

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES COOPER, JR., III,
Appellant,
vs.
SHIRLEY COOPER,
Respondent.

No. 58462

FILED

DEC 14 2012

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a post-divorce decree motion to modify child support and for division of omitted assets. Eighth Judicial District Court, Family Court Division, Clark County; Bryce C. Duckworth, Judge.

The parties were divorced in December 2009, and respondent was awarded sole physical custody of their three children. The district court ordered appellant to pay child support of \$500 for the months of November and December 2009, based on the unemployment benefits he was receiving at that time. The court further order that, effective January 2010, appellant would pay monthly child support of \$628 based on his prior earnings of \$12.50 per hour and the court's expectation that he would secure employment. The court instructed appellant to provide documentation of his search for employment, as well as quarterly income information from all of his business pursuits. The divorce decree did not dispose of any community or separate property, except to direct the parties to retain personal items in their possession.

In March 2011, appellant filed a motion to modify the child support and for the division of omitted assets. Appellant sought a reduction of his child support obligation because his unemployment

benefits had ended and he had been unable to secure employment. Appellant also sought the division of respondent's pension and certain bank accounts that respondent had not identified in her financial disclosure form.

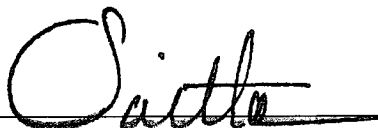
In denying appellant's motion, the district court found that appellant had failed to demonstrate a good faith effort to find employment, that he was willfully unemployed or underemployed, and that it was not in the children's best interests to reduce appellant's child support obligation. As for the omitted assets, the district court denied appellant's request to modify the divorce decree as to these assets, but advised that any interest in these assets may be pursued by way of an independent action. This appeal followed.

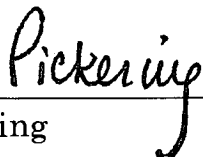
The district court may modify child support upon finding changed circumstances since entry of the divorce decree and that modification would be in the child's best interest. Rivero v. Rivero, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009). If a parent "is willfully underemployed or unemployed to avoid an obligation for support of a child, that obligation must be based upon the parent's true potential earning capacity." NRS 125B.080(8). The district court's decisions regarding child support are reviewed for an abuse of discretion. Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Having reviewed the record, we conclude that the district court did not abuse its discretion in denying appellant's request to modify his child support obligation.

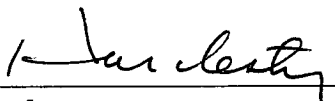
As for the pension plan and bank accounts that appellant alleged were omitted from the divorce decree, the decree was silent as to the existence or disposition of any community property. We have recognized that when assets are omitted from a divorce decree, a party to

a divorce may maintain an independent equitable action to adjudicate and recover an interest in the omitted assets, because such property never came within the field of the divorce litigation. Amie v. Amie, 106 Nev. 541, 796 P.2d 233 (1990). We, therefore, conclude that the district court did not abuse its discretion in denying appellant's request to modify the divorce decree to include the omitted assets, on the basis that appellant may maintain an independent action under Amie. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Saitta

 _____, J.
Pickering

 _____, J.
Hardesty

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division
Charles Cooper, Jr., III
Leavitt Law Firm
Eighth District Court Clerk