IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC EUGENE DAVIS,
Appellant,
vs.
MELANIE ADDINGTON,
Respondent.

No. 67316

ORDER OF AFFIRMANCE

This is an appeal from a post-divorce decree order modifying child support. Eighth Judicial District Court, Family Court Division, Clark County; Bryce C. Duckworth, Judge.

Appellant Eric Davis moved for a modification of the parties' existing child support order on the ground that their custody arrangement had changed from primary to joint physical custody. To calculate the proper amount of support, Davis argued the court should impute income to respondent Melanie Addington because she was willfully underemployed. He also asked that the modification be made retroactive to January 2012 or earlier. The district court declined to impute income to Addington, and recalculated the parties' support obligations based on their financial disclosures. Ultimately, the district court entered an order reducing Davis's support obligation, effective as of May 2014. This appeal followed.

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Having reviewed the record and Davis's arguments, we conclude the district court did not abuse its discretion by declining to find that Addington was willfully underemployed for the purpose of avoiding child support. *See Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003) (explaining that child support orders are reviewed for abuse of discretion). In particular, the record demonstrates that, in addition to working, Addington has been attending school in order to obtain a degree so that she can eventually work in her chosen field. Under these circumstances, we cannot conclude that the district court's refusal to impute income to Addington was an abuse of discretion.[1] *See id.* Moreover, the district court did not abuse its discretion by declining to consider money that Addington was receiving through the GI Bill in making its decision, as the record demonstrates that she was not going to receive that money after December 2014, which was the same month that the district court entered its order in the underlying proceeding.[2]

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[1]As we discern no abuse of discretion in the conclusion that Addington was not willfully underemployed, we need not reach Davis's arguments regarding how the district court should have calculated Addington's imputed income.

[2]Davis asserts the district court should have calculated his income based on a maximum pay rate of $1820 per month. As the district court's order indicates it calculated the support amount based on Davis having income of $1320 per month, it is unclear what relief Davis seeks by making this assertion. Regardless, as his substantial rights do not appear to have been affected in relation to any potential error in the calculation of his income, we decline to order any relief on this argument. *See* NRCP 61.

Davis also argues the district court erred by not making the child support modification order retroactive to January 2012, when he originally sought modification in the Utah courts.[3] Under the circumstances of this case, we conclude the district court did not abuse its discretion by making the modification of child support effective as of May 2014. *See Ramacciotti v. Ramacciotti*, 106 Nev. 529, 532, 795 P.2d 988, 990 (1990) (recognizing that a court has discretion to make a child support obligation retroactive to the time that a modification is sought, make it effective as of the date of the court's order modifying the support, or make it effective as of any time in between the two extremes). Similarly, the district court did not abuse its discretion by ordering Davis to pay $38 per month for the minor child's health insurance premium effective as of May 2014. *See Edgington*, 119 Nev. at 588, 80 P.3d at 1290.

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[3]To the extent Davis argues the district court should have applied Utah law in considering retroactivity, he did not assert this argument in his motion to modify custody, and we therefore need not consider it on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). But even if he had preserved this argument, we would conclude that the district court properly applied Nevada law in modifying Davis's support obligation. *See* NRS 130.613 (providing that Nevada has jurisdiction to modify an out-of-state child support order that has been registered in Nevada if the parties reside in Nevada and the child does not reside in the issuing state, and that in modifying such an order, "the procedural and substantive law of this State" shall be applied).

As we discern no abuse of discretion in the district court's rulings, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division
Eric Eugene Davis
Stacy T. Weil
Eighth District Court Clerk