

{3} **Issues 1, 7 & 9 (Custody and Visitation):** With respect to custody and visitation of the couple's two minor children, we discussed the evidence that the district court relied on in reaching its determination and concluded that the district court had not abused its discretion in awarding sole custody to Respondent, despite a presumption that joint custody is in the best interests of children. In response, Petitioner asserts that this Court "misunderstood a number of facts relevant to" this issue. [MIO 1] However, as we explained in our calendar notice relative to other issues, the district court, as finder of fact, weighs the credibility of witnesses and resolves conflicts in evidence to reach factual determinations, not this Court. *See*

generally Chapman v. Varela, 2009-NMSC-041, ¶ 5, 146 N.M. 680, 213 P.3d 1109 ("[T]he duty to weigh the credibility of witnesses and to resolve conflicts in the evidence lies with the trial court, not the appellate court." (internal quotation marks and citation omitted)). In other words, the factfinder (in this case, the district court) determines what the facts are based on the evidence presented by the parties. In doing so, the district court was entitled to reject Petitioner's version of the facts and other evidence he relied on. Accordingly, Petitioner's assertions regarding allegedly misunderstood evidence do not change the result we reached in our proposed disposition relative to this issue.

{4} Petitioner's other arguments relative to the best interests of the children are likewise unavailing for the reasons we set forth in our calendar notice. We acknowledge Petitioner's reference to *Strosnider v. Strosnider*, 1984-NMCA-082, ¶ 30, 101 N.M. 639, 686 P.2d 981, and our reliance on it for the proposition that "[w]hen a joint custody arrangement breaks down in such a manner as to injure the relationship between children and a parent, it would seem appropriate in some cases to award sole custody to the parent who did not precipitate the failure." (internal quotation marks and citation omitted). Petitioner argues that it was Respondent who precipitated the breakdown of the relationship between Petitioner and his children. [MIO 4] However, again, the district court made a contrary finding, [RP 188] which

it was entitled to do, and we therefore perceive no abuse of discretion in the district court's handling of custody and visitation.

{5} **Issues 2, 4, 5, & 15 (Allocation of Assets and Debts):** In our notice, we explained that because Petitioner failed to supply this Court with an explanation or citations relative to an alleged incorrect valuation of the marital home, we would not review his issue. In response, he provided this Court with citations to the record where the parties each offered evidence of the value of the marital home. [MIO 4-5] Petitioner points out that the evidence offered by Respondent differs from the evidence he offered at trial. [Id.] He then complains that the district court took "the stance that [Respondent's] assertions are correct[.]" [MIO 5] The determination regarding the valuation of the home was a factual finding based on the district court's view of the evidence, and as we explained above, our role on appeal does not permit us to substitute our judgment concerning the facts for the district court's view. *See Haaland v. Baltzley*, 1991-NMSC-086, ¶ 17, 110 N.M. 585, 798 P.2d 186 (explaining that the fact there may have been contrary evidence that would have supported a different ruling does not permit a reviewing court to weigh evidence). Accordingly, we hold that the district court did not abuse its discretion in determining the value of the marital home.

{6} Further, regarding the award of the home to Respondent, Petitioner disputes that he left the home in 2011. Instead, he claims that he left the home in 2008 and made payments on the home until September 2012. [MIO 5] Even if these assertions are correct, we do not see how they would have changed the district court's ruling. The district court awarded the home to Respondent, subject to the debt on the house. [Id.] As we explained in our notice, in considering the assets that Respondent was awarded, [RP 190-91] his greater earning power, [RP 180] and the fact that the home remains subject to a substantial debt, [RP 183] we cannot say that the district court abused its discretion in awarding the home to Respondent. *See Trego v. Scott*, 1998-NMCA-080, ¶ 22, 125 N.M. 323, 961 P.2d 168 (decisions relating to the equitable division of community property and debts are reviewed for an abuse of discretion); *see also Irwin v. Irwin*, 1996-NMCA-007, ¶ 10, 121 N.M. 266, 910 P.2d 342 ("The division of property, however, need not be computed with mathematical exactness.").

