

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

HALTOM V. HALTOM

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AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

JOHN HALTOM, APPELLANT,
V.
BRISA HALTOM, APPELLEE.

Filed May 1, 2012. No. A-11-886.

Appeal from the District Court for Lancaster County: STEVEN D. BURNS, Judge.
Affirmed.

Douglas R. Lederer for appellant.

Terrance A. Poppe and Benjamin D. Kramer, of Morrow, Poppe, Watermeier &
Lonowski, P.C., L.L.O., for appellee.

MOORE, CASSEL, and PIRTLE, Judges.

CASSEL, Judge.

INTRODUCTION

John Haltom appeals from a decree dissolving, rather than annulling, his marriage to Brisa Haltom. He challenges the denial of an annulment and also attacks the division of property and awards of alimony, child support, and attorney fees. Because John failed to prove that Brisa's Mexican divorce did not become final before the parties' Nebraska marriage, he did not establish grounds for an annulment. And because the district court did not abuse its discretion in the relief it granted, we affirm the decree of the district court.

BACKGROUND

John filed a complaint for dissolution of marriage in 2009 in the district court for Lancaster County, Nebraska. In response, Brisa filed an answer and a cross-complaint for dissolution of marriage. In 2010, John filed an amended complaint for annulment, alleging that

the marriage was the result of fraud and that Brisa was not legally able to marry at the time of their marriage.

Under both complaints, the custody of the parties' two minor children was at issue. John and Brisa's oldest child was born in 2006, prior to the parties' marriage. The parties' youngest child was born either in 2007--as listed on the original complaint and Brisa's cross-complaint--or in 2008--according to the amended complaint.

Early in the proceedings, Brisa filed a motion for temporary child support and temporary spousal support. The district court ordered John to pay temporary spousal support in the amount of \$1,800 beginning October 1, 2009. Because the custody of the parties' two children was at issue in a separate juvenile case, the district court did not rule on the issue of temporary child support until the juvenile case was closed on July 1, 2011. At that time, the juvenile court gave Brisa legal and physical custody of the children and suspended John's parenting time indefinitely. Following this decision of the juvenile court, the district court ordered John to pay temporary child support in the amount of \$1,500 for both children beginning July 1.

The case came for trial before the district court in August 2011. Over 2 days, the parties presented evidence on the circumstances of their marriage, their respective financial situations, and their personal and marital property. Much evidence was also submitted on the subject of child custody, which is not at issue on appeal.

The testimonies of John and Brisa established the events surrounding their marriage as follows: In December 2005, John met Brisa, a native of Mexico, while traveling in Rocky Point, Mexico. They immediately began dating and soon decided to get married. Although the parties dispute when exactly it occurred, at some point in the early weeks of their relationship, John learned that Brisa was married and had two children. Brisa was separated from her husband but not divorced, and the children lived with Brisa's family in Puerto Vallarta, Mexico. At John's insistence, he and Brisa brought the two children to live with them in Rocky Point. Brisa also began the process of divorcing her husband, the cost of which was paid by John.

John stayed in Mexico with Brisa until February 2007, during which time the parties' oldest child was born. In February, Brisa finally obtained visas for herself and the children. At that time, John, Brisa, and the children moved to Lincoln, Nebraska. The parties' youngest child was born sometime after the move to Nebraska.

The exact date of the marriage between John and Brisa is less than certain, but it is undisputed that it occurred after the move to Nebraska and was performed in Lancaster County.

At an unknown date after John and Brisa's marriage, they separated. John moved to a house in Ashland, Nebraska. Brisa remained in Lincoln with the parties' two children and the two children from her previous marriage. Brisa testified that she has no intention of leaving Lincoln or returning to Mexico.

At trial, Brisa testified to her extremely limited employment history in both Mexico and Nebraska. She was a licensed nurse in Mexico, but she was working as a restaurant manager when she met John in 2005. Brisa had not been employed since moving to Nebraska. Indeed, Brisa testified that she believed she was not legally able to work because of her immigration status. She had a green card, but it was "on hold." Brisa stated that she planned to go back to nursing school in Nebraska once she could afford it and that it would take approximately 4 years for her to become a certified nurse in the United States. She asked for alimony in the amount of

\$2,500 per month for 4 years because it was of an amount and duration that would allow her to “get through . . . college” and become employed. When asked whether she needed alimony “to survive,” Brisa responded, “I need.” She testified that she had already borrowed over \$80,000 to support herself and her children since the separation from John.

John testified that he was the sole shareholder in a corporation called Haltom Management. Through this corporation, John owned six adult novelty stores and collected an average salary of \$65,000 per year. On his property statement, John valued his interest in Haltom Management at \$2.5 million.

John also owned real estate located on South 72d Street in Omaha, Nebraska. He owned a one-half interest in the property prior to his marriage to Brisa and acquired full title by quitclaim deed on November 27, 2007. Yet, during his testimony, John stated that Haltom Management was paying the mortgage on the property and that “[i]t’s basically the company’s property.”

John testified that he was the titleowner of five different vehicles, all of which he claimed were paid for by Haltom Management and “are really company cars.” These vehicles included a Hummer, two 2005 Ford Explorers, a 2005 Ford Excursion, and a recreational vehicle. According to John, “the company cannot get its financing because of the type [of] business[,] so they have to put everything in my name and finance it.” During his testimony, John stated that the Hummer had a purchase price of \$60,000, that the Ford Explorers were worth \$13,000 each, that the Ford Excursion was worth “a little more than the Explorers,” and that the recreational vehicle was worth \$40,000. On his property statement, John valued the Hummer at \$80,000, the Ford Explorers at \$10,000 each, the Ford Excursion at \$15,000, and the recreational vehicle at \$250,000.

