

**IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

LYDIA BARCINAS SANTOS,)	APPEAL NO. 98-029
)	CIVIL ACTION NO. 95-0673
Plaintiff/Appellee,)	
)	
v.)	
)	OPINION
ALVARO A. SANTOS,)	
)	
Defendant/Appellant.)	
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Argued and submitted November 23, 1999

Cite as: *Santos v. Santos*, 2000 MP 9

Counsel for Appellant:	Kenneth L. Govendo Saipan
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Counsel for Appellee:	G. Anthony Long Saipan
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BEFORE: DEMAPAN, Chief Justice, CASTRO, Associate Justice, LIZAMA, Justice *Pro Tem*
DEMAPAN, Chief Justice:

[1,2,3] This is an appeal from a Final Decree of Child Custody, Child Visitation Rights and Property Distribution between Appellant Alvaro Santos (“Alvaro”) and Appellee Lydia Santos (“Lydia”). Alvaro contests the trial court’s award of child support, as well as the classification and distribution of real property. We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, as amended¹, 1 CMC § 3102 and 8 CMC § 1103. We affirm in part and reverse in part.

¹ N.M.I. Const. art. IV, § 3 was amended by the passage of Legislative Initiative 10-3, ratified by the voters on November 1, 1997 and certified by the Board of Elections on December 13, 1997.

ISSUES PRESENTED AND STANDARD OF REVIEW

[4]The first issue before this Court is whether the trial court correctly calculated its child support award. We review a trial court's orders made under 8 CMC § 1311 for abuse of discretion. *See Robinson v. Robinson*, 1 N.M.I. 81, 86 (1990). We will not reverse unless the record is devoid of competent evidence to support the trial court's decision. A judgment will not be disturbed when there is any reasonable evidence to support it. *See id.* at 89.

[5,6]The second issue is whether the trial court correctly classified and distributed several lots of real property owned by the parties. This is a mixed question of law and fact, in that Alvaro questions the trial court's findings of fact which supported the court's legal conclusion as to ownership of property. While mixed questions of law and fact are generally reviewed *de novo*, *see Agulto v. Northern Marianas Inv. Group. Ltd.*, 4 N.M.I. 7, 9 (1993), the trial court's factual findings are still reviewed for clear error, *see id.* at 10; *Rosario v. Quan*, 3 N.M.I. 269, 276-77 (1992), and this Court will not reverse such findings unless it is left with a firm and definite conviction that a mistake has been made. *See Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323, 325 (1996). Whether the trial court correctly applied the law to the facts is a legal question to be reviewed *de novo*. *See In re Estate of Mueilemar*, 1 N.M.I. 441, 444 (1990) (holding conclusion as to ownership of lands is legal question, reviewed *de novo*); *Hofschneider v. Hofschneider*, 4 N.M.I. 277, 278 (1995) (holding determination of marital property was question of statutory interpretation, reviewed *de novo*).

FACTUAL AND PROCEDURAL BACKGROUND

Alvaro and Lydia Santos were married in 1979 and divorced in 1996. At the time of their divorce, the parties had four minor children from their marriage. On August 13, 1998 the trial court issued a Final Decree in which it awarded joint custody, ordered that Alvaro pay monthly child support, and distributed certain real property between the parties. *See Santos v. Santos*, Civ. No. 95-0673 (N.M.I. Super. Ct. Aug. 13, 1998) (Final Decree of Child Custody, Child Visitation Rights and Property Distribution) ("Decree").

Child Support. The trial court awarded joint custody of the children. Lydia has physical custody four days each week, while Alvaro has the children the remaining three days. The trial court determined

Alvaro's total assets are greater than Lydia's because he draws extra income from the rental of his individual property, and because Lydia will incur higher expenses in caring for the children one day more per week than Alvaro. Consequently, the court ordered that Alvaro pay \$250 per month, per minor child. He currently pays \$750 per month.²

Lot No. 082 E 17. The trial court found the parties lived on Lot No. 082 E 17, and used marital funds to repair and furnish the house thereon, until they built their marital home. The property is currently under lease. Alvaro testified he acquired this lot in exchange for Lot No. 013 B 40, which in turn is part of Lot No. 013 B 14, which the court recognized was a gift from Alvaro's father and therefore Alvaro's individual property. The deed to Lot No. 082 E 17 lists Alvaro and Lydia as grantors of Lot No. 013 B 40, and Alvaro's brother Roque as the grantee. The deed then lists Roque as grantor of Lot No. 082 E 17, and Alvaro as the sole grantee. Lydia offered no evidence to the contrary.

