IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK ROSAURO BARRAMEDA,
Appellant,
vs.
CELESTE BARRAMEDA,
Respondent.

No. 73372

ORDER OF REVERSAL AND REMAND

Mark Rosauro Barrameda appeals from an order denying his motion to set aside, or, in the alternative, modify a divorce decree, and an order denying his motion to amend findings and to reconsider that first order. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Mark and respondent Celeste Barrameda filed a joint petition for divorce.[1] The district court granted a decree of divorce on October 14, 2016. Their joint petition, including child support and property division worksheets, explicitly merged with the decree.

The decree stated that the court was ordering a child support amount that deviated from the statutory child support formula. However, neither the decree nor the joint petition or the relevant worksheet indicated what the parties' child support obligation would have been under the statutory formula or under *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998).[2] The decree also awarded the parties' community property house to

[1]We do not recount the facts except as necessary to our disposition.

[2]We note that Mark alleges that Celeste had a greater income than him, yet he was required to pay child support to her even though they had joint physical custody of their children. *See Wright*, 114 Nev. at 1368-69, 970 P.2d

Celeste, and awarded $54,000 to Mark for his interest in the house, to be paid to him from the proceeds from the sale of the house. Neither the decree nor the relevant portion of the joint petition specified when the house would be sold.

On May 11, 2017, about seven months after the decree was entered, Mark moved to set aside the decree pursuant to NRCP 60(b) because of fraud.[3] In the alternative, Mark requested that the district court modify the decree of divorce. Before Celeste filed a response, and without a hearing, the district court denied Mark's motion. The district court denied Mark's motion to amend findings and to reconsider its order, again, before Celeste filed a response and without a hearing.

Mark appeals from both of the district court's orders. He raises two issues. First, he argues the district court erred by refusing to modify a divorce decree that contained a child support obligation that did not comply with Nevada law. Second, he argues the district court erred by interpreting the decree as awarding Mark a lien on the house and by refusing to establish a timeframe in which Celeste must sell the house. We agree.

The district court erred by determining it lacked the authority to modify the child support obligation in the parties' decree of divorce

We review decisions regarding child support for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). However, a district court "commits legal error when it misinterprets or fails

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at 1072 (1998) (holding that in joint physical custody cases, the parent with the greater income generally pays child support to the parent with the lesser income).

[3]On appeal, Mark does not argue that the district court should have set aside the decree of divorce pursuant to NRCP 60(b), and Celeste does not argue that NRCP 60(b) precludes relief.

to follow the statutes as written." *Fernandez v. Fernandez*, 126 Nev. 28, 39, 222 P.3d 1031, 1038 (2010). Further, "questions of statutory construction, including the meaning and scope of a statute, are questions of law, which this court reviews de novo." *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003).

Mark argues the district court erred when it concluded it lacked the authority to modify the terms of a decree because it was based upon a settlement agreement. Mark contends district courts retain jurisdiction to modify child support throughout a child's minority.[4] We agree.

"The trial court has continuing jurisdiction over its child support orders." *Fernandez*, 126 Nev. at 35, 222 P.3d at 1035; *see also* NRS 125B.145(1)-(2). "[T]he jurisdiction of the court never ends in a support matter, as long as the child is supposed to be getting support." *Fernandez*, 126 Nev. at 36, 222 P.3d at 1036 (internal quotation marks omitted). Moreover, when the parties agree to a child support amount, "[a]ny inaccuracy or falsification of financial information which results in an inappropriate award of support is grounds for a motion to modify or adjust the award." NRS 125B.080(2). Because Mark alleged below that the information in the joint petition worksheet concerning child support was inaccurate or false, the district court had jurisdiction pursuant to NRS

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[4]Celeste's arguments that Mark lacks standing to appeal and that this court lacks jurisdiction to hear this appeal are unavailing. Mark is not appealing the decree of divorce; he is appealing the district court's orders denying his motion to set aside or modify the decree and his motion to amend findings or reconsider. The appeal from those orders is timely because it was filed within 30 days after the notice of entry for the order denying the motion to amend findings was served. *See* NRAP 4(a)(4).

125B.080(2) to modify the terms of the agreed-upon child support obligation.

