

**Elnaey v. Elnaey, No. 67974, Order Affirming in Part, Reversing in Part and Remanding (Unpublished Disposition, Aug. 12, 2016)  
COA Unpub**

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1. Pursuant to Ogawa, the court will not set aside a district court's factual findings unless they are clearly erroneous or not supported by substantial evidence. Here, evidence raised the presumption of community property; thus, Appellant bore the burden of proving any separate portion of the accounts. Respondent testified at trial that the parties held bank accounts jointly, and presented a deed conveying a house, which contained both parties' names. Thus, substantial evidence supports the conclusion that the proceeds of the sale of the house were community property.

Furthermore, Appellant failed to appear at the trial, and the district court did not admit any of the supporting exhibits upon which he relied. Because he failed to satisfy his duty of actively and diligently procuring testimony and documents to support his position at trial, the district court did not err by characterizing the accounts as community property

2. Pursuant to NRS 125.150(1)(b), a district court must "make an equal disposition of the community property of the parties." However, an "unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition." Here, because Appellant did not fully disclose certain assets in his financial disclosure form, did not participate in the case, and did not provide discovery as requested, substantial evidence supports the district court's finding that compelling reasons existed to divide the community property unequally per Lofgren.

3. Because the district court failed to evaluate the Brunzell factors in determining a disparity of income between the parties when awarding attorney fees, in addition to not being presented with documentation of the work Respondent's attorney performed, a remand is necessitated under NRCP 54(d)(2)(B).