

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRITZ VITAL,
Appellant,
vs.
NANCY VITAL,
Respondent.

No. 38176

FILED

MAR 17 2003

ORDER OF AFFIRMANCE

JANE LEE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a district court order adjudicating spousal support issues and arrearages.

Fritz and Nancy Vital were married on October 6, 1983, and had three minor children born on October 21, 1984, December 23, 1985, and August 6, 1988. On July 27, 1999, the Vitals filed a joint petition for divorce. An attorney prepared the joint petition on behalf of the parties.

The divorce decree was entered on August 3, 1999. Nancy was awarded primary physical custody of the three minor children. The decree contained the following provisions regarding child support and spousal support:

It is further ordered, adjudged and decreed that [Fritz] shall pay child support to [Nancy], in an amount equal to twenty-nine percent (29%) of his gross monthly income or Five Hundred Dollars (\$500.00) per month per child, for three children, for a total of Fifteen Hundred Dollars (\$1,500.00); HOWEVER, this child support is waived by [Nancy], subject to the conditions that [Fritz's] compliance with the terms of the Spousal Support set forth herein [sic].

It is further ordered, adjudged and decreed that [Fritz] pay to [Nancy] the sum of Two Thousand Two Hundred Dollars (\$2,200.00) per month as and for Spousal Support for a period of 10 years, beginning the first day of the month following

entry of the Decree of Divorce and this support cannot be modified.

On November 16, 2000, Fritz filed a motion for a change of custody and to address post-decree issues.¹ Fritz argued that his child support obligation should be adjusted since Fritz was now seeking joint custody of the children. Fritz also contended that his spousal support obligation should terminate based upon Nancy's recent remarriage.

Nancy opposed and countered the motion, seeking: (1) an order reducing to judgment spousal support arrearages in the amount of \$27,000.00 with interest pursuant to NRS 125.180 and EDCR 5.33, (2) an order of contempt against Fritz for failure to comply with the terms of the divorce decree, including payment of spousal support, community debt and medical insurance for the children pursuant to NRS 125.240, and (3) attorney fees and costs.

An evidentiary hearing on the motion and countermotion was held on February 12, 2001. At the hearing, Fritz argued he was seeking termination of the spousal support award and not a modification. He contended Nancy remarried in November 1999, and any arrearages he owed were in the amount of \$1,500.00 per month for child support.

At the conclusion of the hearing, the district court took the issue of spousal support under advisement. The court, finding Fritz in contempt with respect to his support obligations, stated Fritz had a \$1,500.00 per month child support obligation. Child support arrearages were determined to be \$17,000.00 in addition to attorney fees and costs.

¹The child custody issues are not before this court on appeal.

On February 27, 2001, the district court issued a minute order concluding Fritz was bound by the terms of the divorce decree regarding spousal support and the court would not modify the terms of the decree. Spousal support arrearages were reduced to judgment.

On April 20, 2001, the parties entered a stipulation regarding arrearages. On June 7, 2001, the district court entered its order on Fritz's post-decree motion and Nancy's countermotion and the parties' stipulation. The court concluded: (1) based on the party's stipulation as to the amount of arrearages owed, Nancy was owed \$27,905.50, (2) Fritz would be subject to a garnishment of \$2,618.05 per month for support and arrearages, and (3) Fritz would attempt to refinance or sell the marital home paying Nancy \$20,000.00 for her ownership interest and an additional \$20,000.00 towards the arrears. The court further concluded that while the parties had stipulated to the amount of arrearages owed, Fritz preserved his right to appeal the legality of the spousal support agreement. Fritz timely appeals.

This court reviews a district court's ruling on a motion to modify spousal support for an abuse of discretion.² The construction given to a decree "must be given great weight in determining the intent of the trial court."³

NRS 125.150(5) provides that "[I]n the event of the death of either party or the subsequent remarriage of the spouse to whom specified

²Wolff v. Wolff, 112 Nev. 1355, 1359, 929 P.2d 916, 919 (1996); DuBois v. DuBois, 92 Nev. 595, 595, 555 P.2d 839, 839 (1976).

³Krick v. Krick, 76 Nev. 52, 56, 348 P.2d 752, 754 (1960); Wilde v. Wilde, 74 Nev. 170, 173, 326 P.2d 415, 416 (1958).

periodic payments were to be made, all the payments required by the decree must cease, unless it was otherwise ordered by the court.”

First, Fritz argues his spousal support obligation should have terminated by operation of law pursuant to NRS 125.150(5). Fritz also contends that there is no language in the decree indicating that the spousal support obligation continued after Nancy’s remarriage. Fritz asserts the district court has made an after-the-fact determination that the phrase “and the support order cannot be modified” in the divorce decree means Fritz owes Nancy \$700.00 per month in spousal support for a period of ten years. Fritz argues there is no evidence in the record suggesting that he intended to pay Nancy spousal support after the children graduate from high school, beyond the date of her remarriage or beyond the date of his death. Fritz contends he never paid the \$2,200.00 award because he did not believe it was supposed to be paid after Nancy remarried. Therefore, Fritz contends the district court’s determination that the “no modification” language is the equivalent of a no termination clause is incorrect and, thus, an abuse of discretion.

Nancy argues the terms of the decree explicitly state that the spousal support award cannot be modified. Nancy asserts the terms of the divorce decree do not include standard language stating that the spousal support award will terminate on her remarriage or death because she and Fritz did not intend for the award to terminate for a period of ten years. In support of her contention, she notes that all three of the children would be past the age of emancipation when the natural term of the award expires.

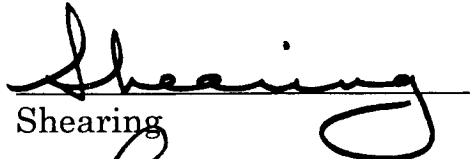
We conclude the district court did not abuse its discretion in finding that Fritz’s spousal support award did not terminate on Nancy’s


remarriage. First, the terms of the decree clearly state Nancy is to receive \$2,200.00 per month as spousal support for a period of ten years. Further, the decree states, “this support cannot be modified.” Moreover, the district court’s order regarding the terms of the divorce decree and its decision not to modify the terms constitutes an order of the court pursuant to the terms of NRS 125.150(7).⁴ Second, the decree also contains a clause identifying child support and the amount Fritz was required to pay by law. However, Nancy waived the child support “subject to the conditions” that Fritz comply with the terms of the spousal support. Under these terms, the children—who were ages 15, 14, and 11 at the time the decree was entered—would be past the age of majority when the spousal support agreement ends. This lends support to Nancy’s contention that the spousal support award was rehabilitative in nature (although not identified as such) in compensation for the years she spent at home with the children. Therefore, we conclude Fritz is bound by the terms of the decree.⁵ Accordingly, we

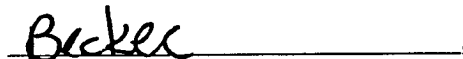
⁴See Krick, 76 Nev. at 59, 348 P.2d at 755 (noting that the trial court’s denial of a husband’s motion seeking relief from making further payments to his ex-wife twelve years after the entry of the decree constituted an order of the court for the purposes of NRS 125.150).

⁵We note Fritz had, and still has, the option of seeking a modification of future support payments under the decree pursuant to NRS 125.150(7) based on changed circumstances.

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Lisa Brown, District Judge, Family Court Division
Kurth & Associates
April A. O'Brien
Clark County Clerk