IN THE SUPREME COURT OF THE STATE OF NEVADA

KRAIG MILKO,
Appellant,
vs.
KIMBERLY MILKO,
Respondent.

No. 57981

FILED

DEC 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court divorce decree and an order denying a motion for a new trial or to set aside the decree. Eighth Judicial District Court, Family Court Division, Clark County; Bill Henderson, Judge.

In the divorce decree, the district court granted respondent primary physical custody of the parties' minor child, and ordered appellant to pay $807 in monthly child support and $2,400 in monthly spousal support for a term of seven years. The district court also ordered appellant to pay preliminary attorney fees of $4,500, and an additional $7,500 in attorney fees in the divorce decree.

On appeal, appellant first contends that the district court abused its discretion in its awards of child and spousal support because the amounts were based upon an incorrect calculation of appellant's income.[1] Appellant asserts that the 2010 payroll register used at trial by

[1]Respondent is proceeding on appeal in proper person and did not file an answering brief.

respondent's counsel in calculating his income represented a seven-month rather than a six-month time period, and thus, counsel's method of doubling the amount to obtain a projected annual income improperly attributed two additional months of income to him.

This court reviews child and spousal support orders for an abuse of discretion. See Wolff v. Wolff, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996); Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). The district court's factual determinations must be supported by substantial evidence. See Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998). A noncustodial parent's obligation for the support of one child is 18 percent of the parent's gross monthly income, not to exceed the presumptive maximum amount. NRS 125B.070(1). As for spousal support, the district court may award such support as appears just and equitable. NRS 125.150(1)(a). In marriages of significant length, spousal support serves the purpose of narrowing any large gaps in the post-divorce earning capacities of the parties and to allow the recipient party to live as closely as possible to the station in life enjoyed during the marriage. Shydler, 114 Nev. at 198, 954 P.2d at 40.

Having reviewed the record, we conclude that the amounts of child and spousal support awarded by the district court are supported by the evidence presented at trial. To the extent that appellant's income was miscalculated under the 2010 payroll register, any such miscalculation was not established at trial through testimony or independent evidence. Further, a calculation of appellant's monthly income under the 2010 payroll register for a strict twelve-month period including the bonuses is close to the lower range of the district court's findings of appellant's monthly "earnings and earning capacity" to be between $8,825 and

$10,000. Moreover, in the divorce decree, the district court found some indication that appellant had additional income that he was not disclosing. Under these circumstances, we conclude that the child and spousal support awards were not an abuse of discretion, and we affirm the divorce decree as to these awards. We note, however, that our order does not preclude appellant from pursuing his post-judgment motion to modify the support awards, which the district court deferred ruling on because this appeal was pending.

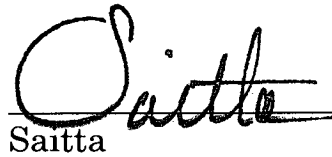
Next, appellant challenges the award of attorney fees to respondent. The district court awarded attorney fees to respondent on three separate occasions: (1) $2,500 in initial attorney fees in an order filed on February 26, 2010; (2) $2,000 in additional attorney fees at a July 2010, hearing; and (3) $7,500 in attorney fees in the final divorce decree based on "the huge disparity in income." Appellant contends that the district court's award of attorney fees was an abuse of discretion because the court failed to consider the factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), and because the award was based upon an incorrect calculation of his income.

NRS 125.150(3) allows the district court to award reasonable attorney fees to either party in a divorce action. When there is a disparity in the parties' income, the court may award preliminary and final attorney fees to balance the parties' access to justice in the divorce proceeding. See Sargeant v. Sargeant, 88 Nev. 223, 495 P.2d 618 (1972); see also Wright v. Osburn, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). In awarding attorney fees, however, the court must determine the reasonableness of the fees by considering the Brunzell factors, including the qualities of counsel, the nature and extent of the work performed, and the result

obtained. See Miller v. Wilfong, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005). "[P]arties seeking attorney fees in family law cases must support their fee request with affidavits or other evidence that meets the factors in Brunzell and Wright." Id.

Here, the district court properly awarded attorney fees to respondent based on the disparity in the parties' income. However, the district court's preliminary orders and final divorce decree awarding attorney fees do not evaluate the reasonableness of the fees awarded in accordance with Brunzell, and the record before this court does not contain affidavits or other evidence analyzing the relevant factors. Accordingly, we reverse the preliminary attorney fees awards and the portion of the divorce decree awarding $7,500 in final attorney fees, and remand this matter to the district court to enter written findings concerning the reasonableness of the attorney fees under Brunzell.

It is so ORDERED.


_____, J.
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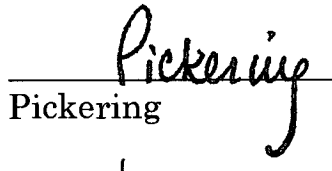
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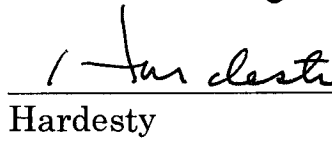
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Hardesty

cc: Hon. Bill Henderson, District Judge, Family Court Division
Dawson, Ford & Friedman
Kimberly Milko
Eighth District Court Clerk