

THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT GOODKIN,
Appellant,
vs.
MARY GOODKIN,
Respondent.

No. 57099

FILED

JAN 27 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court post-divorce decree order concerning child support and attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

As to the portion of the district court order concerning child support, appellant contends that the district court abused its discretion when it declared him willfully underemployed, when it failed to apply Nevada's child support statutes equally to him because he is not a United States resident, and when it denied his motion to modify support.

The district court failed to set forth any findings to support its declaration that appellant is willfully underemployed, and thus, we are unable to determine whether the district court abused its discretion. Compare Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (holding that a district court's order concerning child support will not be overturned absent an abuse of discretion), with Noble v. Noble, 86 Nev. 459, 464-65, 470 P.2d 430, 433-34 (1970) (explaining that while a district court has wide discretion in cases involving the care, custody, maintenance and control of a minor child, when there are no findings made with regard to the district court's decision, and the record is unclear, this court is unable to determine if the district court abused its discretion,

and reversal and remand to the district court is warranted), overruled on other grounds by *Westgate v. Westgate*, 110 Nev. 1377, 887 P.2d 737 (1994). Accordingly, we remand this portion of the district court's order to the district court to enter its findings.


As for applying Nevada's child support statutes, the district court's order provides that "[i]f [appellant] wants to come back to the United States and show the Court he is making an attempt to find employment, then the Court will address his [motion to modify] at that time." The order then reestablished that appellant was obligated to pay \$638 a month in child support. The fact that appellant resides in another country does not constitute sufficient factual findings to justify denying appellant's motion to modify his child support obligation. NRS 125B.145 (explaining when a district court is required to consider a motion to modify child support). Thus, the district court erred as a matter of law in refusing to consider appellant's motion to modify child support simply because he does not reside in the United States. Cf. *DuBois v. DuBois*, 956 S.W.2d 607, 611 n.2 (Tex. App. 1997) (inferring a due process violation when a court forces an obligor parent to reside in a particular place to ensure the obligor parent's earnings satisfy the child support obligation), overruled on other grounds by *Iloff v. Iloff*, 339 S.W.3d 74 (Tex. 2011). Accordingly, we reverse the portion of the district court's order that denied appellant's motion to modify child support and remand this issue to the district court to consider appellant's motion in light of NRS Chapter 125B.

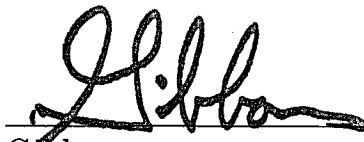
Concerning the district court's attorney fees award, the record fails to identify a legal basis to support the fees award. See *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (requiring that a legal basis to support the attorney fees be identified). Under *Miller*, the party moving for an attorney fees award must support the fees request with evidence that satisfies the factors identified in *Brunzell v. Golden*

Gate National Bank, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969) (concerning whether a fees award is reasonable). The district court granted respondent's motion for attorney fees without citing any legal basis for the award and without considering the Brunzell factors, which we conclude constitutes an abuse of discretion. Miller, 121 Nev. at 622, 119 P.3d at 729 (reviewing a district court's attorney fees award for an abuse of discretion). We therefore reverse the portion of the district court's order awarding respondent attorney fees.

Based on the above discussion, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. William S. Potter, District Judge, Family Court Division
Scott Goodkin
Mary Goodkin
Eighth District Court Clerk

¹To the extent that appellant seeks to challenge the district court's September 25, 2008, order that found appellant willfully underemployed, we lack jurisdiction over that order because appellant did not timely file an appeal. See NRAP 4(a)(1); NRAP 26(c); Healy v. Volkswagenwerk, 103 Nev. 329, 331, 741 P.2d 432, 433 (1987) (noting that an untimely appeal fails to vest jurisdiction in this court).

Having considered appellant's remaining arguments on appeal, we conclude that they lack merit.