The trial court found Alvaro did not adequately trace Lot No. 013 B 40 to Lot No. 013 B 14, and that Alvaro had therefore failed to demonstrate he used his individual property to obtain Lot No. 082 E 17. Accordingly, the trial court concluded Lot No. 082 E 17 was marital property.

Lot Nos. 082 E 03, 082 E 04 and 082 E 07. Alvaro and Lydia constructed their marital home on these properties after acquiring them in 1992. Alvaro claims approximately \$173,000 of the money used to purchase the lots and construct the marital home was a gift from his mother, therefore the property should be treated as a mix of marital and individual property. Alvaro offered no evidence to support his claim, other than his own testimony. The trial court found Alvaro could have used the proceeds of a lease of other marital land to buy this property and construct the marital home. The court concluded Alvaro failed to rebut the marital property presumption, and determined these lots were entirely marital property.

Lot Nos. 1320 and 1336. The trial court found Alvaro received a property interest in these lots from his uncle Jose Fausto Arriola. Since Alvaro received the property alone as a gift, the court found the land was Alvaro's individual property.

Alvaro timely appealed.

² The oldest child has since turned 18 years old.

ANALYSIS

I. The Trial Court Abused its Discretion in Making its Child Support Award

Alvaro claims the trial court incorrectly assumed Lydia would incur higher expenses during the one extra day each week she has the children. He further questions the trial court's determination that each child would need \$250 per month for food and clothing based on the one extra day per week the children stay with their mother, in the absence of any determination of the children's actual financial needs.

[7,8]When a court grants a divorce it may make any appropriate orders for child custody, support for the children or either party, and for the disposition of the parties' interests in marital property. 8 CMC § 1311. In determining the amount of child support, the court shall consider all relevant facts, including:

- (1) the needs of the child;
- (2) the standard of living and circumstances of the parents;
- (3) the relative financial means of the parents;
- (4) the earning ability of the parents;
- (5) the need and capacity of the child for education, including higher education;
- (6) the age of the child;
- (7) the financial resources and the earning ability of the child;
- (8) the responsibility of the parents for the support of others; and
- (9) the value of services contributed by the custodial parent.

8 CMC § 1715(e).

[9]A child support award is designed to provide the children, as closely as possible, with the same standard of living they would have enjoyed had the marriage not dissolved. *See Hamiter v. Torrence*, 717 N.E.2d 1249, 1253 (Ind. Ct. App. 1999). In determining child support, the primary focus is on the needs of the child, and the court may order a parent to pay an amount reasonable or necessary for the child's support after considering the relevant factors. *See In re Marriage of Berry*, 660 P.2d 512, 513 (Colo. Ct. App. 1983) (finding insufficient evidence of children's needs where there was no accounting of monthly needs and expenses and support was based solely on husband's ability to pay); *Garrett v. Garrett*, 409 P.2d 470, 472 (Wash. 1965).

[1011]The amount of child support depends on many factors, including the children's needs and the parents' financial resources. *See In re Marriage of Campbell*, 589 P.2d 1244, 1249 (Wash. Ct. App. 1979); *see also* COLO. REV. STAT. ANN. § 14-10-115(1) (West 1999); 750 ILL. COMP. STAT. ANN. 5/513(b) (West 1999); *In re Marriage of Thurmond*, 715 N.E.2d 814, 818 (Ill. Ct. App. 1999);

Fernau v. Fernau, 694 P.2d 1092, 1095 (Wash. Ct. App. 1984); *In re Marriage of Berry*, 660 P.2d 512, 513 (Colo. Ct. App. 1983). However, a court should not order a party to pay more for expenses than he or she can afford. See *In re Marriage of Thurmond* at 818. If the record establishes that the trial court considered all relevant factors in fashioning the child support award, and that the award was not unreasonable under the circumstances, then the reviewing court will not disturb the child support award. See *Fernau v. Fernau*, 694 P.2d at 1095. A trial court abuses its discretion as to a child support award when it fails to consider the financial impact of the amount of time the non-custodial spouse will spend with the child. See *Wofford v. Wofford*, 991 S.W.2d 194, 198 (Mo. Ct. App. 1999) (reducing award because non-custodial spouse was to spend six out of every fourteen days with child); see also *Shaddox v. Schoenberger*, 869 P.2d 249, 251-52 (Kan. Ct. App. 1994) (finding insufficient evidence to support child support award where required child support guideline worksheet was not filed and there was no record of hearing).