On September 26, 2011, the district court issued a decree dissolving the marriage of John and Brisa. The court awarded custody of the parties’ two minor children to Brisa and ordered John to pay monthly child support in the amount of \$1,747.93 for two children and \$1,218.90 for one child, along with a certain percentage of other expenses listed in the decree.

In the decree, the court also set forth its property division. The court determined that a one-half interest in the property on South 72d Street, the two Ford Explorers, the Ford Excursion, and all stock in Haltom Management were premarital assets held by John. The court found all remaining property to be marital property and divided it among the parties as follows: In addition to the above-mentioned premarital property, John received a one-fourth interest in the property on South 72d Street (i.e., half of the other one-half interest), the Hummer, and the recreational vehicle. Brisa was awarded the remaining one-fourth interest in the property on South 72d Street. Each party was awarded all furnishings and household effects in his or her possession and any ownership interests held in checking accounts, savings accounts, pensions, IRA’s, retirement accounts, insurance policies, or annuities. As to the parties’ debt, the court found that there were marital debts of \$85,000 and that Brisa should assume those debts.

Finally, the court ordered John to pay alimony in the amount of \$1,000 per month for 12 months, \$10,000 toward Brisa’s attorney fees, and a judgment of \$135,000.

John timely appeals. Pursuant to authority granted to this court under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

ASSIGNMENTS OF ERROR

John alleges, restated and reordered, that the district court erred (1) in failing to grant his request for an annulment, (2) in ordering alimony and in setting the duration of said alimony, (3) in calculating the amount of child support, (4) in awarding attorney fees to Brisa, (5) in determining that the building located on South 72d Street was a marital asset, and (6) in awarding Brisa a judgment of \$135,000.

STANDARD OF REVIEW

In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determinations of custody, child support, property division, alimony, and attorney fees; these determinations, however, are initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion. *Reed v. Reed*, 277 Neb. 391, 763 N.W.2d 686 (2009).

An action to annul a marriage sounds in equity. As such, an appellate court reviews annulment cases de novo on the record. *Hicklin v. Hicklin*, 244 Neb. 895, 509 N.W.2d 627 (1994). The appellate court will reach independent conclusions without reference to the conclusions reached by the trial judge. See *id.* But where the evidence is in conflict on a material issue of fact, an appellate court considers and may give weight to the fact that the trial judge observed and heard the witnesses and accepted one version of the facts rather than another. *Id.*

ANALYSIS

Annulment.

Upon our de novo review of the evidence, we find that John was not entitled to an annulment because he failed to meet his burden of proving that his marriage to Brisa was invalid.

The general rule is that the validity of a marriage is determined by the law of the place where it was contracted; if valid there, it will be held valid everywhere, and conversely, if invalid by the *lex loci contractus*, it will be invalid wherever the question may arise. *Bogardi v. Bogardi*, 249 Neb. 154, 542 N.W.2d 417 (1996). Therefore, because John and Brisa were married in Nebraska, we turn to Nebraska law to determine the validity of their marriage and the propriety of an annulment.

Under Neb. Rev. Stat. § 42-374 (Reissue 2008), a marriage can be annulled under five circumstances: (1) the marriage between the parties was prohibited by law, (2) either party was impotent at the time of marriage, (3) either party had a spouse living at the time of marriage, (4) either party was mentally ill or a person with mental retardation at the time of marriage, or (5) there was force or fraud. An annulment action can be granted only when one or more of the grounds enumerated in § 42-374 exist. *McCombs v. Haley*, 13 Neb. App. 729, 700 N.W.2d 659 (2005).

In Nebraska, a marriage is presumed valid until proved otherwise. See *Guggenmos v. Guggenmos*, 218 Neb. 746, 359 N.W.2d 87 (1984). The burden of overcoming the presumption that a marriage is valid is upon the party seeking annulment. See *Edmunds v. Edwards*, 205 Neb. 255, 287 N.W.2d 420 (1980). Thus, John had the burden of proving that his marriage to Brisa was invalid and that it should be annulled for one or more of the reasons in § 42-374.

In the amended complaint, John alleged that his marriage to Brisa should be annulled pursuant to § 42-374(1)--marriage between the parties was prohibited by law--and § 42-374(5)--force or fraud. But on appeal, he argues for an annulment based on only § 42-374(1). Because John does not argue that the district court erred in failing to issue an annulment on the basis of fraud, we only address the evidence as it pertains to § 42-374(1). An appellate court will not review errors that were not assigned and argued in a party's brief. *Amanda C. v. Case*, 275 Neb. 757, 749 N.W.2d 429 (2008). Upon reviewing this evidence, we find that John failed to offer sufficient evidence to prove that his marriage to Brisa was prohibited by law.

Between the testimony of John and Brisa at trial, there was evidence that Brisa was married when she met John and that she later obtained a divorce in Mexico. John testified that he learned that Brisa was married when they traveled to Puerto Vallarta and she introduced the father of her first two children as her husband. He also testified to urging Brisa to obtain a divorce and subsequently paying for her divorce. Brisa also testified that she was married when she met John, but that she was divorced and free to marry by the time she got married to John. In her testimony, she also stated that she and John got married "a little bit before a year after my divorce."

