IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DAVID PRESCOTT,
Appellant,
vs.
LOVELY LOU PRESCOTT,
Respondent.

No. 79386-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Michael David Prescott appeals from a post-decree order denying a motion to modify child custody and support. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

The parties were divorced by way of a stipulated decree of divorce entered in 2014.[1] Pursuant to the terms of the decree, the parties shared joint legal and joint physical custody of their minor child, and Michael was required to pay respondent Lovely Prescott $300 per month in child support. As relevant here, in July 2017, Michael filed a motion for an order to show cause, to modify custody and award him primary physical custody, and to modify child support pursuant to his request for primary physical custody. In his motion, Michael alleged that Lovely had withheld the child for months, such that he was entitled to make-up time with the child and that she failed to pay half of the child's private school tuition. In her opposition and counter-motion, Lovely sought an order requiring

[1]We only recount the facts as necessary to this disposition.

Michael to undergo a psychological assessment. At the initial hearing on the motion, the district court[2] found that a psychological assessment would be beneficial and continued the matter for the parties to obtain the same.

The matter was then continued several times for the finalized report from the psychological assessment. During this time, the parties appeared before the court numerous times on various motions, including additional motions to modify custody. Although the district court determined that it did not have a basis to modify any prior orders at the time these unrelated motions were decided, each time, the district court indicated that Michael's July 2017 motion was still pending and that the court would not make a further decision on custody until the final report from the psychological assessment was completed.

In an order following a June 2019 hearing, after the psychological assessment report was finalized, the district court concluded that the court had resolved the issues raised in Michael's July 2017 motion years ago. Somewhat confusingly, the court then indicated that if it had resolved the issues in Michael's July 2017 motion there would be no basis to have the upcoming evidentiary hearing, but concluded that the upcoming evidentiary hearing on child support would remain scheduled. However, at the time set for the evidentiary hearing on child support, in July 2019, the district court stated that it had reviewed the file and in his July 2017 motion, Michael only requested that child support be modified based on custody being modified. And because custody was never modified, there was no basis for the evidentiary hearing. Accordingly, the court took the matter off calendar and entered an order to the same effect. This appeal followed.

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[2]This case was initially assigned to Judge Duckworth, but was later administratively reassigned to Judge Hoskin.

On appeal, Michael challenges the district court's denial of his motion to modify child support without an evidentiary hearing. This court reviews a child support order for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996); *see also Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018) (stating that in child support matters, this court "will uphold the district court's determination if it is supported by substantial evidence" (quoting *Flynn*, 120 Nev. at 440, 92 P.3d at 1227)). "Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted).

Here, the district court concluded that Michael was not entitled to an evidentiary hearing on whether child support should be modified because the sole basis for his request for modification was premised on his request to modify child custody. And because custody was not modified, Michael's request to modify child support need not be reached. We agree with the district court that in his July 2017 motion, Michael only argued that child support should be modified based on his request to modify custody.[3]

[3]We note that Michael did quote the statute regarding child support modification, which includes a provision allowing modification based on a financial change in circumstances, but Michael provided no argument regarding the same in his motion.

But based on our review of the record, we disagree with the district court's conclusion that it had denied Michael's request to modify custody. In the order at issue on appeal, the district court indicates that custody was resolved "years ago," but a review of the prior orders entered in the underlying case demonstrates that the court was waiting for the psychological assessment before addressing Michael's motion to modify custody.

Indeed, in the order following the December 2017 hearing, the district court indicated that Michael's motion was still pending before the court and that the court would entertain further proceedings on Michael's motion once it had the psychological assessment. Similarly, in the order following the February 2018 hearing, the district court indicated that it did not have any reason to modify the existing orders based on what the court had to date, but noted that Judge Duckworth was waiting for the psychological assessment and advised the parties to put the matter back on calendar once they completed the psychological assessment. In the order following the September 2018 hearing, the district court again indicated that the parties shared joint physical custody and that the court would not take further action on custody until it had the completed psychological assessment. And in the order following the March 2019 hearing, the district court set an evidentiary hearing for the child support issue, which the court left scheduled following a June 2019 hearing, but the court indicated that it believed the custody and support issues had been resolved years ago. Accordingly, we cannot agree that the district court considered Michael's motion to modify custody and denied the same, such that his motion to modify child support became moot.

Additionally, we note that following the September 2018 hearing, the district court appears to have temporarily modified Michael's child support obligation to $0, based on Michael's expenses and limited income, until Lovely filed a new financial disclosure form. The district court may modify a child support order if "there has been a change in circumstances since the entry of the order and the modification is in the best interest of the child." *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009); *see also* NRS 125B.145. Here, although it appears the district court may have concluded there was a change in circumstances regarding Michael's income, such that modification was warranted, the modification appears to have only been temporary pending Lovely's filing an updated financial disclosure form. And the district court never readdressed the modification because, at the time set for the evidentiary hearing, the district court concluded the hearing was not warranted because Michael had only sought child support modification based on a custody modification. Thus, in light of the district court's denial of Michael's motion to modify child support, it is unclear whether child support remained at $0 or reverted back to $300 per month, despite Michael's expenses and income. Therefore, we must reverse and remand this matter to the district court to address these issues. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142.

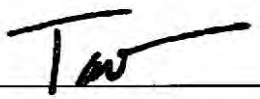
To the extent Michael contends the district court abused its discretion in denying his request to hold Lovely in contempt, the district court awarded Michael make-up time with the child and determined that Lovely was not required to pay for half of the child's school tuition pursuant to the terms of the divorce decree. And based on our review of the record, we discern no abuse of discretion in the district court's determinations as to the alleged contempt. *See In re Water Rights of the Humboldt River*, 118

Nev. 901, 906–07, 59 P.3d 1226, 1229–30 (2002) (explaining that the district court has "inherent power to protect dignity and decency in its proceedings, and to enforce its decrees" and because it has particular knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an abuse of discretion). We likewise discern no abuse of discretion in the district court's decision regarding attorney fees and costs. *See Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005) (explaining that this court reviews an award of attorney fees in divorce proceedings for an abuse of discretion).

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.[4]

_____, C.J.
Gibbons



_____, J.
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Bulla

[4]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Michael David Prescott
The Wright Law Offices, PC
Eighth District Court Clerk