

IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD V. SWANSON,  
Appellant,  
vs.  
JULIE L. SWANSON N/K/A JULIE L.  
BROWN,  
Respondent.

No. 54105

**FILED**

APR 29 2011

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. Lindeman*  
DEPUTY CLERK

This is an appeal from a district court post-decree order denying appellant's motion to modify spousal support. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Appellant Todd Swanson and respondent Julie Swanson (n.k.a. Julie Brown) were divorced in May 2005 after 21 years of marriage. In determining spousal support the district court concluded "that the fair, just, and equitable amount of support to be paid in this case is \$9,000.00 per month"<sup>1</sup> for a duration of nine years.

In 2009, Todd filed a motion to reduce spousal support, arguing that he had suffered a drastic change in his income and financial circumstances since the divorce. Specifically, Todd claimed that his total income had been reduced from \$875,000 in 2005, to \$673,000 in 2008, amounting to a 23-percent reduction in income. Based on his reduced income, Todd argued that his spousal support payment to Julie should be reduced. Julie opposed Todd's motion, arguing that Todd failed to show a change in circumstances necessary to modify the district court's order.

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<sup>1</sup>The district court concluded that Todd would have income of at least \$875,000 in 2005 and based its award on this income.

Further, she argued that Todd's income was more than sufficient to pay the court-ordered alimony.

The district court held a hearing on the motion and noted that the parties and the court were assuming that Todd's alleged income of \$673,000 was from his 2008 tax return, which he did not submit as required under NRS 125.150(7).<sup>2</sup> The district court also stated that the hearing was being held pursuant to Todd's right to a review under NRS 125.150(11). The district court found that "[g]iven the fact that [Todd] is grossing fifty-six thousand dollars [per month] and that the nine thousand dollars is—again, constitutes almost half of the plaintiff's [Julie's] income, the request for the defendant to decrease his alimony is—is going to be denied." The district court also rejected Todd's argument that NRS 125.150(11) modified NRS 125.150(7). The district court denied Todd's motion to reduce his spousal support and Todd subsequently filed the instant appeal.

#### Discussion

On appeal, Todd argues that the district court abused its discretion in refusing to modify his spousal support obligation. Specifically, he argues that NRS 125.150(11) modifies the language in NRS 125.150(7) and mandates modification of spousal support when the obligor experiences a 20 percent or more change in gross monthly income. This court reviews a district court's ruling on a motion to modify spousal support for an abuse of discretion. Wolff v. Wolff, 112 Nev. 1355, 1359,

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<sup>2</sup>Todd's attorney indicated that Todd had all the financial information available but did not want to file it, and it had not been requested.

929 P.2d 916, 918-19 (1996); DuBois v. DuBois, 92 Nev. 595, 595, 555 P.2d 839, 839 (1976). Based on the record presented, we find no abuse of discretion and affirm.

In this case, the district court entered a detailed order denying Todd's motion to reduce spousal support. It found that

Todd has failed to show that he is unable to pay the support ordered under the Decree. [Todd] argues that the standard set forth in NRS 125.150(7) was modified by the addition of NRS 125.150(11). The court disagrees. There is nothing in NRS 125.150(11) that suggests that the discretion of the court granted in NRS 125.150(7) was either modified or amended.

Todd asserts that the Legislature amended NRS 125.150 in 2003 to add subsection 11,<sup>3</sup> which expresses the clear intent of the Legislature to permit the court to modify an alimony award where the obligor spouse has sustained a decrease of 20 percent or more in his or her gross monthly income. Todd contends that the district court's ruling violates statutory construction rules because it "entirely negates" NRS 125.150(11). Todd further argues that ability to pay cannot be the threshold standard as the district court ruled because rigid adherence to an inability-to-pay standard does not serve the goal of justice.

Julie counters that the purpose of NRS 125.150(11) is "to simply give a mathematical metric to the language found in NRS 125.150(7)" that gives the district court the authority to modify alimony

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<sup>3</sup>NRS 125.150(11) provides, in part, that "a change of 20 percent or more in the gross monthly income of a spouse who is ordered to pay alimony shall be deemed to constitute changed circumstances requiring a review for modification of the payments of alimony."

payments upon a showing of changed circumstances. Julie asserts that the district court correctly found that NRS 125.150(11) does not conflict with or abrogate the district court's discretion under NRS 125.150(7).

