

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH E. THOMAS,  
Appellant,  
vs.  
SIRPA H. SYRJANEN-THOMAS, N/K/A  
SIRPA KAUFMAN,  
Respondent.

No. 53024

**FILED**

APR 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Y. [Signature]  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a post-divorce-decree order concerning child support payments and awarding attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Lisa M. Kent, Judge.

On appeal, appellant argues that (1) NRS 125B.080(8), providing that the child support obligation of a parent who is willfully underemployed must be based on “the parent’s true potential earning capacity,” is unconstitutionally vague and overbroad; (2) the district court denied appellant due process by prohibiting him from cross-examining the expert witness who examined the parties’ child unless appellant paid the expert’s fees; (3) the evidence was insufficient to support the district court’s finding that appellant was willfully underemployed; (4) the district court abused its discretion by basing appellant’s child support obligation solely on the testimony of a business evaluator; (5) the evidence was insufficient to support the district court’s findings as to appellant’s child support arrearages; and (6) the district court abused its discretion by awarding attorney fees to respondent without considering the appropriate factors.

## DISCUSSION

As an initial matter, appellant did not argue before the district court that NRS 125B.080(8) was unconstitutional or that the district court denied him due process with regard to the expert witness. We therefore decline to consider these arguments in this appeal. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding that a party's failure to raise an issue before the district court precludes consideration of the issue on appeal).

Next, with regard to appellant's second and third claims, the district court did not abuse its discretion by increasing appellant's child support payments. Substantial evidence supported the district court's determination that appellant was willfully underemployed and that his true potential earning capacity was at least \$100,000 per year. Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (recognizing that matters of child support are within the discretion of the district court). While appellant argues that the expert failed to consider appellant's specific circumstances, the expert testified concerning appellant's earning potential, not the amount that he actually was earning.

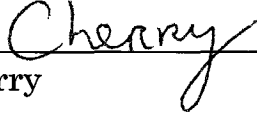
As to arrearages, respondent presented evidence showing that appellant owed more than \$16,500 in arrears at the time of the hearing. The district court's role was to determine the weight to give the evidence presented and to resolve disputed issues of fact. Olivero v. Lowe, 116 Nev. 395, 403, 995 P.2d 1023, 1028 (2000) ("It is within the province of the fact finder to weigh the evidence, determine the credibility, and act upon such conclusions."). Substantial evidence supports the district court's finding, and thus the court did not abuse its discretion with regard to the arrearages.

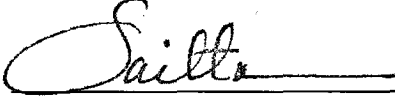
As to attorney fees, because the district court concluded that appellant owed arrearages, the court was required to assess a reasonable attorney fee against appellant. NRS 125B.140(2)(c)(2). The court indicated that its decision was based on the testimony and evidence presented in the case. The record supports the district court's implicit conclusion that respondent's attorneys completed work, which required a great deal of time and attention and which resulted in success for the respondent. Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Moreover, although respondent did not present affidavits with regard to the representation, she provided billing records showing that she had incurred more than \$52,000 in legal fees. See Miller v. Wilfong, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005) (holding that "parties seeking attorney fees in family law cases must support their fee request with affidavits or other evidence that meets the [relevant] factors") (emphasis added). Finally, the record reflects that a large portion of the fees were incurred because appellant demanded an evidentiary hearing concerning whether the parties' son was disabled, when that fact was not reasonably subject to dispute. The district court ordered appellant to pay \$25,000 in attorney fees to respondent, and the record does not support appellant's claim that this ruling was an abuse of discretion. Brunzell, 85 Nev. at 350, 455 P.2d at 33-34 (holding that, absent an abuse of discretion, this court will not substitute its opinion for that of the trial court because the value to be placed on an attorney's services "lies in the exercise of sound discretion by the trier of the facts").


CONCLUSION

Because we conclude that the district court did not abuse its discretion by increasing the child support payments, assessing arrearages, and awarding attorney fees, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Eighth Judicial District Court Dept. J, District Judge,  
Family Court Division  
Robert E. Gaston, Settlement Judge  
Thomas & Associates  
Ecker & Kainen, Chtd.  
Lemons, Grundy & Eisenberg  
Eighth District Court Clerk