The question thus becomes whether this divorce took effect prior to or after Brisa's marriage to John. If her Mexican divorce took effect prior to her and John's marriage, they would have been legally married in Nebraska. But if the divorce became final afterward, Brisa would have still technically been married at the time she married John. If, at the time of the parties' Nebraska marriage, Brisa's Mexican marriage remained valid and in effect, we must recognize that Mexican marriage as valid in Nebraska. See Neb. Rev. Stat. § 42-117 (Reissue 2008) (stating that "[a]ll marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state"). And if Brisa was still married to her first husband, her marriage to John would be void under Nebraska law, see Neb. Rev. Stat. § 42-103 (Reissue 2008), thereby entitling John to an annulment.

To determine when Brisa's divorce became final, we turn to the law of the place in which it was issued--in this case, Mexico. See, *Hicklin v. Hicklin*, 244 Neb. 895, 509 N.W.2d 627 (1994) (applying law of Minnesota to determine when divorce issued in Minnesota became final); *Loring v. Kaplan*, 179 Neb. 215, 137 N.W.2d 716 (1965) (turning to law of California to determine whether divorce issued in courts of California was final decree).

John bore the burden of providing the district court with the Mexican law necessary to determine the validity of Brisa's divorce. Under Neb. Rev. Stat. § 25-12,101 (Reissue 2008), Nebraska courts must take judicial notice of "the common law and statutes of every state, territory and other jurisdiction of the United States." But the law of a foreign country cannot be judicially noticed. See Neb. Rev. Stat. § 25-12,105 (Reissue 2008). Rather, "foreign law or rights thereunder must be proved like any other fact." *Exstrum v. Union Casualty & Life Ins. Co.*, 167 Neb. 150, 155, 91 N.W.2d 632, 635 (1958).

John simply did not meet this burden of proving Mexican law. His amended complaint for annulment made no reference to the law that prohibited Brisa's marriage, but merely alleged that she "was not legally able to marry in accordance with the terms of her divorce decree from

her prior husband.” At trial, John offered into evidence neither Brisa’s divorce decree nor the text of the Mexican law governing that decree. Indeed, the only mention of Mexican law was during the cross-examination of Brisa:

[John’s attorney:] Could you restate for me again, ah, how you get around the one-year restriction, uhm, on -- from the Mexican divorce decree?

[Brisa’s attorney]: Object to the form of the question.

THE COURT: Sustained.

Q. (By [John’s attorney]) Uhm, I want to talk to -- Uhm, you mentioned in your deposition, you talked about an article 834 of the Constitution. You specifically mention that in the deposition

. . . .

Q. (By [John’s attorney]) Ah, I’m going to read you the question that was asked --

. . . .

Q. (By [John’s attorney]) -- and read your answer, if that’s possible.

. . . .

Q. (By [John’s attorney]) Ah, in Mexico when does a divorce decree become final? And let me preface it, in the United States or at least in Nebraska, if you and John are officially divorced today, neither party can get remarried anywhere in the world for a period of six months. Is there a similar law there in Mexico that you’re aware of?

And your answer was: I know where you’re going. But in the Mexican Constitution in the Article 834, ah, a lot of marriages, ah, Mexican Constitution and is in the Jalisco Constitution they say you can remarry before a year because there is a stipulation a year you have to wait.

Is that what you -- Do you remember -- Do you recall that answer?

A. Yes, is there, I do.

Q. So there is a year that you have to wait in order to, ah --

A. To answer your question I have to go to the Mexican law and I don’t think anything have to do with Mexican law with American law. If you want to go to the Mexican law I can.

Q. Uhm, does it say if -- if, ah -- if you wait a year to remarry only if you remarry in Mexico or does it say to get remarried in the U.S., it doesn’t matter? Uhm, is that -- I mean, I’m trying to clarify what you’re -- you’re explaining to me.

[Brisa’s attorney]: I’m going to object to the line of questioning. This calls for a legal conclusion.

THE COURT: Sustained.

We recognize that this portion of testimony mentions an article of the Mexican Constitution, which supposedly prohibits remarriage within 1 year of divorce. But Brisa’s testimony was far from sufficient to establish the specifics of the limitation. Indeed, the deficiencies in her testimony were brought to the attention of the court by John’s attorney as he attempted to clarify the specifics of the limitation. Brisa’s vague references to the limitations attached to a Mexican divorce decree were not sufficient to establish the content of Mexican law.

In his appellate brief, John purports to quote the relevant Mexican law establishing a 1-year limitation on remarriage after divorce, referring to the Mexican Civil Code and not the Mexican Constitution, as Brisa stated. But an appellate court “cannot consider as evidence statements made by the parties at oral argument or in briefs, as these are matters outside the record.” *Bedore v. Ranch Oil Co.*, 282 Neb. 553, 574, 805 N.W.2d 68, 85 (2011). As we observed above, John had the burden to prove the Mexican law upon which he desired to rely. This required evidence. A bill of exceptions is the only vehicle for bringing evidence before an appellate court; evidence which is not made a part of the bill of exceptions may not be considered. *Id.* No such evidence appears in the bill of exceptions. Thus, John did not meet his burden of establishing Mexican law.

