

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CAROLYN SUE GIFFORD,
Appellant,
vs.
THOMAS GIFFORD,
Respondent.

No. 73253

FILED

AUG 30 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Carolyn Gifford appeals a post-divorce decree order modifying alimony. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

Pursuant to the stipulated decree of divorce, Carolyn was awarded the parties' community residence located in Nevada, while respondent Thomas Gifford was awarded the community residence located in Oklahoma. Additionally, Thomas was required to pay Carolyn \$2,303 per month in alimony and was required to pay Carolyn's medical expenses. The alimony provision also stated that the alimony was non-modifiable unless Carolyn's social security income changed or Thomas suffered a catastrophic event, such as a terminal disease or illness.

In 2015, Carolyn moved for an order holding Thomas in contempt and seeking to compel Thomas to pay alimony arrearages. At the evidentiary hearing on that motion, the parties stipulated to selling the Oklahoma property, with Carolyn receiving \$150,000 from the sale of the property as full payment of Thomas' arrears. The agreement also provided

that Thomas was to receive any net proceeds over \$150,000 from the sale or would owe Carolyn the difference for any amount less than \$150,000; that Thomas would continue to pay \$2,303 in alimony; and that he would pay an additional \$300 per month for Carolyn's insurance premium, but would no longer be responsible for any of Carolyn's additional medical costs. The agreement also provided that Carolyn's \$2,603 (\$2,303 in alimony plus \$300 for her insurance premium) would be paid to her directly from Thomas' pension benefit, but that Thomas was required to pay Carolyn himself until the pension benefit began distributing to her.

Carolyn subsequently sold the Oklahoma property for \$150,000 and in 2016, again moved for an order seeking to hold Thomas in contempt, asserting that Thomas failed to pay her \$2,603 per month until the pension benefit began paying her directly. Thomas opposed and counter-moved for an order holding Carolyn in contempt, asserting that she failed to comply with the court's order in selling the property. Thomas asserted that Carolyn failed to obtain an appraisal or list the property, as required by the 2015 order, thereby resulting in the property being sold for drastically less than its value, and that she intentionally did so to avoid Thomas obtaining any net proceeds from the sale above \$150,000. Thomas also sought modification of the alimony award based on his inability to continue working after Carolyn swung a seven-foot long, 2x2 board at Thomas, narrowly missing his head, and after she shot her firearm at Thomas several times while Thomas attempted to move out of the Oklahoma property.

After an evidentiary hearing, the district court concluded that Thomas did not willfully violate the court's order when he failed to pay

alimony because he was unable to pay and, therefore, he was not in contempt. Additionally, the court concluded that, despite the 2015 stipulation, Carolyn was not entitled to \$2,603 per month and awarded her \$2,303 per month in arrears for the months Thomas failed to pay. The district court also concluded that Carolyn willfully violated the district court's prior order in selling the property for \$150,000, without obtaining an appraisal or listing the property, as required by the court's prior order, and that her conduct was intended to deprive Thomas of any benefit from the sale. Accordingly, the district court ordered Carolyn to pay Thomas \$338,500—the difference between the appraised value of the property (\$488,500) less the sale price (\$150,000).

The district court then went on to conclude that, because of Carolyn's actions, the alimony award should be modified. Specifically, the district court concluded that Carolyn's swinging the 2x2 board at Thomas and shooting her firearm at Thomas caused him significant financial hardship; that Carolyn caused unnecessary legal expenses and fees; and that Carolyn should not profit from her wrongful actions. Accordingly, the district court modified Thomas's alimony payment to \$1,300 per month and stated that the \$1,000 reduction would be considered Carolyn's payment to Thomas towards the \$309,364 judgment¹ against Carolyn.

¹While the district court concluded Carolyn owed Thomas \$338,500 for underselling the property, it offset that amount based on other findings relating to the loss of personal property and Thomas' arrearages, leading to a final judgment against Carolyn in the amount of \$309,364.

This court reviews the district court's alimony decisions for an abuse of discretion. *Gilman v. Gilman*, 114 Nev. 416, 422, 956 P.2d 761, 764 (1998); *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996). This court will not substitute its judgment for that of the district court because "the district court has a better opportunity to observe parties and evaluate the situation." *Wolff*, 112 Nev. at 1359, 929 P.2d at 919. Additionally, this court will affirm the district court if it applied the correct legal standard and its ruling is supported by substantial evidence. *Doan v. Wilkerson*, 130 Nev. 449, 453, 327 P.3d 498, 501 (2014).

