

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD SMEREK,
Appellant,
vs.
ELAYNE SMEREK,
Respondent.

No. 45511

FILED

JAN 23 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order denying a motion to modify spousal support, child support, and visitation with the minor child. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie Jr., Judge.

Appellant contends that the district court abused its discretion in denying his request to terminate his obligation for spousal support and to reduce his obligation for child support, given respondent's new employment. We will not set aside an order of the district court concerning spousal support or child support absent an abuse of discretion.¹ Having reviewed the record, we conclude that the district court did not abuse its discretion in denying appellant's request.


Appellant also contends that the district court abused its discretion in denying his request to extend his weekend visitation and to add visitation during the child's spring break. In making child custody

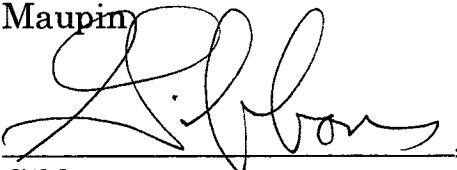
¹See Gilman v. Gilman, 114 Nev. 416, 422, 956 P.2d 761, 764 (1998) (holding that this court reviews a district court's ruling on a motion to modify spousal support for abuse of discretion); Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (providing that matters of child support rest in the trial court's sound discretion).

determinations, the district court must consider the child's best interest.² Matters of child custody, including visitation, rest in the district court's sound discretion.³ Appellant did not demonstrate that the modification in visitation would be in the child's best interest. We conclude, therefore, that the district court did not abuse its discretion in denying appellant's request.

Lastly, appellant contends that, before the hearing on his motion to modify, he did not have the opportunity to review respondent's untimely opposition or to file a reply. We conclude that any error was harmless because appellant was present at the hearing to address respondent's contentions, and he has not demonstrated any prejudice. Accordingly, we affirm the district court's order.

It is so ORDERED.


_____ J.

Maupin

_____ J.
Gibbons


_____ J.
Hardesty

²See NRS 125.480(1) (providing that the sole consideration in awarding custody of a child is the best interest of the child).

³See Wallace, 112 Nev. at 1019, 922 P.2d at 543.

cc: Hon. T. Arthur Ritchie Jr., District Judge, Family Court Division
Ronald Smerek
Christopher R. Tilman
Clark County Clerk