Because John did not meet his burden of proving Mexican law, we use Nebraska law to determine whether Brisa’s divorce was final at the time of her marriage to John. In the absence of proof of the common law or statutory law of another jurisdiction, this court, in reviewing the matter, will presume that they are the same as the law of Nebraska. *State v. Wilson*, 199 Neb. 765, 261 N.W.2d 376 (1978).

Under Neb. Rev. Stat. § 42-372.01(2) (Reissue 2008), “[f]or purposes of remarriage other than remarriage between the parties, a decree dissolving a marriage becomes final and operative six months after the decree is entered or on the date of death of one of the parties to the dissolution, whichever occurs first.” Thus, Brisa would have been prohibited from marrying John if she obtained her divorce less than 6 months prior to their marriage.

Although the evidence is far from certain, we conclude that John and Brisa were married in Nebraska on May 19, 2007. At trial, one witness testified that she believed John and Brisa were married in May 2007. Exhibit 1 stated that the parties were married in Lincoln on May 19, 2006, and Brisa testified that the information on this exhibit was correct. But this exhibit also listed the place of marriage as Lincoln, suggesting that Brisa incorrectly wrote the year of their marriage when filling out the form, since in May 2006 the parties were still residing in Mexico. In light of all of the evidence, it would appear that John and Brisa were married on May 19, 2007.

Turning now to the date of Brisa’s divorce, we find that John failed to prove the exact date when Brisa’s Mexican divorce decree was issued. When John was asked when Brisa’s divorce decree was signed, he responded, “I don’t know. I mean, all I know [is that] it was super hot down there” John’s attorney then stated, “Actually, I think it was June 13th,” but John never confirmed or denied the accuracy of his attorney’s statement. John stated the same date of June 13, 2006, in his appellate brief, but, again, an appellate brief is not a source of evidence. See *Bedore v. Ranch Oil Co.*, *supra*. And although John’s brief cited two portions of trial testimony in support of this date, neither portion of testimony mentioned the date of the divorce decree or even the year. Because the proximity in time between Brisa’s divorce and her subsequent marriage to John is determinative of whether their marriage was valid, John had the burden of proving when Brisa’s divorce was issued and when it became final, a burden he clearly did not satisfy.

Without establishing the date of Brisa’s divorce, John necessarily could not prove that Brisa was legally unable to marry in May 2007. Without proof that the marriage was within 6 months after the issuance of her divorce, John failed to establish that the marriage was invalid on

the ground that Brisa was still legally married to another person. As John presented no other argument as to why his marriage to Brisa was prohibited by law or was otherwise invalid, in the absence of proof that their marriage occurred within 6 months of her divorce and was thus prohibited under § 42-372.01(2), case law demands that we assume their marriage in Nebraska was valid. See *Guggenmos v. Guggenmos*, 218 Neb. 746, 359 N.W.2d 87 (1984). Therefore, John did not prove that he was entitled to an annulment under § 42-374(1).

Even if John had proved that the Mexican divorce decree was issued on June 13, 2006, he still would not have been entitled to an annulment because the parties' marriage would have occurred more than 6 months after Brisa's divorce. If the divorce was issued on June 13, Brisa would have been free to remarry after December 13. Thus, the parties' May 2007 marriage would not have been prohibited by the limitation attached to Brisa's divorce decree if it indeed was filed on June 13, 2006, which, again, was not proved. John was not entitled to an annulment under § 42-374(1).

Having failed to prove that there were grounds for annulment under § 42-374(1) and having argued for an annulment under only this subsection, John did not meet his burden of proving that his marriage to Brisa should be annulled for one or more of the reasons in § 42-374. The district court did not err in failing to annul the parties' marriage. John's first assignment of error lacks merit.

Alimony.

The district court awarded Brisa alimony of \$1,000 per month for 12 months or until her remarriage or the death of either party. On appeal, John claims that Brisa was not entitled to alimony because she has a nanny to watch the children, did not interrupt her career or educational opportunities upon entering into the marriage, and has not sought employment in the United States. While these are all considerations that must be factored into the decision of whether to award alimony, we find that the district court did not abuse its discretion in ordering John to pay alimony.

Under Neb. Rev. Stat. § 42-365 (Reissue 2008), when ordering alimony, a court must consider

the circumstances of the parties, duration of the marriage, a history of the contributions to the marriage by each party, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities, and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party.

In addition to these factors, a court must consider "the income and earning capacity of each party, as well as the general equities of each situation." *Millatmal v. Millatmal*, 272 Neb. 452, 457, 723 N.W.2d 79, 85 (2006). But in determining whether alimony should be awarded, in what amount, and over what period of time, the ultimate criterion is one of reasonableness. *Id.*

The equities of the case at bar are such that an award of alimony to Brisa was both appropriate and reasonable. While the parties dispute the extent of Brisa's contributions to maintaining a household during the marriage and helping with John's business, it is clear that Brisa will be the sole caregiver for the parties' two minor children--plus the two children from her previous marriage--from this point forward. As John pointed out, Brisa did have a nanny to

help care for the children during the parties' marriage, but there was no evidence that Brisa continues to employ a nanny. Given her financial situation since the separation, she certainly will be unable to afford a nanny going forward. Thus, as the parties' two children are not yet in school and one of Brisa's older children requires extra care due to her medical condition, any employment held by Brisa would be at the expense of the children's care. Furthermore, it is unknown whether Brisa is legally able to work in the United States given her immigration status. Even if she could seek employment legally, Brisa testified that it would take 2 to 4 years of school before she could become a certified nurse in the United States and resume her professional career.

