IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL BLAND,
Appellant,
vs.
ROBIN BLAND,
Respondent.

No. 49197

FILED

JUL 11 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order resolving post-divorce decree support issues.[1] Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Appellant Michael Bland and respondent Robin Bland were divorced in 1996 by decree of divorce entered in Clark County. The divorce decree adopted a Marital Settlement Agreement (MSA) drafted by the parties that set forth the terms of the parties' agreement concerning custody and support of their two children, alimony, and division of property and debts. Under the terms of the MSA, as incorporated in the divorce decree, Michael was obligated to make monthly payments to Robin of $2000 for child support, $1000 for alimony for 18 years, and $1000 for "asset equalization" for 18 years. Upon each of the parties' two minor children reaching majority, Michael was obligated to pay Robin $1000 a month in "additional property settlement," totaling $2000, until September 2014.

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

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Michael complied with the terms of the decree, paying Robin $4000 each month until June 2005. From June through September 2005, Michael paid Robin only $2000 a month. In September 2005, Michael filed a voluntary petition for discharge in bankruptcy. Michael sought to discharge the "asset equalization" and "property settlement" obligations in bankruptcy. Robin filed a motion to extend time to file a complaint for non-dischargeability with the bankruptcy court, and the court granted her motion for an extension. Thereafter, Robin filed a motion for enforcement and order to show cause in the Second Judicial District Court, seeking to have the "asset equalization" and "property settlement" provisions of the divorce decree declared support obligations.

In October 2005, while the bankruptcy and district court actions were pending, Michael took physical custody of the parties' minor daughter. The parties' son had already reached majority at this time. The parties agreed informally, via e-mail, that Michael would cease making $1000 monthly payments to Robin for child support, that Michael would not seek child support from Robin, and that neither party would seek payment from the other or judicial intervention concerning the child support. Thereafter, from November 2005 through November 2006, Michael paid Robin $1000 a month of the remaining $3000 that was owed under the terms of the divorce decree.

In April 2006, Robin moved the bankruptcy court for relief from the automatic stay[2] and the bankruptcy court granted her motion in

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[2]Pursuant to 11 U.S.C. § 362(a)(1), an automatic stay comes into effect upon the filing of a petition in bankruptcy. "The automatic stay 'is designed to effect an immediate freeze of the status quo . . . and protects the debtor by allowing it breathing space and also protects creditors as a

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May 2006. Thereafter, the district court held a hearing at which both parties testified and presented documentary evidence. The district court issued an order in December 2006 declaring that no portion of the $4000 monthly obligation imposed on Michael by the divorce decree represented property division payments and that the entire obligation was in the nature of support. The district court modified the alimony award to $2000 per month and eliminated the other portions of the award. The district court calculated Michael's arrears from June 2005 to November 2006 to be $29,000 and ordered the arrears paid in monthly installments of $500. The court further awarded Michael child support payments of $623 and ordered Robin's payments to be credited against his arrears. Finally, the district court found Michael in contempt of court for his failure to comply with an enforceable court order and ordered him to pay $5000 in attorney fees to Robin's attorney. Michael appeals the district court's order on multiple grounds, which we address in turn.

We review a district court's award of alimony and child support for an abuse of discretion.[3]

Michael argues that the district court improperly modified accrued payments by characterizing the "asset equalization" and "property

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class from the possibility that one creditor will obtain payment on its claims to the detriment of all others.'" In re Wingard, 382 B.R. 892, 899 (Bankr. W.D. Pa. 2008) (alteration in original) (quoting Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n, 997 F.2d 581, 585 (9th Cir. 1993)).

[3]Sprenger v. Sprenger, 110 Nev. 855, 859, 878 P.2d 284, 287 (1994); Laird v. Laird, 93 Nev. 687, 688, 572 P.2d 543, 544 (1977).

settlement" portions of his obligation as support obligations. We reject this contention. Accrued alimony and child support payments are not modifiable.[4] Contrary to Michael's contention, however, the district court did not modify accrued payments when it characterized the entire $4000 obligation under the divorce decree to be in the nature of support. Rather, the district court interpreted the MSA and clarified the true nature of the obligation.[5] For this reason, Michael's related contentions—that the district court modified his alimony obligation from $1000 to $3000 for the period from October 2005 to May 2006, and that the district court "renamed" the "property settlement" portion of the obligation as alimony—are without merit.