[12]Here, according to the Decree, the trial court considered Alvaro and Lydia's respective financial means, but not the children's needs. The latter is equally important and necessary in determining a child support award that is in the best interests of all concerned. The trial court already ordered both Alvaro and Lydia to share equally in the mortgage payments and the children's educational and medical needs. It is therefore unclear why the children need an additional \$250 per month to support them or maintain their standard of living during the one extra day per week they spend with their mother. If there is no need for this support, it is irrelevant that Alvaro can afford to pay it.

Since the trial court made no findings as to the children's needs and focused solely on the parents' respective incomes, we hold the court abused its discretion in making its child support award, and we reverse the trial court's ruling on this issue.

II. Classification and Distribution of Real Property

[13,14,15,16]All property of spouses is considered marital property, subject to specific statutory exceptions. 8 CMC § 1820. One exception to the above rule is that property owned by a spouse before the marriage is individual property. 8 CMC § 1820(f); see *Ada v. Sablan*, 1 N.M.I. 415, 423-24 (1990) (acknowledging similar Chamorro custom). Another exception is that property acquired by a spouse

during the marriage is individual property if acquired by gift or disposition at death from a third party, or in exchange for or with the proceeds of other individual property. 8 CMC § 1820(g). A combination of marital and other property is presumed marital property unless the component of the mixed property which is not marital property can be traced. 8 CMC § 1829(a).

Neither Commonwealth written law nor Chamorro customary law are instructive as to how a party may adequately trace a portion of marital property to his own individual property. Accordingly, we look to the common law of other United States jurisdictions for guidance. *See* 7 CMC § 3401; *Ada v. Sablan*, 1 N.M.I. at 423.

[17,18]To trace the separate portion of a mixed property, a party must prove the claimed separate portion is identifiably derived from a separate asset. This process involves two steps. First, the party must identify a portion of the mixed property. Second, the party must directly trace that portion to a separate asset. *See Barker v. Barker*, 500 S.E.2d 240, 246 (Va. Ct. App. 1998). The party claiming a separate interest in mixed property bears the burden of proving retraceability. *See id.*

[19]In determining whether a party has adequately traced a portion of mixed property to that party's own separate property, the trial court is entitled to weigh evidence and assess credibility. The finder of fact may believe all, part or none of the evidence presented to it. A reviewing court will not disturb the trial court's credibility determinations. *See Williamson v. Williamson*, 586 A.2d 967, 972 (Pa. Super. Ct. 1991) (rejecting witness' testimony that he received half the profits from sale of husband's business, and instead finding entire profit to be marital property).

A. Lot No. 082 E 17 Is Alvaro's Individual Property

[20]The trial court believed Alvaro did not adequately trace Lot No. 082 E 17 to his individual property. To support his claim, Alvaro himself testified he acquired Lot No. 082 E 17 in exchange for Lot No. 013 B 40, which in turn was derived from Lot No. 013 B 14, a larger property his father gave him. The trial court apparently felt Alvaro's self-serving testimony, unsupported by documentary evidence or another witness' testimony, did not sufficiently connect Lot No. 013 B 14 to Alvaro's family land, such that any property obtained in exchange for Lot No. 013 B 14 would also constitute Alvaro's individual property. While we recognize the importance of protecting family land, we must defer to the trial court's

evaluation of Alvaro's testimony regarding Lot 013 B 40. *See Commonwealth v. Cabrera*, 4 N.M.I. 240, 246 & n.30 (1995).

[21,22]However, Alvaro's testimony was not the only evidence before the trial court. The deed to Lot No. 082 E 17 lists Alvaro and Lydia as grantors of Lot No. 013 B 14, but only names Alvaro as the grantee of Lot No. 082 E 17. Where the language of a deed is plain, certain and unambiguous, it should be given its plain construction. An unambiguous instrument conveying property must be construed to its terms. *See Tarope v. Igisaiar*, 3 CR 242, 246 (Trial Ct. 1987) (rejecting claim that plaintiff relinquished interest in property, where deed clearly listed plaintiff only as witness to transaction); *Hardin v. Hardin*, 979 S.W.2d 314, 316 (Tenn. Ct. App. 1998) (holding "Unless a deed is ambiguous, the intention of the grantor is to be determined from the four corners of his deed"). Where the language of a writing is plain and precise, a court can, as a matter of law, establish the intentions of the parties as declared in the writing. *See Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303, 310 (1992); *Vines v. McKenzie Methane Corp.*, 619 So.2d 1305, 1309 (Ala. 1993) (finding wife had no interest in property, where grantors listed husband and his brother only as grantees of gift of farm land, despite letter addressed to husband, wife and their son notifying them of gift, and despite fact husband had reported income from farm as joint income); *Goetz v. Goetz*, 306 P.2d 167, 174 (Kan. 1957); *Park's Ex'rs v. Parks*, 150 S.W.2d 687, 688 (Ky. 1941) (holding "The form and language of the deed are such as to leave no question whatever but that title was vested in [Wife] alone," where husband and wife were named in deed caption, but granting clause mentioned only wife's name).