{7} Lastly, relative to Petitioner's assertion that he received too much of the student loan debt, which the district court determined to be a community debt, and that Respondent "filed taxes in a deceptive manner," we continue to believe that our notice correctly analyzed these issues. We only point out, as we did above, that "[t]he division of property . . . need not be computed with mathematical exactness." *Irwin*, 1996-NMCA-007, ¶ 10, and in examining the overall distribution of assets and debts,

we conclude that the district court divided both equally between the parties. [See RP 190-91] We therefore affirm with respect to this issue.

{8} **Issues 10 & 11 (Calculation of Income)**: Petitioner continues to argue that the district court incorrectly calculated his income; as we requested he do, Petitioner has now supplied this Court with the basis for his argument. [MIO 6-7] Petitioner contends that the district court erred in including a $6000 insurance-related benefit as part of his income, since it is not paid out to him. For support purposes, income can come from "any source," including income from certain insurance benefits and "significant in-kind benefits." NMSA 1978, § 40-4-11.1 (C)(2) (2008). Accordingly, we perceive no error in the district court's calculation of Petitioner's income and affirm on this issue.

{9} **Issues 3 & 12 (Child Support)**: In his memorandum in opposition, Petitioner clarifies that he is challenging the district court's determination that Petitioner owed a child-support debt for a time period in 2012 through 2013. [MIO 7] As Petitioner points out and the district court explained in the decree, there was no court-ordered support before September 2013. [RP 180-81; MIO 7] Petitioner moved out of New Mexico in 2012, and between the time of his move to the time of the court-ordered payments in 2013 (a period of seventeen months), Petitioner provided monetary assistance to Respondent and the children for six months. [RP 181] The district court

pointed out that had interim support been ordered during this time period, Respondent would have been entitled to a substantial amount more than she actually received. [RP 182] This is not a determination that Petitioner owes support from this time period as Petitioner contends. In any event, the district court determined that "Petitioner owes no amount to Respondent for child support or interim arrears." [RP 191] Therefore, Petitioner is not in a position to claim error. Additionally, we perceive no abuse of discretion in the district court's decision to offset a portion of Respondent's share of the student loan debt. In offsetting Respondent's share of the debt, the district court took into account the fact that Respondent had to meet the family's financial obligations on her own during this time period and experienced substantial hardship in doing so. [RP 181] In light of this, the district court decided to offset a portion of Respondent's share of the student loan debt to compensate for Petitioner's failure to make adequate support payments in 2012-2013. We perceive no abuse of discretion in the district court's handling of this issue. *See Fernandez v. Fernandez*, 1991-NMCA-001, ¶ 9, 111 N.M. 442, 806 P.2d 582 (providing that a trial court "must attempt to perform an allocation that is fair under all the circumstances").

{10} **Issues 6, 8 & 14 (Spousal Support) and Issue 13 (Attorney Fees)**: Petitioner's arguments relative to spousal support [MIO 8-10] and attorney fees [MIO 10] have already been addressed by this Court's notice, and we decline to address

them further in this opinion because Petitioner has not provided any new legal or factual argument that persuades us that our analysis was incorrect.

{11} **Issue 16 (Undue Hardship)**: Lastly, Petitioner recharacterizes this issue as "an attempt [on his part] to explain the evidence that was provided to the district court that shows proof that [his security clearance] will be revoked if he incurs debt that he [] cannot pay." [MIO 11 (emphasis omitted)] As we explained in our notice, any future concern about Petitioner's job based on the enforcement of the final decree is entirely speculative, and this Court will not review these kinds of issues. *Crutchfield v. N.M. Dep't of Tax. & Rev.*, 2005-NMCA-022, ¶ 36, 137 N.M. 26, 106 P.3d 1273 ("A reviewing court generally does not decide academic or moot questions.").

{12} Accordingly, for the reasons set forth in our notice of proposed disposition and in this opinion, we affirm.

{13} **IT IS SO ORDERED.**

JAMES J. WECHSLER, Judge

WE CONCUR:

LINDA M. VANZI, Judge

_____

TIMOTHY L. GARCIA, Judge