First, we agree with Carolyn that the district court abused its discretion in only awarding Carolyn \$2,303 in arrears for each month that Thomas failed to pay, rather than \$2,603. See NRS 125.150(8) (stating that accrued alimony payments cannot be modified); *Day v. Day*, 82 Nev. 317, 320-21, 417 P.2d 914, 916 (1966) ("Payments once accrued for either alimony or support of children become vested rights and cannot thereafter be modified or voided."). Accordingly the arrearages award must be reversed and remanded for the district court to award Carolyn \$2,603 per month for each month Thomas failed to pay.

Additionally, while we agree with Carolyn that the district court's subsequent decision to modify alimony must be remanded, contrary to Carolyn's assertions, the district court was permitted to modify the alimony award. See *Mizrachi v. Mizrachi*, 132 Nev. ___, ___ n.9, 385 P.3d 982, 988 n.9 (2016) (explaining that generally, once the parties' agreement is adopted by the district court, the agreement merges into the decree and the parties' rights rest solely upon the decree, "unless both the decree and the agreement contain a clear and direct expression that the agreement"

survives the decree); *Kramer v. Kramer*, 96 Nev. 759, 761, 616 P.2d 395, 397 (1980) (“A decree of divorce cannot be modified or set aside except as provided by rule or statute.”). And here, neither the parties’ stipulation that alimony was non-modifiable except in limited circumstances nor the divorce decree expressly stated that the non-modifiability clause would survive the decree. Thus, the alimony award was modifiable pursuant to rule or statute. *Kramer*, 96 Nev. at 761, 616 P.2d at 397.

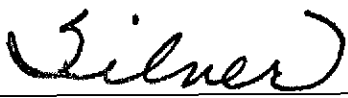
NRS 125.150(8) expressly allows the district court to modify alimony awards upon a showing of changed circumstances. In addition to any factors the district court finds relevant, it must also “consider whether the income of the spouse who is ordered to pay alimony, as indicated on the spouse’s federal income tax return for the preceding calendar year, has been reduced to such a level that the spouse is financially unable to pay the amount of alimony the spouse has been ordered to pay.” NRS 125.150(8). However, based on our review of the record, we are unable to determine whether the district court applied the correct legal standard. While the district court made numerous factual findings, it did not conclude that there had been a change in circumstances and it does not appear that the court considered Thomas’ income, as indicated by his federal income tax return. *See id.* Accordingly, we must reverse and remand the district court’s modification of alimony for further findings and, to the extent it was not applied previously, for the application of the appropriate standard for determining whether a spousal support award should be modified. *See Devries v. Gallio*, 128 Nev. 706, 712-13, 290 P.3d 260, 265 (2012) (explaining that this court cannot adequately review a spousal support issue when the district court does not explain its reasons for awarding or denying spousal

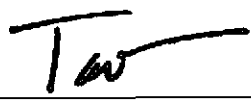
support); *Doan*, 130 Nev. at 453, 327 P.3d at 501 (explaining that although this court reviews for an abuse of discretion, “the district court must apply the correct legal standard”).

Finally, as to Carolyn’s challenge to the district court’s finding Carolyn in contempt for intentionally underselling the Oklahoma property, we discern no abuse of discretion and no reason to disturb the district court’s decision as to that matter. *See In re Water Rights of the Humboldt River*, 118 Nev. 901, 906–07, 59 P.3d 1226, 1229–30 (2002) (explaining that the district court has “inherent power to protect dignity and decency in its proceedings, and to enforce its decrees” and because it has particular knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an abuse of discretion). We likewise discern no abuse of discretion in the district court’s entering judgment against Carolyn for the lost value of the property. NRS 22.100(3) (providing that reasonable expenses in seeking enforcement of an order may be awarded as a penalty for contempt); *State, Dep’t of Indus. Relations, Div. of Indus. Ins. Regulation v. Albanese*, 112 Nev. 851, 856, 919 P.2d 1067, 1071 (1996) (explaining that contempt sanctions are to compensate the opposing party for actual losses resulting from the contemnor’s noncompliance); *see also Hildahl v. Hildahl*, 95 Nev. 657, 601 P.2d 58 (1979) (affirming a district court’s finding of contempt and entry of judgment for the arrearages owed). We therefore affirm the district court’s decisions holding Carolyn in contempt and entering judgment against her for the lost value of the property.

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order. ²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Rena G. Hughes, District Judge, Family Court Division
Lansford W. Levitt, Settlement Judge
Mills, Mills & Anderson
Thomas Gifford
Eighth District Court Clerk

²We have considered Thomas's challenge to this court's jurisdiction in this matter and concluded it is without merit. *See Vaile v. Vaile*, 133 Nev. ___, ___, 396 P.3d 791, 794-95 (2017) (explaining that although orders solely addressing contempt are not independently appealable, this court has jurisdiction to consider contempt findings that are included in an otherwise independently appeal order).