Statutory interpretation is a question of law, and this court reviews the district court's interpretation of a statute de novo. Sims v. Dist. Ct., 125 Nev. \_\_\_, \_\_\_, 206 P.3d 980, 982 (2009). "Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself." Madera v. SIIS, 114 Nev. 253, 257, 956 P.2d 117, 120 (1998) (quoting Erwin v. State of Nevada, 111 Nev. 1535, 1538-39, 908 P.2d 1367, 1369 (1995)).

Todd's argument is partly correct, in that NRS 125.150(11) and NRS 125.150(7) must be read together and a 20 percent shift in income requires review for changed circumstances. However, whether to modify an existing award remains entrusted to the sound discretion of the district court.

NRS 125.150(7) states, in part:

Payments pursuant to a decree entered on or after July 1, 1975, which have not accrued at the time a motion for modification is filed may be modified upon a showing of changed circumstances, whether or not the court has expressly retained jurisdiction for the modification. In addition to any other factors the court considers relevant in determining whether to modify the order, the court shall consider whether the income of the spouse who is ordered to pay alimony, as indicated on the spouse's federal income tax return for the preceding calendar year, has been reduced to such a level that the spouse is financially unable to pay the amount of alimony the spouse has been ordered to pay.

At the hearing on Todd's motion, the district court judge noted that Todd had not submitted his federal income tax return for the preceding calendar year, and the parties were assuming that Todd's claim would be supported by the tax return when he submitted it. Based on the available record, it does not appear Todd ever submitted his 2008 tax return below and it was not supplied for this court's review on appeal. Assuming arguendo that Todd's income did decrease from \$875,000 in 2005 to \$673,000 in 2008, we still cannot conclude that the district court abused its discretion in denying modification.

Failure to follow the law can amount to an abuse of discretion. AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010). Here, we note that the district court's order treated Todd's ability to pay as dispositive in this case. However, ability to pay is just one factor in evaluating changed circumstances for modification of a spousal support award. Thus, NRS 125.150(7) plainly states that the court shall consider the reduction in income of the spouse ordered to pay support "... [i]n addition to any other factors the court considers relevant in determining whether to modify the order . . . ." (Emphasis added.) Considered in the abstract, the language in the district court's order to the effect that it only considered Todd's inability to pay in reaching its decision to deny modification would be an error. However, review of the record also shows that Todd did not argue any other relevant factors in requesting a modification under NRS 125.150(7) and failed to include a copy of his federal income tax return for the preceding calendar year. Therefore, we conclude that the district court did not abuse its discretion by misapplying the law, since no other factors were tendered for its consideration in support of the requested modification.

NRS 125.150(11) does not require a modification to a spousal support obligation any time an obligor experiences a 20 percent or more change in gross monthly income. On the contrary, NRS 125.150(11) states that a 20-percent change requires “a review for modification of the payments of alimony.” (Emphasis added.) The statute does not require an alimony modification but simply a review. Subsection 7 remains and entrusts the decision as to modification to the district court. The statutes are to be read harmoniously and the district court properly made its determination under NRS 125.150(7), which sets forth the standard in determining whether to modify an alimony order. We conclude that Todd’s argument is without merit.


“Alimony is an equitable award serving to meet the post-divorce needs and rights of the former spouse.” Shydler v. Shydler, 114 Nev. 192, 198, 954 P.2d 37, 40 (1998). “[T]wo of the primary purposes of alimony, at least in marriages of significant length, are to narrow any large gaps between the post-divorce earning capacities of the parties, and to allow the recipient spouse to live ‘as nearly as fairly possible to the station in life [ ] enjoyed before the divorce.’” Id. (alteration in original) (citations omitted) (quoting Sprenger v. Sprenger, 110 Nev. 855, 860, 878 P.2d 284, 287 (1994)).


Todd and Julie were married for over twenty years and it was determined in the original divorce decree that \$9,000 per month in spousal support was just and equitable under NRS 125.150. Spousal support in this case was required to allow Julie to live, to the extent reasonably possible, as she had before the divorce. Despite her increased income, she still comes nowhere close to Todd’s earnings. Despite Todd’s alleged decrease in income since the divorce decree in 2005, he has failed to


establish factors that would lead us to conclude that it was an abuse of discretion on this record to deny modification under NRS 125.150(7).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Mathew Harter, District Judge  
Robert E. Gaston, Settlement Judge  
Bruce J. Shapiro, Ltd.  
Radford J. Smith, Chtd.  
Eighth District Court Clerk