

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHAD ESTUS,
Appellant,
vs.
HEATHER ESTUS,
Respondent.

No. 71463

FILED

SEP 22 2017

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order modifying child support and denying child support arrearages. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Appellant, Chad Estus, and respondent, Heather Estus, divorced in 2014. In the divorce decree, the court awarded Chad primary physical custody of their three minor children. The court also set forth Heather's statutory child support obligation, but deviated it downward to zero based on the parties' custody timeshare and relative incomes. A few months after the divorce decree was entered, Chad moved to modify child support because Heather obtained a new job and her income was substantially changed. The court granted Chad's request to modify Heather's child support obligation,¹ but ordered Heather to pay child support prospectively only, instead of dating her support obligation back to the time Chad filed his motion, which was eleven months before.

On appeal, Chad argues the district court abused its discretion in denying his request for "constructive arrears," or support obligations

¹Although not raised by either party, we note that the district court's application of a deviation even after granting Chad's motion to modify support appears odd considering the substantial change in Heather's income.

dated back to the time of filing the motion instead of the date of the order. He also asserts the district court abused its discretion by relying on irrelevant law when denying his motion for reconsideration.

This court reviews matters regarding child support and orders denying reconsideration for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).

First, Chad argues that the district court abused its discretion by failing to give constructive arrears without making factual findings. We disagree. In *Ramacciotti v. Ramacciotti*, the Nevada Supreme Court held that it was not error for a court to make modified support obligations effective as to the date a motion was filed because such an arrangement did not constitute an impermissibly “retroactive” support award. 106 Nev. 529, 532, 795 P.2d 988, 990 (1990). The court clarified that support orders could be effective as of the time of filing, the time of modification, or some time in between. *Id.* And in *Anastassatos v. Anastassatos*, the Nevada Supreme Court upheld a district court order that declined to award support from the date of filing because “the district court apparently considered the delay in proceedings to be unintentional” and therefore did not abuse its discretion. 112 Nev. 317, 322, 913 P.2d 652, 654 (1996).

While Chad is correct that neither of these cases grant courts unfettered discretion in this area, he is incorrect that the cases require factual findings when denying constructive arrears. Factual findings are necessary when modifying child support to show a change of circumstances and that modification is in the best interest of the child. *See Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009). However, the Nevada Supreme Court has not extended the requirement for factual findings in this

context, and we decline to extend such a requirement to a denial of constructive arrears. We conclude the district court acted within the limits of the wide range of discretion afforded to it when it denied constructive arrears.²

Second, Chad argues the district court abused its discretion by considering NRS 125B.030 in denying his motion for reconsideration because that statute only applies “in the absence of a court order for the support of a child.” However, Chad ignores the first sentence of the statute: “[w]here the parents of a child do not reside together, the physical custodian of the child may recover from the parent without physical custody” certain childcare expenses. Chad does not address this provision of the statute and fails to articulate how the court’s inclusion of it demonstrates that his motion for reconsideration should have been granted. Nor does Chad explain how the reference to NRS 125B.030 proves that the district court erred in issuing its dispositive order, which did not mention the statute. Thus, Chad fails to demonstrate the district court abused its discretion by denying his motion for reconsideration.

Lastly, Chad also requests that this court sanction Heather for deficiencies in her answering brief. This court may impose sanctions against appellate attorneys for failing to comply with NRAP. *Miller v. Wilfong*, 121


²We have also considered Chad’s argument that by failing to award constructive arrears, the district court effectively granted Heather a support deviation to zero dollars without complying with the mandates of NRS 125B.080(9). While this argument is creative, it is unpersuasive upon close inspection. Heather’s support obligation already *was* zero dollars before Chad filed his motion; thus, the court simply preserved the status quo while the parties engaged in motion practice. Chad cites no authority to support his theory that this nevertheless constitutes a deviation requiring factual findings under NRS 125B.080(9), and we decline to interpret it as such.

Nev. 619, 625, 119 P.3d 727, 731 (2005). Although Chad is correct that Heather's answering brief does not comply with many provisions of NRAP,³ Chad commits his own violations of appellate procedure and as a result, this court declines to impose sanctions on either party.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Mathew Harter, District Judge
Carolyn Worrell, Settlement Judge
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Law Offices of Shawanna L. Johnson
Eighth District Court Clerk

³For example, in violation of NRAP 28(a)(10)(A), Heather fails to make arguments supported by authority and merely disagrees with Chad in narrative form.

⁴For example, this court dismissed Chad's previous attempt at this appeal because he failed to appeal from a written and final order. *Estus v. Estus*, No. 69250, 16-900886 (Nev. Ct. App. July 28, 2016). This court specifically noted that Chad must present this court with a final written disposition of his motion to reconsider. *Id.* However, on appeal, Chad failed to include this order in either his notice of appeal or the appendices. Instead, the written order appears only in Chad's docketing statement. Thus, Chad violated NRAP 30(b)(2)(H), which requires that an appendix contain "[a]ll judgments or orders appealed from."