Michael next argues that the district court's determination that his obligation for the period from October 2005 to May 2006 was $3000 per month was excessive and unjust. We disagree. In its December 2006 order, the district court determined that the $4000 total obligation should be reduced by $1000 for the period from October 2005 to May 2006 in recognition of the fact that Michael took physical custody of the parties' minor daughter in October 2005. The district court then reduced the remaining obligation to $2000, effective June 2006, based on Michael's motion for modification of his support obligation.[6] We conclude that

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[4]Hildahl v. Hildahl, 95 Nev. 657, 660, 601 P.2d 58, 60 (1979).

[5]See Martin v. Martin, 108 Nev. 384, 386, 832 P.2d 390, 391 (1992) (stating that whether an award is in the nature of support is determined by looking to its purpose and function).

[6]See NRS 125.150(10)(b) (permitting the court to modify an alimony award upon motion demonstrating changed circumstances).

because Michael did not move to modify his support obligation until June 2006, the district court did not abuse its discretion by modifying the agreement and its determination was not excessive and unjust.

Michael next asserts that the district court abused its discretion by awarding Robin $2000 in alimony beginning in June 2006, in addition to the $1000 alimony award to which she is entitled under the terms of the original divorce decree. This appears to be a misunderstanding of the district court's December 2006 order. The district court first declared that the entire $4000 obligation under the divorce decree was in the nature of support. The district court then reduced that support obligation to $2000 per month for alimony and eliminated any child support obligations because the parties' son was over 18 years of age and Michael had physical custody of the parties' minor daughter. The $2000 alimony award was not in addition to any obligation previously owed under the terms of the divorce decree. Rather, the district court's order clearly provides that Michael's entire obligation is $2000 per month in alimony plus $500 a month in payments toward his arrears. The order does not obligate Michael to pay $3000 per month in alimony.

Michael next argues that the district court abused its discretion by awarding Robin ongoing alimony. Michael asserts that the amount of money that he has already paid Robin is in excess of the amount that a court would reasonably have awarded at the time of the divorce decree and that the district court should have taken this into consideration when determining whether to award ongoing alimony. We reject this argument. The district court exercised its discretion when it determined that the entire $4000 obligation under the divorce decree was in the nature of support, and then modified portions of the support

obligation, obligating Michael to pay $2000 a month in alimony, a substantial decrease from the obligation under the divorce decree. We discern no abuse of discretion in the district court's actions.

Michael next argues that the district court abused its discretion by awarding $2000 in ongoing alimony to Robin because this obligation increases his tax liabilities. We disagree. District courts may consider "potential tax liability when valuing marital assets when a taxable event has occurred as a result of the divorce or equitable distribution of property, or is certain to occur within a time frame so that the trial court may reasonably predict the tax liability."[7] However, district courts must consider potential tax liabilities if, when dividing community property, "there is proof of an immediate and specific tax liability."[8] None of the above circumstances existed in the instant case. Michael has not cited any authority for the proposition that a district court should consider potential tax liabilities when deciding whether to modify an alimony award. Therefore, we conclude that the district court did not abuse its discretion by awarding $2000 in ongoing alimony to Robin.

Michael next argues that the district court erred in calculating the amount of his arrears for the period between July 2005 and September 2005. We agree. According to the district court's order, Michael's obligation from July 2005 through September 2005 was $4000 a month, and Michael and Robin both testified that Michael paid Robin $2000 a month during that 3-month period. The district court found that Michael's

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[7]Ford v. Ford, 105 Nev. 672, 677, 782 P.2d 1304, 1307 (1989).

[8]Id. at 677, 782 P.2d at 1307-08.

arrears totaled $8000 for that period. However, it appears that Michael's arrears should total $6000 for that period. We conclude that the district court miscalculated the amount of Michael's arrears for that period and we reverse this portion of the district court's order and remand this matter for the district court to correct the amount of arrears owed by Michael.

Michael argues that the district court abused its discretion by failing to award him child support from October 2005, the date that he took physical custody of the parties' minor child. We disagree. The district court explained that it awarded Michael child support from the date of its order, December 2006, due to the existence of an informal agreement between Michael and Robin, drafted in October 2005, stating that Michael would take primary physical custody of the parties' minor daughter, that he would be relieved of his $1000 monthly child support obligation, and that he would not seek child support from Robin. The agreement also provided that Robin would not seek payment or otherwise petition the court for the $1000 a month in alimony that she was agreeing to forfeit. Michael argues that because Robin filed a motion with the family court to have the entire $4000 obligation declared support, she breached their agreement and should be required to pay child support from the date of the custody transfer.

