

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELADIO S. PAZ,
Appellant,
vs.
CRISABEL R. PAZ,
Respondent.

No. 65676

FILED

DEC 17 2015

TRACIE K. LINDEN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF CLERK

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from a district court order denying appellant's motion to modify alimony. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

Appellant Eladio ("Jun") Paz raises three issues on appeal: (1) whether the district court ignored the plain meaning of NRS 125.150(7) by holding the parties to their alimony agreement; (2) whether the district court abused its discretion by suspending alimony payments indefinitely; and (3) whether the district court abused its discretion by not having a meaningful hearing regarding Jun's motion to modify alimony and by not reducing his alimony.¹

Jun and respondent Crisabel Paz were married 24 years and had one minor child. The parties successfully negotiated the terms of their divorce, which were accepted by the court and memorialized in the parties'

¹Because this matter is remanded to the district court, we need not address the third issue raised by Jun. Nevertheless, a full evidentiary hearing may be required. The only evidence before the court was the affidavits by the parties. Although Jun proffered a document regarding his employment severance during the hearing, it was not admitted into evidence. The parties were not sworn. Arguments of counsel are not evidence. *Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. ___, ___, 338 P.3d 1240, 1255-56 (2014) *reh'g denied* (Mar. 23, 2015).

divorce decree. The decree awarded the parties joint legal custody and joint physical custody. In addition to paying child support, Jun was ordered to pay Crisabel alimony of \$200 for 17 months and \$300 for an additional 103 months, for a total of \$34,300 over 120 months.

Two months after the decree was filed, Jun became unemployed and ceased making alimony and child support payments. He filed a motion to modify alimony and child support and for other relief. Crisabel filed an opposition and counter-moved for arrears, attorney fees and costs.

After a hearing, the district court found Jun owed child support and alimony arrears and modified child support. Because the parties had joint physical custody and Crisabel now earned more than Jun, Crisabel was ordered to pay Jun child support pursuant to *Wright v. Osburn*.² Jun's child support and alimony arrears were offset by Crisabel's child support obligation until the arrears would be paid in full, which would take approximately three months.

The district court also "suspended" Jun's monthly alimony payments while unemployed and ordered him to pay \$1 per month for this period to avoid being held in contempt. The court further ordered when Jun became employed, his alimony payments would resume in the amounts identified in the decree. As a result of this order, the total amount of alimony Jun owed would remain unchanged and the term of alimony would be extended by the number of months Jun was unemployed. The district court did not make specific findings regarding

²114 Nev. 1367, 970, P.2d 1071 (1998).

the parties' current financial circumstances or whether Jun's income will return to its pre-divorce level.

The court stated several times during the hearing that it intended Crisabel to receive the full amount of alimony owed under the decree. Nevertheless, the court also stated that the court would entertain a motion to modify alimony if there is a substantial difference between Jun's former income and his new income after he becomes employed.

Jun first argues the district court's intention to hold him to his alimony agreement made alimony unmodifiable, thereby violating rules of statutory construction and ignoring the plain meaning of NRS 125.150(7). This conclusion is partially accurate. The court did not violate rules of statutory construction; it simply failed to fully apply the statute at that hearing.³

The court was clearly perturbed by the close proximity between the filing of the decree and Jun's motion to modify the decree, and

³A district court's interpretation and application of a statute is reviewed de novo. *Las Vegas Sands v. Eighth Judicial Dist. Court*, 130 Nev. ___, ___, 319 P.3d 618, 621 (2014). When a statute's language is plain and unambiguous, courts will apply the plain language. *Id.* NRS 125.150(7) and NRS 125.150(11) govern modification of alimony. The plain language of subsection 11 states a 20% change in gross monthly income satisfies the changed circumstances element of NRS 125.150(7), but only mandates a *review* of the alimony payments. Subsection 7 remains and gives discretion to the district court to determine whether modification is appropriate. In this case, the hearing lasted 33 minutes; counsel and the court spent the majority of the hearing discussing Jun's loss of income and the alimony issue. Therefore, Jun received the review required under subsection 11 and it was within the court's discretion whether to modify the alimony order.

wanted to ensure Crisabel received the alimony awarded in the decree. The court, however, considered and acknowledged Jun's current financial circumstances by suspending payments and left open the possibility of reducing the alimony after Jun secures employment should his new income be substantially less than his prior income. Therefore, the district court did not make the parties' alimony unmodifiable and did not violate the plain meaning of NRS 125.150(7).

Jun next contends the district court abused its discretion by indefinitely suspending alimony while keeping the total amount of alimony owed under the decree intact. Under the facts of this case, we agree.

We review a district court's ruling on a motion to modify alimony for an abuse of discretion. *Gilman v. Gilman*, 114 Nev. 416, 422, 956 P.2d 761, 764 (1998). Because the district court reduced monthly payments to \$1, but only suspended the balance owed, it did not actually modify alimony. This conclusion is clear because the court did specifically modify child support. Thus, it appears the court found Jun's financial circumstances had substantially changed and warranted a modification of both child support and alimony payments. However, the district court's order, while giving Jun temporary relief, kept the total amount owed intact, as if it was addressing a contempt motion. NRS 125.150(7) allows the court to modify unaccrued alimony upon a change in circumstances. The amount that would have been owed pursuant to the decree while alimony was suspended had not accrued and therefore was subject to modification at the court's discretion based upon the evidence. The district court did not make findings to support its decision to suspend

rather than grant, grant in part, or deny Jun's motion for modification.⁴

Even if suspension of monthly payments is sanctioned by the law, divorced parties should be able to have certainty in their legal rights and obligations regarding alimony. *See Shank v. Shank*, 100 Nev. 695, 697, 691 P.2d 872, 873 (1984) (concluding alimony that ceased upon remarriage should not be revived upon annulment of the remarriage; to hold otherwise would cause enormous uncertainty for parties.) The district court's order does not state, and nothing in the record indicates, that Jun's income will return to its pre-divorce amount if he becomes employed. Therefore, any amount of alimony based on the party's future financial circumstances is speculative if not supported by factual findings.

Further, the record reflects that Jun did not know when he would become employed. Thus, the suspension of alimony and extension of the duration of the payments could last days, months, or even years.


The order suspending alimony payments, in conjunction with speculative nature of the duration of alimony payments, and the assumption that the original amount of alimony would be appropriate when the payments resumed, constitutes an abuse of discretion.⁵

⁴Although the district court was understandably concerned about the timing of Jun's unemployment, it made no findings to support an element of willfulness. Moreover, the parties could have used different methods during the settlement process to ensure Crisabel received financial support, such as an agreement that alimony would be non-modifiable, or securing the payments with property, or by lump sum payments, or by purchasing an annuity or insurance. Those methods were not utilized.

⁵We do not address whether the suspension of alimony would be appropriate had the district court made findings to support its decision or had made other orders in conjunction with the suspension.

Therefore, we ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Vincent Ochoa, District Judge
M. Nelson Segel, Settlement Judge
Hanratty Law Group
Crisabel R. Paz
Eighth District Court Clerk