IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER P. LAMPKIN,
Appellant,
vs.
KEILY A. LAMPKIN, N/K/A KEILY ANNE MARIE SHORT,
Respondent.

No. 81512-COA

ORDER OF REVERSAL AND REMAND

Christopher P. Lampkin appeals from a post-decree of divorce order regarding child support. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

In the proceedings below, the parties were divorced by way of a decree of divorce entered in 2017. Pursuant to the terms of the decree, the parties were awarded joint legal and joint physical custody of their two minor children. Additionally, the parties stipulated as to their relative gross monthly incomes and that Christopher would pay respondent Keily A. Lampkin (n/k/a Keily Anne Marie Short) $1,150 per month in child support. In May 2019, Christopher filed a motion to modify child support, asserting that he was unable to work due to a back injury and that Keily began receiving income from a trust, such that the court should modify child support for the months he was unable to work and open limited discovery to determine support moving forward. Keily opposed the motion, but conceded that Christopher should not be obligated to pay child support during the months he was recovering from his back surgery.

The matter was heard in October 2019, at which time the district court concluded that Christopher was entitled to a temporary modification of his child support based on his back injury, and that the parties stipulated to suspend his child support obligation for the months of June through September 2019 (the relevant time period). The district court also opened discovery regarding the parties' incomes, instructed the parties to file supplemental briefing after discovery, and set the matter for a return hearing.

Both parties filed supplemental briefing and the district court issued a written order, without an additional hearing, in March 2020. In its order, the court concluded that Christopher's supplemental briefing failed to include a specific breakdown of his income from March 2019 through September 2019, and that the income Christopher received from unemployment benefits during the relevant time period was unclear. But the court ultimately concluded that based on the parties' income during the relevant time period and Christopher's inability to work due to his back surgery during this time, a temporary change in child support was warranted. Based on this, the district court found that Christopher's child support obligation for June[1] through September 2019 should be $9 per

[1]Although Christopher's back injuries began in March 2019, the district court correctly concluded that it could not modify the child support obligation incurred prior to the filing of Christopher's motion in May 2019. *See* NRS 125B.140(1)(a) (providing that a child support order "may not be retroactively modified or adjusted" after the date a payment is due); *Ramacciotti v. Ramacciotti*, 106 Nev. 529, 532, 795 P.2d 988, 990 (1990) (recognizing that a court has discretion to make a child support order

month, for a total of $36 during the four-month period, and because Christopher paid his June child support obligation in the amount of $1,150, he was entitled to a credit of $1,114. The district court went on to conclude that Christopher failed to establish that Keily's inheritance should be considered as part of her gross monthly income pursuant to NRS 125B.070(1)(a)[2] (defining gross monthly income in the context of child support obligations), and that he otherwise failed to demonstrate a 20 percent change in either party's income, such that a permanent modification of child support was not warranted. Finally, the court awarded Keily a limited amount of attorney fees on the basis that Christopher multiplied the proceedings so as to increase costs unreasonably, pursuant to EDCR 7.60(b)(3), but ordered her counsel to prepare an affidavit of fees and costs and entered the order awarding fees in a separate written order.

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retroactive to the time that modification is sought, as of the date of the court's order modifying the support, or as of any time in between the two).

[2]NRS 125B.070 was repealed in 2017, effective February 1, 2020. *See* 2017 Nev.Stat., ch. 371, § 13 at 2292; Approved Regulation of the Adm'r of the Div. of Welfare & Supportive Servs. of the Dep't of Health & Human Servs., LCB File No. R183-18 (2019) (amending NAC Chapter 425 and making the repeal of NRS 125B.070 effective). Notably, the district court concluded that NRS 125B.070 applied, rather than NAC Chapter 425, because NRS 125B.070 was in effect during the relevant time period (from June through September 2019, when Christopher was unable to work). In light of our conclusion, as discussed in more detail below, this court need not address whether the district court erred in applying NRS 125B.070 instead of NAC 425.025 (defining gross monthly income for child support purposes, effective February 1, 2020).

Christopher then filed a motion to alter or amend the March 2020 order, which the district court denied after a hearing, again concluding that Christopher failed to demonstrate that Keily's investment income could be considered income for child support purposes. The court awarded Keily attorney fees, pursuant to NRS 18.010, but again directed her counsel to submit an affidavit of fees and costs and entered a separate order awarding attorney fees. This appeal followed.

