

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY LEROY HUBER,
Appellant,
vs.
HOPE LOUISE HUBER,
Respondent.

No. 50666
FILED

OCT 08 2009

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

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from a post-judgment district court order modifying visitation and tax exemption allocation. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

Having reviewed the parties' appellate arguments and the appellate record, we conclude that the district court did not abuse its discretion in denying appellant's motion to set aside the judgment as it relates to the district court's jurisdiction to modify the parties' visitation schedule. See Cook v. Cook, 112 Nev. 179, 912 P.2d 264 (1996) (holding that the district court's broad discretion to grant or deny an NRCP 60(b) motion will not be disturbed absent an abuse of discretion). The district court correctly determined that NRCP 4 did not apply and that appellant was provided with notice that proceedings were occurring in the Nevada district court.

Concerning appellant's challenge to the portion of the district court's order that modified the original decree's allocation of tax exemptions for the children, we determine that the district court abused its discretion in denying appellant's NRCP 60(b) motion for relief, as the district court lacked jurisdiction over appellant to make this modification. See NRS 125A.020 (1998 version) (providing generally that the purpose of NRS 125A is to resolve disputes concerning child custody); NRS

125A.040(2) (1998 version) (explaining that “custody determination” refers to a court decision or order providing for the custody of a child, but specifically excludes “a decision relating to child support or any other monetary obligation of any person”); NRS 125A.050 (1998 version) (defining when a Nevada court has jurisdiction to make a child custody determination or a modification of child custody); see also Hall v. Hall, 472 N.W.2d 217, 221 (Neb. 1991) (holding that “a tax dependency exemption is nearly identical in nature to an award of child support or alimony and is thus capable of being modified as an order of support”); Babka v. Babka, 452 N.W.2d 286, 288 (Neb. 1990) (stating that the tax dependency exemption “is an economic benefit”); McKenzie v. Jahnke, 432 N.W.2d 556, 558 (N.D. 1988) (J. Levine, concurring) (noting that the tax dependency exemption “is so clearly aligned with child support and custody, that it is properly considered to be support rather than property”); In re Marriage of Lovetinsky, 418 N.W.2d 88, 90 (Iowa Ct. App. 1987) (providing that the tax dependency exemption is part of the child support issue).

Because we have concluded that the district court did not abuse its discretion in denying appellant’s NRCP 60(b) motion for relief regarding modification of the visitation schedule, but that the district court abused its discretion in refusing to set aside the modification of the tax exemption allocation, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

cc: Hon. Andrew J. Puccinelli, District Judge
Carolyn Worrell, Settlement Judge
John D. Hancock
Michelle L. Rodriguez
Elko County Clerk