IN THE SUPREME COURT OF THE STATE OF NEVADA

DONNA M. ALBRIGHT,

Appellant,

vs.

DALE ALBRIGHT,

Respondent.

No. 35666

FILED

NOV 15 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART,

REVERSING IN PART AND REMANDING

This is a proper person appeal from an order of the district court concerning temporary child custody, child support, alimony, distribution of a pension plan, a motion for contempt, and attorney's fees.

Although appellant ostensibly challenges all rulings of the district court, we conclude that we lack jurisdiction to consider portions of the district court's order. Specifically, we conclude that we lack jurisdiction to review the district court's January 20, 2000, order as to the rulings concerning the denial of the motion for contempt, motion to strike, and the motion regarding visitation with the maternal grandparents. We conclude that these rulings do not affect the rights of the parties growing out of the divorce decree, see Burton v. Burton, 99 Nev. 698, 669 P.2d 703 (1983); Wilkinson v. Wilkinson, 73 Nev. 143, 311 P.2d 735 (1957), nor is there a statute or court rule authorizing this court's review of these rulings. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

Furthermore, a district court's order that is not final is not an appealable order because it is subject to

review and modification by the district court. See In re Temporary Custody of Five Minors, 105 Nev. 441, 777 P.2d 901 (1989). Accordingly, we conclude that the rulings concerning the temporary change in child custody, temporary change in child support as to the oldest child, the QDRO, and the order that appellant may be required to submit to psychological testing if an evidentiary hearing is ordered are not appealable, as the January 20, 2000, order does not conclusively resolve these issues, and therefore the order is not final. Accordingly, as we lack jurisdiction to review the above noted rulings, we will not consider them.

As to that portion of the district court's order concerning the award of attorney's fees, we conclude that the district court did not abuse its discretion in ordering appellant to pay respondent's attorney's fees. See Carrell v. Carrell, 108 Nev. 670, 671-72, 836 P.2d 1243, 1244 (1992) (holding that "[u]nder NRS 125.150(3), a district court may, in a divorce action, award reasonable attorney's fees to either party. Such an award lies within the sound discretion of the district court and will not be overturned on appeal absent an abuse of discretion"). Therefore, we affirm that portion of the district court's order pertaining to the award of attorney's fees.

In addition, we conclude that the district court did not abuse its discretion in denying appellant's NRCP 60(b) motion. See Carlson v. Carlson, 108 Nev. 358, 361, 832 P.2d 380, 382 (1992) (stating that "[m]otions under NRCP 60(b) are within the sound discretion of the district court, and this court will not disturb the district court's decision absent an abuse of discretion"). Accordingly, we affirm that portion of the district court's order pertaining to the NRCP 60(b) motion.

Additionally, we affirm the district court's order as it relates to alimony. The district court did not modify the alimony awarded, nor did the court abuse its discretion when it concluded that respondent was not in arrears by offsetting the alimony payment with the amount due from appellant for school tuition. See NRS 125.150(7) (providing that "[i]f a decree of divorce, or an agreement between the parties which was ratified, adopted or approved in a decree of divorce, provides for specified periodic payments of alimony, the decree or agreement is not subject to modification by the court as to accrued payments").

Next, regarding the modification of child support as to the youngest child, we conclude that the district court abused its discretion in concluding that respondent did not owe appellant child support. Specifically, the parties stipulated that respondent would pay child support as part of the marital settlement agreement. Pursuant to NRS 125B.145, the district court may modify a child support order. If a child support agreement is executed by the parties and incorporated into a divorce decree that is issued or is enforced by a Nevada court, then the provisions of that agreement are subject to modification under NRS 125B.145. See NRS 125B.145(5) (providing that an "'order for the support of a child' means such an order that was issued or is being enforced by a court of this state").

Although the district court had authority to modify the parties' child support agreement, we conclude that the district court abused its discretion in modifying support with respect to the youngest child. Based on the agreement between the parties regarding respondent's child support obligation, the fact that the parties agreed to share, and continue to share, joint legal and physical custody of the youngest child,

and based on the disparity of income between the parties (respondent earns approximately $20,000.00 a month and appellant receives $4,000.00 per month), the district court erred when it ordered respondent to stop paying child support for the parties' youngest child. See Barbagallo v. Barbagallo, 105 Nev. 546, 549, 779 P.2d 532, 534 (1989) (noting that the district court may in "rare cases of equal caretaking and equal financial status of the custodians, rule that neither party is entitled to receive child support from the other"); see also Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998) (providing a formula for calculating the amount of child support payments and who receives child support where the parties share equal custody of the child). Accordingly, we reverse that portion of the district court's order pertaining to the modification in child support as to the youngest child, and we remand this matter to the district court for further proceedings regarding the appropriate amount of child support.

It is so ORDERED.[1]

_____, J.
Shearing

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Cynthia Dianne Steel, District Judge,
Family Court Division
Donna M. Albright
Dale Albright
Clark County Clerk

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[1]Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from appellant.