On appeal, Christopher challenges the district court's denial of his motion to modify child support, asserting that the district court abused its discretion by failing to consider Keily's inheritance as income for child support purposes, by failing to consider Keily's underemployment and per diem income; by imputing income to Christopher; and by awarding attorney fees and costs to Keily. "This court reviews the district court's decision regarding child support for an abuse of discretion." *Rivero v. Rivero*, 125 Nev. 410, 438, 216 P.3d 213, 232 (2009). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013); *Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992) (explaining that in divorce proceedings, this court generally will uphold a district court decision that is supported by substantial evidence). Additionally, the district court must apply the correct legal standard in reaching its conclusion and no deference is owed to legal error. *See Davis v. Ewalefo*, 131 Nev. 445, 450-51, 352 P.3d 1139, 1142-43 (2015); *Williams*, 108 Nev. at 471, 836 P.2d at 617-18.

Here, although the district court concluded that Christopher failed to demonstrate the income Keily received from her investment

accounts—the accounts she received as part of her inheritance—should be considered as income, the record demonstrates that the district court had a misunderstanding of the applicable law relating to such income. Notably, the district court recognized Christopher's argument that pursuant to NAC 425.025(1), gross income for purposes of child support includes interest and investment income, but specifically concluded that NAC 425.025 did not apply because it was not in effect during the relevant time period (although it was in effect at the time the district court made its decision, in March 2020). And the record indicates that the district court did not believe that income earned as a result of interest earned from an investment account could constitute income for purposes of determining a party's gross monthly income for child support pursuant to NRS 125B.070. Indeed, the district court cited *Rodgers v. Rodgers*, 110 Nev. 1370, 1373, 887 P.2d 269, 271 (1994), for the proposition that "'gross monthly income' must be limited to the parent's income from employment," in concluding that the deposits made into Keily's bank account were not income.

But *Rodgers* was interpreting a prior version of NRS 125B.070(1)(a), substantively different from the version of the statute as it existed in June through September 2019. *See id.* Importantly, the version of the statute at issue in *Rodgers* provided that gross monthly income was "the total amount of income from any source of a *wage-earning employee*" (emphasis added); whereas, the statute as it existed during the relevant time period here did not include the term "wage-earning employee," as that term was removed. *See* 2001 Nev. Stat., ch. 386, § 1 at 1865 (amending NRS 125B.070(1)(a)); *Metz v. Metz*, 120 Nev. 786, 792-93, 101 P.3d 779, 784 (2004) (explaining that *Rodgers* held gross monthly income was limited to

income from employment, but that it interpreted a prior version of NRS 125B.070). Accordingly, NRS 125B.070(1)(a), as it existed during the relevant time period here, was not limited to income from employment and included income from "any" and "all" sources. *Metz*, 120 Nev. at 793, 101 P.3d at 784. Thus, regardless of whether NRS 125B.070(1)(a) or NAC 425.025(1) applied, investment income can constitute income for purposes of determining parents' gross monthly incomes in establishing child support obligations, and the district court abused its discretion in concluding that such income could not be considered. *See Davis*, 131 Nev. at 450-51, 352 P.3d at 1142-43; *Rivero*, 125 Nev. at 438, 216 P.3d at 232.

Based on the foregoing, we necessarily reverse the district court's order denying Christopher's request to modify child support. We likewise note our concern that the district court repeatedly indicated it was only concerned with the relevant time period, from June through September 2019. While that time period was relevant to Christopher's request to temporarily suspend his child support obligation as he was unable to work, the parties agreed to suspend his child support during that time. And as to Christopher's request to permanently modify the child support obligation based on the parties' current incomes, that limited time period alone was not a basis to deny modification if the parties' current incomes supported a request to modify child support. Thus, on remand, the district court must determine whether the parties' current incomes warrant a modification of child support moving forward.[3]

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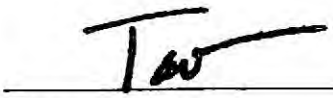
[3]We discern no abuse of discretion in the district court's determination that Keily is not underemployed as the district court found,

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[4]

_____, C.J.
Gibbons



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and the record supports, that Keily was working similar hours to those worked at the time of the parties' divorce, such that she did not reduce her hours to avoid a child support obligation after Christopher filed his motion to modify. *See Rivero*, 125 Nev. at 438, 216 P.3d at 232.

[4]As to Christopher's challenge to the district court's awards of attorney fees, Christopher did not appeal from the orders awarding attorney fees, and we therefore do not consider the awards on the merits. *See* NRAP 3(c)(1)(B) (providing that the notice of appeal must designate the orders being appealed); *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (explaining that a post-judgment order awarding attorney fees is appealable as a special order entered after final judgment). Nonetheless, we note that the awards should be revisited on remand in light of our reversal of the district court's decision regarding child support. *See W. Techs., Inc. v. All-Am. Golf Ctr., Inc.*, 122 Nev. 869, 876, 139 P.3d 858, 862 (2006) (awards of attorney fees and costs may be reconsidered on remand without the appellate courts reaching a decision on their merits).

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
Christopher P. Lampkin
Pecos Law Group
Eighth District Court Clerk