

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER MILES THOMAS,
Appellant,
vs.
JENNIFER LYNN THOMAS,
Respondent.

No. 45752

FILED

DEC 07 2006

JANE T. M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a post-decree district court order modifying a child support obligation. Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, Judge.

The parties were divorced in 1998. They have one child from the marriage who is approximately eleven years old. After the divorce, a post-decree order was entered setting appellant's child support obligation at \$275 per month.

At some point, appellant asked respondent's permission to abate paying child support because he wanted to start a franchise business. Respondent refused.

In January 2005, appellant moved the district court to reduce his child support obligation to zero so that he could pursue his franchise business. Appellant insisted that he had no income. Respondent opposed the motion and filed a countermotion to increase appellant's child support obligation. Subsequently, the district court entered an order denying appellant's motion and increasing his child support obligation to \$602 per month. The district court determined that although appellant claims that he does not currently have an income because of the franchise business, each month appellant pays bills totaling approximately \$5,700. Thus, the

court imputed income to appellant and modified the support obligation based on the imputed income. This appeal followed.

On appeal, appellant raises two arguments. First, appellant contends that the district court was required to conduct a hearing to evaluate his financial status before modifying his child support obligation. Second, appellant insists that willful underemployment is a necessary precondition in order for the district court to impute income to a non-custodial obligor parent for child support purposes. We are not persuaded by appellant's contentions.

Nevada imposes upon both parents the duty to provide child support.¹ This court reviews a child support order for an abuse of discretion,² and will uphold a district court's findings of fact that are supported by substantial evidence.³

In its order, the district court found that appellant and his current wife own two vehicles, a home, a franchise business that cost over \$200,000, a retirement account valued at approximately \$45,000, an investment account valued at approximately \$20,000, a personal checking account with an average monthly balance of \$3,200, monthly bills that total approximately \$5,700 and which are paid in full each month, and that appellant had previously earned \$80,000 when employed. Based on these considerations, the district court imputed a monthly income to

¹NRS 125B.020.


²Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996).


³Gepford v. Gepford, 116 Nev. 1033, 1036, 13 P.3d 47, 49 (2000).

appellant in the amount of \$5,700. Further, the court ordered appellant to pay child support in the amount of \$602 per month.⁴

Having reviewed the appellate record and the parties' briefs, we conclude that substantial evidence supports the district court findings regarding appellant's income.⁵ Thus, the district court did not abuse its discretion when it imputed income to appellant and determined the amount of his monthly child support obligation. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

⁴See NRS 125B.070 (setting forth a formula to determine the amount of child support).

⁵See Barry v. Lindner, 119 Nev. 661, 670, 81 P.3d 537, 543 (2003) (imputing an annual income to the obligor father based on his "previous income and continued expenditures").

⁶Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

cc: Hon. Deborah Schumacher, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Aaron D. Grigsby
Bader & Ryan
Washoe District Court Clerk