

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHAD FISHBEIN,
Appellant,
vs.
BECKY FISHBEIN, N/K/A BECKY
HARDT-HARDING,
Respondent.

No. 70316

FILED

SEP 15 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order modifying child support. First Judicial District Court, Carson City; James E. Wilson, Judge.¹

Having considered the parties' arguments and the record on appeal, we affirm the district court's order adopting the special master's recommendations regarding child support. Initially, we conclude that it was not an abuse of discretion to account for appellant's new wife and child in calculating respondent's portion of the parties' children's health insurance premium. See NRS 125B.080(9)(a) (permitting the district court to deviate from the statutory child support formula based on the cost of health insurance); *Rivero v. Rivero*, 125 Nev. 410, 438, 216 P.3d 213, 232 (2009) (providing that a district court's child support decision is reviewed for an abuse of discretion).

Moreover, the district court properly excluded respondent's interest in money earned by her new husband from the calculation of her

¹Chief Judge Michael P. Gibbons did not participate in the decision in this matter.

gross income. See *Rodgers v. Rodgers*, 110 Nev. 1370, 1373, 887 P.2d 269, 271 (1994) (concluding in part that a spouse's income may not be used to calculate gross monthly income under NRS 125B.070(1)(a) because that provision "concerns the *parent's* 'gross monthly income'").² And while the court could have considered that money in deciding whether to deviate from the statutory formula based on the parties' relative incomes, see NRS 125B.080(9)(1); *Rodgers*, 110 Nev. at 1376, 887 P.2d at 273 ("[A]n examination of a remarried parent's 'relative income' may properly include consideration of his or her one-half interest in the new spouse's income."), we discern no abuse of discretion in the court's decision not to do so in this case. See *Rivero*, 125 Nev. at 438, 216 P.3d at 232.


Likewise, the court did not abuse its discretion by declining to find that respondent is willfully underemployed or underpaid or in declining to require respondent to provide bank records and other financial documentation. See *id.* While NRS 125B.080(3) provides that the district court may direct a party to furnish financial records if the parties disagree about either party's gross monthly income, the statute does not require the court to enter such an order. See *State v. Am. Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990) (explaining that, in statutory construction, "may" is construed as permissive unless legislative intent demands another construction"). And


²Although the *Rodgers* court's conclusion that income must come from employment was later overturned in *Metz v. Metz*, 120 Nev. 786, 101 P.3d 779 (2004), based on changes to the statutory language, the Nevada Supreme Court has not revisited its conclusion that a parent's community property interest in a spouse's income is excluded from the statutory definition of gross monthly income for the purpose of calculating child support.

appellant has not demonstrated that respondent should have been required to produce such records in this case.

Thus, because appellant has not demonstrated that the district court abused its discretion in adopting the special master's child support recommendations, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Tao


_____, J.
Silver

cc: Hon. James E. Wilson, District Judge
Chad Fishbein
Becky Fishbein
Cassandra G. Jones
Carson City Clerk

³To the extent respondent argues in her informal answering brief that the district court should have decided certain issues differently, we do not address these arguments because they are not properly before us, as respondent has not filed a cross-appeal in this matter. *See Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) (“[A] respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal.”).