We are not persuaded by John's argument that because Brisa was not employed as a nurse when they met in 2005, she did not interrupt her career to marry him or to raise their children. This argument ignores the evidence that Brisa was seeking employment in the nursing field at the time they met and likely had not been out of school and officially certified for very long. She testified to completing high school, 4 years of college, and then 4 more years of specialty nurse training. At the time of trial, Brisa was approximately 27 years old. This evidence would suggest that she had not been out of school for any significant length of time. Furthermore, we cannot disregard the fact that one of the consequences of Brisa's marriage to John was the move to Nebraska, which has effectively nullified her previous training in Mexico and adversely affected her ability to obtain employment in her chosen field--she must go back to school in the United States to obtain her license here. This setback to her professional career is a circumstance that undoubtedly weighed in favor of an award of alimony.

Because Brisa is not immediately employable in the United States as a nurse and because she is responsible for the care and upbringing of four minor children, the district court did not abuse its discretion in ordering John to pay alimony. And given that Brisa testified to having expenses of \$5,050 per month for the care of herself and the children, the amount of \$1,000 is reasonable.

Neither was it an abuse of discretion for the court to award Brisa alimony in addition to attorney fees and a property settlement, as John argues. First, while the criteria for reaching a reasonable division of property and a reasonable award of alimony may overlap, the two serve different purposes and are to be considered separately. § 42-365. Attorney fees similarly serve a separate and distinct purpose. See *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008) (stating that Neb. Rev. Stat. § 42-357 (Reissue 2008) empowers district court to require party to pay sums of money to enable other party to prosecute or defend against action). Second, there are countless cases in which courts have awarded alimony, attorney fees, and property settlements or equalization payments in a single divorce. See, e.g., *Sitz v. Sitz*, 275 Neb. 832, 749 N.W.2d 470 (2008); *Ritz v. Ritz*, 229 Neb. 859, 429 N.W.2d 707 (1988); *Keim v. Keim*, 228 Neb. 684, 424 N.W.2d 112 (1988); *Seemann v. Seemann*, 225 Neb. 116, 402 N.W.2d 883 (1987); *Barnes v. Barnes*, 192 Neb. 295, 220 N.W.2d 22 (1974); *Myhra v. Myhra*, 16 Neb. App. 920, 756 N.W.2d 528 (2008); *Walker v. Walker*, 9 Neb. App. 834, 622 N.W.2d 410 (2001); *Dormann v. Dormann*, 8 Neb. App. 1049, 606 N.W.2d 837 (2000); *Hafer v. Hafer*, 3 Neb. App. 129, 524 N.W.2d 65 (1994). Thus, we conclude that, given the obstacles to Brisa's employment in her chosen profession, the district court did not abuse its discretion in awarding alimony along with attorney fees and a property settlement.

In addition to challenging the award of alimony in general, John also argues that the duration of the alimony award in this case was an abuse of discretion. He highlights that when temporary and permanent alimony are considered together, he will pay alimony for a period of time longer than his actual marriage to Brisa and asserts that “[p]aying alimony for nearly one year longer than the marriage is not reasonable.” Brief for appellant at 9. We are not persuaded by this argument for several reasons.

First, we note that the duration of John’s temporary and permanent alimony obligations would not exceed the length of the marriage in this case. John and Brisa were married in May 2007, which marriage was legally dissolved in September 2011. Thus, their marriage lasted 4 years 5 months. As for alimony, John was ordered to begin paying temporary spousal support in October 2009, and permanent alimony was to begin in September 2011 and last for 12 months. Given these dates, John would pay temporary alimony for 24 months and permanent alimony for 12 months--a total of only 3 years. Thus, under the district court’s decree, John will not pay alimony for longer than his marriage.

Second, John cites to no authority for the proposition that an award of alimony that is longer than the marriage is per se unreasonable. Neither do we find any such legal authority. On the contrary, on numerous occasions, Nebraska courts have awarded alimony of a duration that is nearly equal to or greater than the length of the marriage that was dissolved. See, *Marcovitz v. Rogers*, 267 Neb. 456, 675 N.W.2d 132 (2004) (awarding alimony for 10 years after dissolution of 11-year-long marriage); *Rogers v. Rogers*, 231 Neb. 313, 435 N.W.2d 915 (1989) (awarding alimony until wife remarried or until death of either party, both of whom were only in their late forties, after dissolution of almost 30-year-long marriage); *Hamm v. Hamm*, 228 Neb. 294, 422 N.W.2d 336 (1988) (affirming award of alimony for 5 years upon dissolution of marriage that lasted less than 2 years); *McCollister v. McCollister*, 219 Neb. 711, 365 N.W.2d 825 (1985) (awarding alimony for 6 years after dissolution of 7-year-long marriage); *Hansen v. Hansen*, 199 Neb. 462, 259 N.W.2d 912 (1977) (modifying award of alimony to last 50 months after dissolution of 57-month-long marriage); *Van Bloom v. Van Bloom*, 196 Neb. 792, 246 N.W.2d 588 (1976) (affirming award of alimony for 9 years 11 months following dissolution of 10-year-long marriage); *Barnes v. Barnes*, 192 Neb. 295, 220 N.W.2d 22 (1974) (affirming award of alimony for 2 years 2 months after marriage that lasted 1 year); *Gibson v. Gibson*, 143 Neb. 882, 11 N.W.2d 760 (1943) (awarding alimony for 5 years upon dissolution of 2-year-long marriage).