Robin did not breach the parties' agreement by moving the district court to declare the $4000 obligation to be in the nature of support. Rather, Robin's motion sought to stop Michael from discharging in bankruptcy obligations that she believed were in the nature of support. The informal agreement that the parties reached contained no provision controlling Robin's behavior in the event Michael filed for bankruptcy and sought to discharge his obligations to her. Therefore, we cannot conclude that Robin breached the agreement or that the district court abused its

discretion by awarding Michael child support from December 2006 in reliance on the parties' agreement.

Michael argues further that he is entitled to receive child support from June 2006, since that is the date of his motion to modify support. We conclude that Michael has not shown that the district court abused its discretion by awarding support from the date of its order.

Michael argues that the district court failed to address his motion for modified insurance and health care obligations. In his opposition to Robin's motion to have the entire $4000 obligation declared to be in the nature of support, Michael requested that the district court place the minor daughter on his health insurance, require Robin to pay half of all the daughter's uninsured medical expenses, allow Michael to list the daughter as a dependent on his tax return beginning in 2006 and continuing until the daughter reached majority, and eliminate the term in the divorce decree requiring Michael to maintain term life insurance payable to Robin. The district court did not address this countermotion. This was error. On remand, the district court must modify its order to address Michael's countermotion.

Michael contests the district court's decision to hold him in contempt and require him to pay $5000 in attorney fees to Robin's attorney. Michael asserts that his failure to pay the entirety of his obligation in July and August 2005 was due to a lack of funds, and that his failure to pay the entirety of his obligation between September 2005 and November 2006 is excused because of the automatic stay that comes into effect upon the filing of a petition in bankruptcy.[9] We disagree with

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[9]See 11 U.S.C. § 362(a)(1).

Michael to the extent that he justifies his failure to pay upon his entering into bankruptcy.

Upon the filing of a petition in bankruptcy, an automatic stay comes into effect to preclude, among other things, the collection of numerous types of debts.[10] Since domestic support obligations are not dischargeable in bankruptcy,[11] an exemption from the automatic stay exists with respect to "the collection of a domestic support obligation."[12] Because the district court determined that the obligations Michael sought to discharge in bankruptcy were actually in the nature of support, he is not entitled to the protections of the automatic stay and his nonpayment of the debts is not justified on that ground.

The district court has the "inherent power to enforce [its] decrees through civil contempt proceedings."[13] Under NRS 22.010(3), disobedience to any lawful order issued by a court is contempt. A court may punish a party found guilty of such contempt by requiring the party to pay the reasonable expenses of a party seeking to enforce the order, including attorney fees.[14] However, before holding a party in contempt for failure to pay child support, the court must determine that the party "ha[d] the ability to comply with the child support order but failed to make

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[10]See 11 U.S.C. § 362(a)(1)-(8).

[11]See 11 U.S.C. § 523(a)(5).

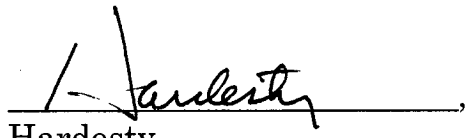
[12]11 U.S.C. § 362(b)(2)(B).

[13]Matter of Water Rights of Humboldt River, 118 Nev. 901, 909, 59 P.3d 1226, 1231 (2002).

[14]NRS 22.100(3).

an effort to do so."[14] Here, the district court does not explain whether or on what basis it determined that Michael had the ability to pay the entirety of his obligation from August 2005 to November 2006 and that he willfully failed to do so. On remand, the district court should fully examine the facts underlying its conclusion that Michael had the ability to pay but failed to make an effort to pay the entirety of his obligation. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



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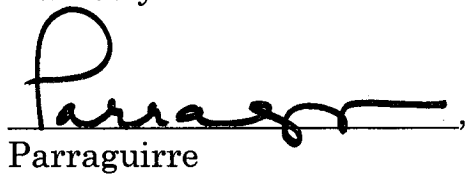

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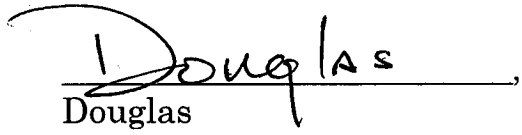

_____, J.
Douglas

cc: Hon. David A. Hardy, District Judge
Brent Begley, Settlement Judge
Lynn G. Pierce
Jonathan H. King
Washoe District Court Clerk

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[14]Rodriguez v. Dist. Ct., 120 Nev. 798, 811, 102 P.3d 41, 50 (2004).