The district court erred by finding the child support obligation in the decree complied with Nevada law

Again, we review a district court's decision concerning child support for an abuse of discretion, *see Wallace*, 112 Nev. at 1019, 922 P.2d at 543, though we review questions of law de novo, *see Miller v. Miller*, 134 Nev. ___, ___, 412 P.3d 1081, 1083 (2018). Settlement agreements in family law cases are valid and generally enforceable as long as they are not unconscionable, illegal or in violation of public policy. *Mizrachi v. Mizrachi*, 132 Nev. ___, ____, 385 P.3d 982, 984 (Ct. App. 2016). However, once a party asks the district court to review an order that is based upon an agreement, that court must apply Nevada law and not contract principles. *See Bluestein v. Bluestein*, 131 Nev. 106, 111, 345 P.3d 1044, 1047-48 (2015). For agreements regarding child support obligations, the agreement must be "calculated and reviewed under the statutory child support formula and guidelines in NRS 125B.070 and NRS.080." *Fernandez*, 126 at 34, 222 P.3d at 1035.

Mark argues the district court erred by not modifying the child support obligation in the decree to comply with Nevada's statutory child support formula. He contends, among other things, that the decree is statutorily deficient because it does not include a calculation of the child support obligation under the statute, before providing a deviation from that statutory formula. We agree.

NRS 125B.080(6)(b) states that when a child support award deviates from the statutory formula, the court *shall* "[p]rovide in the findings of fact the amount of support that would have been established under the applicable formula." In this case, however, neither the decree nor the parties'

worksheets include these required findings. Thus, the district court erred as a matter of law when it determined that the decree complied with Nevada law. *See Miller*, 134 Nev. at ___, 412 P.3d at 1085-86 (noting a district court commits reversible error if it fails to provide "in the findings of fact the amount of support that would have been established under the applicable formula" (quoting NRS 125B.080(6)(b))).

Furthermore, changes in child support are considered matters of public policy and must be considered with regard to the best interests of the child. *See Fernandez*, 126 Nev. at 33-36, 222 P.3d at 1034-35; *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009). Here, the district court denied Mark's motion using principles of contract law and without considering the best interests of the child receiving support. As a result, the district court also erred by denying Mark's motion without considering the best interests of the child.[5]

Accordingly, we reverse the district court's orders regarding child support. We remand this matter for a hearing for the district court to determine the appropriate amount of child support.

The district court had jurisdiction to interpret and enforce the decree's division of community property

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[5]In addition to contending that the decree complied with Nevada law, Celeste argues (1) the parties were free to contract regarding child support and the district court was free to accept those terms as long as the parties certified the terms complied with Nevada law, and (2) Mark failed to allege a change in circumstances that warranted a modification in child support. These arguments are unpersuasive. First, as stated above, child support agreements must be calculated and reviewed by the district court to ensure compliance with the child support statutes. *See Fernandez*, 126 Nev. at 34, 222 P.3d at 1035. Second, a change in circumstances is not required if an inappropriate child support award is based on false or inaccurate information. *See* NRS 125B.080(2).

The district court asserted that it lost jurisdiction to modify the decree's division of community property six months after the decree was entered. This is correct. *See Kramer v. Kramer*, 96 Nev. 759, 762, 616 P.2d 395, 397-98 (noting that, because of NRCP 60(b)'s six-month time limit, a divorce decree in all respects, except as to custody and support of minor children, becomes "unmodifiable six months after the decree [is] entered"). Nevertheless, the district court had jurisdiction to interpret and enforce the decree's division of property. *See Davidson v. Davidson*, 132 Nev. ___, ___, ___, 382 P.3d 880, 883, 886 (2016) (holding that the district court has continuing jurisdiction to enforce a divorce decrees until the six-year statute of limitations expires); *see also Holyoak v. Holyoak*, Docket No. 67490 (Order of Affirmance, May 19, 2016) ("[T]he time requirements of NRCP 60(b) do not apply" when a district court interprets and enforces the terms of a decree).

Although Mark's original motion nominally requested the district court to set aside or modify the decree after the six-month time limit had expired, "[a] party is not bound by the label he puts on his papers." *Doan v. Wilkerson*, 130 Nev. 449, 454, 327 P.3d 498, 501 (2014) (internal quotation marks omitted). Courts should examine the substance, rather than the name, of a party's request to determine whether that party seeks to modify or only clarify and enforce a divorce decree. *See Murphy v. Murphy*, 64 Nev. 440, 449-51, 183 P.2d 632, 636-37 (1947). Here, the substance of Mark's motion was a request for clarity and enforcement of his interest awarded in the divorce decree.[6] Accordingly, we conclude the district court possessed jurisdiction to address Mark's motion.