Third, we find the length of alimony in the instant case to be quite modest given the facts. The primary purpose of alimony is to assist an ex-spouse for a period of time necessary for that individual to secure his or her own means of support. *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67 (2007). Alimony may be used to assist the other party “during a reasonable time to bridge that period of unavailability for employment or during that period to get proper training for employment.” *Bauerle v. Bauerle*, 263 Neb. 881, 890, 644 N.W.2d 128, 135 (2002). As we mentioned above, even assuming that Brisa can legally work in the United States, there are two main circumstances which hinder her ability to be gainfully employed--the responsibilities of raising four minor children, two of which are not yet in school, and the schooling necessary to resume her profession as a nurse in this country. Brisa testified that it would take 4 years for her to complete the schooling necessary to obtain her nursing license in the United States. And, at

the time of trial, the parties' youngest child was still 2 years away from beginning school. Therefore, because Brisa's ability to support herself and her children will be limited for several years after these proceedings, an award of alimony for a single year following dissolution was clearly not excessive under the circumstances.

Because Brisa must return to school before she can continue her profession as a nurse, because she is the sole caregiver for four minor children, and because these circumstances will undoubtedly make it difficult for her to obtain gainful employment for several years after her divorce from John, the district court did not abuse its discretion in awarding her alimony of \$1,000 per month for 12 months. This assignment of error is without merit.

Child Support.

The district court ordered John to pay child support in the amount of \$1,747.93 per month for two children and \$1,218.90 per month for one child. As indicated on the child support calculation worksheet attached to the decree, these calculations were based on a total monthly income for John of \$10,092. The court explained how it reached this amount for John's income as follows:

In determining the amount of child support due herein, the [c]ourt has considered the income of [John] as shown on his 2007, 2008, 2009, and 2010 tax returns. In arriving at [John's] income as shown on the attached child support calculation worksheet, the [c]ourt has not allowed the depreciation expense on Schedule E in those years with respect to the commercial building that the parties own. In addition, the [c]ourt has not allowed the loss as shown on Schedule C of the 2007, 2008, and 2009 tax returns as the business shown on that schedule is no longer a business that [John] operates or has an ownership interest in. As a result, the gross income of [John] over that period of time is as reflected on the attached child support calculation worksheet.

John has assigned error to the district court's calculation of his child support obligation in this manner, specifically arguing that the court "used an unsubstantiated income for [John] that is not supported by his taxes or any other income statements." Brief for appellant at 11. He asserts that his monthly income is only \$5,416.67 and that the correct amount of his monthly child support obligation would be \$1,121 for two children and \$733 for one child.

Contrary to John's argument, the district court's determination of John's monthly income is supported by his tax returns. It is clear that the court arrived at the amount of \$10,092 in monthly income from John's wages and rent income as reported on his 2009 tax returns:

\$ 63,750.00	Wages
+ <u>42,743.00</u>	Rental real estate (from Schedule E)
\$106,493.00	
+ <u>14,617.00</u>	Depreciation expense (from Schedule E)
\$121,110.00	Total yearly income
÷ <u>12</u>	Months
\$ 10,092.50	Monthly income

The district court's calculation of John's monthly income was supported by the evidence at trial.

John argues that the rental income from the property on South 72d Street should not be included in the calculation of his income because the "[i]ncomes from rent that are listed on [his]

2010 tax return are business rents received by [the company].” Brief for appellant at 11. Along these lines, John testified that the rent from the property on South 72d Street “goes to Haltom Management. I don’t see any of it.”

Yet, John provided no evidence to support his contention that this property was actually a business asset and that the rental income was paid to Haltom Management. Rather, the evidence at trial showed that John was the record owner of the property on South 72d Street and that he claimed the rental income from this property on his 2007, 2008, 2009, and 2010 personal tax returns. Given this evidence, we agree with the district court’s decision to attribute the rental income to John personally and not to his business.

As we have rejected John’s argument that the rental income from the property on South 72d Street is business income, there is no question that it must be included in the child support calculation. The Nebraska Supreme Court has not set forth a rigid definition of what constitutes “income,” but has instead relied on a flexible, fact-specific inquiry that recognizes the wide variety of circumstances that may be presented in child support cases. *Workman v. Workman*, 262 Neb. 373, 632 N.W.2d 286 (2001). Indeed, Neb. Ct. R. § 4-204 defines “total monthly income” as income “derived from all sources, except all means-tested public assistance benefits . . . and payments received for children of prior marriages.” As the rental income in the instant case falls under neither of these exceptions, it must be considered as part of John’s total monthly income for purposes of child support. The district court did not abuse its discretion by including the rental income in its calculation of John’s income.

