

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIMBERLY BIVANS,
Appellant,
vs.
RAY BIVANS, A/K/A RAYMOND A.
BIVANS,
Respondent.

No. 39730

FILED

MAY 15 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal by Kimberly Bivans from a district court's order denying Kimberly's motion to modify her spousal support award based on the changed circumstances of receiving considerably less child support. After primary physical custody of four of their five children was changed from Kimberly to Ray upon the parties' stipulation, Ray moved the district court to modify his child support obligation. The district court ordered Ray's child support obligation reduced from \$2,500.00 per month to \$1,000.00 per month until July 1, 2002, after which it would be further reduced to the statutory cap of \$813.00 per month after factoring in the Consumer Price Index. Because Ray now had custody of four of the five children, the district court ordered Kimberly to pay Ray \$414.00 per month in child support. Kimberly moved to modify her spousal support award based on the changed circumstance of receiving considerably less child support. The district court determined that, even if the spousal support award of \$500.00 per month for seven years were modifiable, Kimberly had not demonstrated changed circumstances warranting a modification. We affirm the district court's order.

The district court enjoys wide discretion in determining whether and in what amount to grant spousal support.¹ We will not disturb a district court's ruling on a motion to modify spousal support absent an abuse of discretion.²

Kimberly argues, without providing legal support, that the district court must necessarily consider a child support award when fixing the amount of a spousal support award. She contends that the parties' stipulation to change child custody from Kimberly to Ray, but keeping child support at \$2,500.00 per month for two years, reflected the fact that the child support payments were intended as pseudo-spousal support in order to maintain her lifestyle.

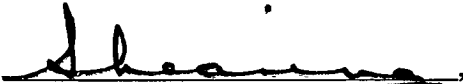
The district court determined that Kimberly failed to show a change of financial circumstances sufficient to warrant a modification of her spousal support award. Kimberly claimed changed circumstances because her child support award was reduced from \$2,500.00 per month to \$1,000.00 per month. The district court noted, however, that Kimberly no longer had primary physical custody of four of the parties' five children and, therefore, her need for child support was proportionately reduced. The district court awarded her \$1,000.00 per month in child support until July 1, 2002, at which time it would be reduced under NRS 125B.070 to the statutory cap of \$800.00 per month for one child, plus \$13.00 per month to factor in the Consumer Price Index.


¹Gardner v. Gardner, 110 Nev. 1053, 1055-56, 881 P.2d 645, 646 (1994); see also NRS 125.150(1)(a).

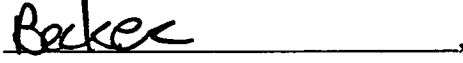
²Gilman v. Gilman, 114 Nev. 416, 422, 956 P.2d 761, 764 (1998).

Substantial evidence in the record supports the district court's ruling.³ Kimberly no longer has to support five children; rather, she has only one child. She receives the statutory maximum allowed for a custodial parent of one child. Kimberly failed to demonstrate any other changed circumstances to justify a spousal support modification. Thus, we conclude that the district court did not abuse its discretion by refusing to modify Kimberly's spousal support award.⁴ For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


Shearing J.


Leavitt J.


Becker J.

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
William S. Potter
Ray Bivans
Clark County Clerk

³Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998) (stating that “[r]ulings supported by substantial evidence will not be disturbed on appeal”).

⁴The district court also determined that the spousal support award was non-modifiable, an issue which Kimberly also appealed. We need not reach this issue, however, because substantial evidence shows that the district court did not abuse its discretion by determining that Kimberly's changed circumstances were insufficient to justify a spousal support modification.