Here, the first paragraph of the deed specifically names Roque, Alvaro and Lydia as grantors, but only names Roque and Alvaro as grantees. The second paragraph again lists Alvaro and Lydia as grantors of Lot 013 B 40 to Roque as grantee. The third paragraph names Roque as grantor to Alvaro as the sole grantee. Roque, Alvaro and Lydia all signed the deed.

[24]The language of this deed is plain, certain and unambiguous. It clearly states the parties' intent that only Alvaro would receive an interest in Lot 082 E 17 and that Lydia would receive no interest therein, regardless of her interest in Lot 013 B 40. We find that, as a matter of law, the deed clearly declares Alvaro's and Lydia's respective interests in Lot 082 E 17. Alvaro therefore rebutted the marital property presumption, and we hold that this land is his individual property.

B. Lot Nos. 082 E 03, 082 E 04 and 082 E 07 Are Marital Property

Alvaro claims this property should be treated as mixed marital and individual property, because \$173,000 of the money used to purchase these lots and construct the marital home was in fact a gift from his mother. Alvaro claims the trial court was bound by his testimony to this effect. Lydia responds that, other than Alvaro's testimony, there was no evidence to trace the money used to purchase the property, or prove the money did not come from an equally plausible source of marital income.³

[25]The trial court found Alvaro could have used marital funds to buy the land and construct the marital home. Specifically, Alvaro testified he and Lydia had claimed \$270,000 as joint rental income on their tax return. Alvaro produced no bank records to trace the source of the money used to purchase the land and construct the marital home, or to prove he did not invest this \$270,000 of marital income in the marital home and property. As for Alvaro's own testimony, this Court will not second-guess the trial court's evaluation of Alvaro's credibility as a witness. *See Commonwealth v. Cabrera*, 4 N.M.I. 240, 246 & n.30 (1995).

[26]Even if Alvaro did invest separate property in the marital home, we find Alvaro failed to adequately document his investment so as to overcome the marital property presumption. Accordingly, we affirm the trial court's determination that Lot Nos. 082 E 03, 082 E 04 and 082 E 07 are entirely marital property.

C. Lot Nos. 1320 and 1336 Are Not Alvaro's Property

At oral argument, counsel for Alvaro represented to the Court that this land was either exchanged for another property or sold. By this appeal, Alvaro requests that the Decree be modified to reflect that Alvaro does not own the property. Lydia does not claim an interest in this land, nor does she oppose Alvaro's appeal on this issue. Accordingly, we vacate the trial court's Decree to the extent it suggests Alvaro has any interest in this property.

³ Alvaro also claims Lydia admitted at trial that the \$173,000 was a gift from Alvaro's mother. However, while Alvaro refers to a portion of the Reporter's Transcript containing this testimony, he failed to provide a copy of this transcript with his appellate brief. This Court will not make factual findings based only on counsel's argument and the record on appeal. *See Agulto v. Northern Marianas Inv. Group. Ltd.*, 4 N.M.I. 7, 11 (1993)

CONCLUSION

As to the child support award, we **REVERSE** and **REMAND**. We instruct the trial court to consider the children's needs as well as the other factors listed in 8 CMC § 1715(e), and recalculate any necessary child support award in a manner consistent with this opinion.

As to Lot No. 082 E 17, we **REVERSE** and **REMAND** with instructions to enter an order that said lot is Alvaro's individual property.

As to Lot Nos. 082 E 03, 082 E 04 and 082 E 07, we **AFFIRM** the trial court's Decree because, even if Alvaro did invest his separate property in the marital home, he failed to present proof sufficient to rebut the marital property presumption.

Finally, we **VACATE** the trial court's Decree to the extent it suggests Alvaro has any interest in Lot Nos. 1320 and 1336, absent proof to the contrary.

Dated this 10 th day of May, 2000.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN, Chief Justice

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO, Associate Justice

/s/ Juan T. Lizama
JUAN T. LIZAMA, Justice *Pro Tem*