Neither did the district court abuse its discretion in adding back the depreciation expense on the property on South 72d Street. Under § 4-204, “[d]epreciation calculated on the cost of ordinary and necessary assets may be allowed as a deduction from income . . . ,” but the party claiming depreciation as a deduction “shall have the burden of establishing entitlement to its allowance as a deduction.” This burden “is a matter of proving the ordinary and necessary expenses of doing business,” *Gress v. Gress*, 271 Neb. 122, 128, 710 N.W.2d 318, 326 (2006), and requires the production of “a minimum of 5 years’ tax returns at least 14 days before any hearing pertaining to the allowance of the deduction,” § 4-204. Furthermore, “[p]art of that burden is showing the court that the deduction does not represent artificial treatment of assets for the purpose of avoiding child support obligations.” *Gress v. Gress*, 271 Neb. at 128, 710 N.W.2d at 326. We have already concluded that John failed to establish that the property on South 72d Street was a business asset. As such, it necessarily follows that John also failed to prove that any depreciation expense on this property was a business expense, as required under *Gress*, and not an “artificial treatment of assets” claimed with the goal of limiting his child support obligation. John also failed to provide 5 years of tax returns. Because John did not satisfy the requirements to get a depreciation deduction under § 4-204, the district court properly added back the depreciation expense when calculating his monthly income for purposes of child support.

Because the district court calculated John’s child support obligation based upon wages and rental income reported on his tax returns and because John was not entitled to a depreciation deduction under § 4-204, we do not find that the district court abused its discretion in calculating John’s child support obligation. This assignment of error lacks merit.

Attorney Fees.

In its decree, the district court awarded Brisa \$10,000 for attorney fees. John argues that this award is an abuse of discretion for two reasons: (1) because one cannot differentiate what portion of the attorney fees were incurred as part of the dissolution proceedings as opposed to the juvenile proceedings and (2) because Brisa “has received substantial alimony already and should be responsible for her own attorney’s fees.” Brief for appellant at 14.

Turning to the latter argument first, we note that “an award of attorney fees depends on a variety of factors, including the amount of property and alimony awarded, the earning capacity of the parties, and the general equities of the situation.” *Schaefer v. Schaefer*, 263 Neb. 785, 794, 642 N.W.2d 792, 799 (2002). Thus, while we must consider the fact that Brisa received temporary alimony throughout these proceedings and was awarded permanent alimony to last 1 year, we do not find that the existence of an alimony award precluded the district court from also awarding attorney fees to Brisa.

On the contrary, we find that the same circumstances which justified an award of alimony in the instant case also supported an award of attorney fees to Brisa. Since separating from John, Brisa has been forced to borrow money to support her family and to maintain an attorney in these proceedings. She has not been employed since she and John moved to Nebraska in 2007, but she has been responsible for the care of the parties’ two minor children and her two children from her previous marriage. As part of these dissolution proceedings, Brisa was awarded the continuing custody of her and John’s two minor children. On these facts, the district court did not abuse its discretion in awarding attorney fees to Brisa.

As to John’s first argument regarding attorney fees, we are not persuaded that the district court’s award was an abuse of discretion simply because the attorney fee statement included costs incurred in the juvenile proceedings. The affidavit of Brisa’s attorney offered in support of her request for attorney fees stated that she had incurred attorney fees and expenses totaling \$16,129.60 throughout the divorce proceedings. Yet, the district court awarded Brisa only \$10,000 toward these fees. Had the court awarded Brisa the full amount of her fees, we might be more inclined to accept John’s argument that the commingling of fees associated with the juvenile and dissolution proceedings made the award unreasonable. But because the court awarded less than the full amount, the court implicitly accounted for any fees and expenses that related solely to the juvenile case. We cannot say that the district court abused its discretion in awarding attorney fees to Brisa.

South 72d Street Property.

We find no merit to John’s contention that the district court abused its discretion in determining that half of the property located on South 72d Street was a marital asset. The evidence at trial clearly indicated that John owned a one-half interest in this property prior to his marriage to Brisa and that he obtained the remaining one-half interest by quitclaim deed in November 2007, several months after the parties were married. John testified that he exchanged his interest in property in Utah for the remaining interest in the property on South 72d Street. And despite John’s contention that this property was owned by the company, the deed clearly identified John as the recipient of the property and not his business.

As a general rule, all property accumulated and acquired by either spouse during the marriage is part of the marital estate, unless it falls within an exception to the general rule. *Davidson v. Davidson*, 254 Neb. 656, 578 N.W.2d 848 (1998). Such exceptions include property accumulated and acquired through gift or inheritance or property held in trust by a third person, but do not include property obtained through one or both spouses' employment. See *id.* Because John obtained a one-half interest in the property located on South 72d Street during the parties' marriage and because it was not acquired by gift or inheritance, the district court properly determined that this one-half interest was a marital asset. This assignment of error lacks merit.

Judgment of \$135,000.

John finally argues that the district court abused its discretion in awarding a judgment of \$135,000 to Brisa. In arguing that the \$135,000 award to Brisa was "unfounded based on the facts of the case and has created an unjust result," John individually attacks the district court's classification and distribution of various pieces of property in the marital estate. Brief for appellant at 15. He argues that the recreational vehicle, the Ford Explorers, and the Ford Excursion are owned and paid for by the company despite being titled in his name. He asserts that the recreational vehicle was owned prior to the marriage and is thus premarital property. And he contends that Brisa's debts are postmarital debts that should not be included in the marital estate. Despite raising these concerns with the court's property division in the argument section of his brief, John specifically assigned none of these issues as errors on appeal. Errors argued but not assigned will not be considered on appeal. *Shepherd v. Chambers*, 281 Neb. 57, 794 N.W.2d 678 (2011). Therefore, we do not review these aspects of the district court's property division, but consider only the propriety of the \$135,000 award to Brisa in light of the property division as set forth in the decree.