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[6]Celeste contends that Mark did not request the district court to interpret and enforce the decree in his original motion, but instead asked the

The district court erred by interpreting the decree's house provision as awarding Mark a lien

Mark contends the district court erred by refusing to supply a time for sale term and by interpreting the decree's provision concerning the house as awarding him a lien on the house. Celeste counters that the district court's understanding of the parties' agreement is supported by the plain language of the agreement and that the decree unambiguously gave her the power to choose when to sell the house.

When a district court's interpretation of a divorce decree presents a question of law, this court reviews such an interpretation de novo. *Henson v. Henson*, 130 Nev. 814, 818, 334 P.3d 933, 936 (2014). "Contract interpretation is a question of law . . . ." *Redrock Valley Ranch, LLC v. Washoe Cty.*, 127 Nev. 451, 460, 254 P.3d 641, 647 (2011). The district court's interpretation of the "plain text" of the provision in the decree concerning the marital home presents a question of contract interpretation that we will review de novo. *See Henson*, 130 Nev. at 818, 334 P.3d at 936.

Here, Mark and Celeste used the following language in their divorce decree regarding Mark's interest in their marital house, which the district court relied upon to conclude a lien was created:

> Mark Barrameda shall receive: . . . 2. $54,000 from the sale of the house due to the invest that he make,

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court to modify the decree. As such, she argues Mark's request for the district court to interpret the decree was not properly before the district court. While we disagree with Celeste's understanding of Mark's original motion, we conclude that, even if her interpretation was correct, we can consider this issue for the first time on appeal because it concerns the jurisdiction of the district court. *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." (emphasis added)).

> the money will be pay to him when the house is sold means that meanwhile is not going to get nothing.

Under Nevada law, Mark does not have a lien on the house. Liens are statutory creatures with specific features and mechanisms of creation and enforcement. For example, a "lien" is variously defined, under Nevada law, as "the statutory rights and security interest in a construction disbursement account established pursuant to NRS 108.2403, or property or any improvements thereon provided to a lien claimant by NRS 108.221 to 108.246, inclusive." NRS 108.22132. Liens upon real property created by "a writ of attachment" generally terminate after 10 years and are conclusively presumed to have been released and discharged at that time. NRS 108.250; *see also* NRS 106.240 (same for a lien by mortgage or deed of trust); NRS 108.260 (same for a lis pendens).

The district court's broad statement that the decree, by its plain language, gave Mark a "lien" on the property is error. The language in the decree did not create a lien on the property. Rather, the language of the decree provides the house will be sold and, when it is sold, Mark will receive $54,000 from the proceeds. In this way, the district court erred because, under its interpretation, the decree imposes no sell-by date on Celeste and she could choose to retain the house indefinitely, effectively depriving Mark of his share of the proceeds from the sale of the house. Additionally, even if there was a valid lien, it might expire in 10 years, again depriving Mark of his share of the value of the house, as Celeste could simply wait for the time to expire. Therefore, we conclude the district court misinterpreted the actual terms of the decree and the provision's language requires Celeste to sell the house. The only remaining question is when.

"[A]bsent . . . a demand for performance, or a term making time of the essence, a contract must be performed within a reasonable time."

Mayfield v. Koroghli, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008). What constitutes a "reasonable time" to perform under a contract depends upon "the nature of the contract and the particular circumstances involved." *Id.* at 349, 184 P.3d at 366 (quoting *Mohr Park Manor, Inc. v. Bank of Nev.*, 87 Nev. 520, 522, 490 P.2d 217, 218 (1971)). As the Nevada Supreme Court observed in *Davidson*, the particular circumstances surrounding the property division in a divorce decree coupled with the specific posture of the litigation concerning that division affects when demanding payment will be reasonable. 132 Nev. at ___, 382 P.3d at 886 (concluding that the appellant "apparently believed that her delivery of the deed was reasonable and [respondent's] refinancing of the property was reasonable" and therefore appellant's demand for payment, despite living in the residence, would have also been reasonable).

We will not address this issue for the first time on appeal with an undeveloped record. Instead, we remand this case to the district court to determine, in the first instance after a hearing, what constitutes a reasonable time for Celeste to sell the house, and to enter an appropriate enforcement mechanism. Accordingly, we

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

Silver, C.J.

Tao, J.

Gibbons, J.

cc: Hon. Mathew Harter, District Judge
Radford J. Smith, Chartered
Pecos Law Group
Eighth District Court Clerk