

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANE ELIZABETH JOHANSON,
Appellant,
vs.
ROBERT W. LUECK,
Respondent.

No. 46057

FILED

NOV 14 2007
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court post-decree order denying a motion for attorney fees. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

The parties were granted a divorce in 1999. They have one minor child from the marriage. Under the decree, appellant was awarded primary physical custody of the child, with respondent having visitation. Respondent was also ordered to pay child support in the amount of \$750 per month.

In November 2004, respondent lost his bid for reelection as a district court judge. His job officially ended in January 2005. Respondent attempted, unsuccessfully, to negotiate a reduction in his child support obligation with appellant, while respondent established his new law practice. Thereafter, in February 2005, respondent moved the district court to modify the divorce decree as to child support. Appellant opposed respondent's motion and filed a countermotion for arrears and for attorney fees.

Following a hearing on the motions, the district court entered an order reducing the child support obligation under the divorce decree, determining child support arrears and entering a judgment on the arrears, and denying appellant's request for attorney fees. Appellant has filed this appeal from the portion of the order concerning attorney fees.

This court will not disturb the district court's decision regarding attorney fees absent an abuse of discretion.¹ On appeal, appellant contends that the district court erred when it refused, under NRS 125B.140(2)(c)(2), to award her attorney fees or make findings of any undue hardship. Indeed, the district court must award reasonable attorney fees in a matter concerning the enforcement of a child support obligation, "unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts."²

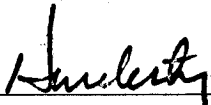
Here, although appellant did not initiate the underlying matter, she did file a countermotion for the enforcement of the child support obligation that was established under the divorce decree. In its order resolving respondent's motion to reduce his child support obligation, and appellant's countermotion for arrears and attorney fees, the district court, without explanation, ordered each party to bear his or her own fees.

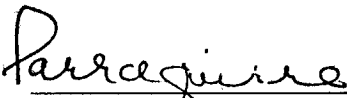
¹Love v. Love, 114 Nev. 572, 959 P.2d 523 (1998) (holding that an award of statutory attorney fees in a divorce case is within the district court's sound discretion).


²NRS 125B.140(2)(c)(2); see also Edgington v. Edgington, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003) (recognizing that in a child support enforcement matter, the district court must award reasonable attorney fees or make findings regarding whether the imposition of fees creates a hardship).

Thus, we conclude that the district court abused its discretion when it denied appellant's fee request without expressly finding that the fee would create a hardship on respondent. Accordingly, we reverse the portion of the district court's order denying attorney fees and remand this matter to the district court for further consideration.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguire


_____, J.
Douglas

cc: Eighth Judicial District Court Dept. 18, District Judge
Carolyn Worrell, Settlement Judge
Bruce I. Shapiro, Ltd.
Law Offices of John G. Watkins
Eighth District Court Clerk