The district court ultimately determined that the marital estate consisted of three assets: (1) a one-half interest in the property located on South 72d Street, (2) the Hummer, and (3) the recreational vehicle. It also determined that there were two marital debts totaling \$85,000.

Having determined what assets and liabilities constituted the marital estate, the district court divided the estate between the parties as follows: John and Brisa each received an equal one-fourth interest in the real property located on South 72d Street, John acquired the Hummer and the recreational vehicle, and Brisa was awarded all \$85,000 of marital debt. Finally, to equalize the division of the marital assets and liabilities, the court awarded a judgment of \$135,000 to Brisa.

In its decree, the district court did not determine the total value of each parties' property award or explain how it settled on a judgment of \$135,000. Consequently, our analysis looks backward from the court's ultimate property division to determine the range of values for the marital estate that would support the court's judgment. If the evidence at trial supported a marital estate within that range, then the district court did not abuse its discretion in ordering a judgment of \$135,000. And our analysis shows that the evidence supports the actual result.

Because the court awarded John and Brisa equal shares of the marital portion of the property located on South 72d Street, they effectively cancel each other out.

Having thus eliminated one asset from the equation, we know that Brisa received a net award of \$50,000 after the equalization payment (\$135,000 equalization payment – \$85,000 in marital debt = \$50,000).

With knowledge of how much Brisa received under the district court’s property division, we can determine the possible marital estate values under which this award would be proper. Although the division of property is not subject to a precise mathematical formula, the general rule is to award a spouse one-third to one-half of the marital estate, the polestar being fairness and reasonableness as determined by the facts of each case. *Millatmal v. Millatmal*, 272 Neb. 452, 723 N.W.2d 79 (2006). Given this rule, the \$50,000 net award would support a net marital estate ranging between \$100,000 and \$150,000. A net award of \$50,000 would be one-third of a \$150,000 marital estate or one-half of a \$100,000 marital estate. Thus, if the evidence at trial supported a finding that John and Brisa’s net marital estate was valued between \$100,000 and \$150,000, then the district court did not abuse its discretion in setting the equalization payment.

To determine the value of the net marital estate, we add the value of the Hummer to the value of the recreational vehicle and subtract the \$85,000 marital debt. Unfortunately, actually performing this calculation is difficult for two reasons. First, the district court did not specifically state what values it assigned to the Hummer or the recreational vehicle. Second, the evidence presented at trial yielded several different values for these two assets. On their respective property statements, both parties valued the Hummer at \$80,000. But John testified that it was worth \$60,000. And on Brisa’s proposed division of assets and debts, she gave the Hummer a value of \$35,000. The evidence similarly failed to yield a single value for the recreational vehicle. While both parties’ property statements and Brisa’s proposed property division valued the recreational vehicle at \$250,000, John testified that it was worth approximately \$40,000.

Given this range of possible values for the Hummer and the recreational vehicle, the evidence at trial would support a net marital estate valued anywhere between –\$10,000 and \$245,000, depending on which values the district court accepted as most credible:

Lowest values:

\$35,000	Hummer
40,000	Recreational vehicle
<u>(85,000)</u>	Marital debt
(\$10,000)	Net value of marital estate

Highest values:

\$ 80,000	Hummer
250,000	Recreational vehicle
<u>(85,000)</u>	Marital debt
\$245,000	Net value of marital estate

Taking the average of the highest and lowest values presented at trial for the Hummer and the recreational vehicle, the net marital estate would be valued at \$117,500:

\$ 57,500	Hummer (average of \$35,000 and \$80,000)
145,000	Recreational vehicle (average of \$40,000 and \$250,000)
<u>(85,000)</u>	Marital debt
\$117,500	Net value of marital estate

Thus, assuming that the net marital estate was determined by averaging the highest and lowest values for each of the assets, the award of \$50,000 would represent 42.55 percent of the value of the net marital estate--well within the one-third to one-half rule. While the equal division of the marital portion of the South 72d Street property would move this number somewhat closer to 50 percent--just how much closer we cannot determine because it would depend on the property's value in relation to the other assets--it would still remain within the one-third to one-half range.

For the sake of completeness, we note that taking the average of all three potential values for the Hummer (\$35,000, \$60,000, and \$80,000) instead of just the highest and lowest values would result in a slightly larger net marital estate of \$118,333. But as the award of \$50,000 would still represent 42.25 percent of the net marital estate under this calculation, we consider this difference in the average value of the Hummer to be inconsequential to our determination.

In the light of this analysis, we cannot say that the district court abused its discretion in setting the equalization payment at \$135,000.

CONCLUSION

We find no merit to John's assignment of error asserting that the district court should have granted an annulment. John failed to prove when Brisa's divorce became final under Mexican law. In the absence of proof of foreign law, we presume that the applicable law is the same as Nebraska law. And according to Nebraska law, Brisa's Mexican divorce became final prior to the parties' Nebraska marriage. Thus, John was not entitled to an annulment. And because the district court did not abuse its discretion in setting the amount or duration of alimony, in calculating John's income for purposes of child support, in awarding \$10,000 toward Brisa's attorney fees, or in ascertaining and dividing the marital estate, John's other assignments of error also lack merit. We affirm the decree of the district court.

AFFIRMED.