IN THE SUPREME COURT OF THE STATE OF NEVADA

DIANA LYNN KELLY, N/K/A DIANA LYNN SCHROEDER,
Appellant/Cross-Respondent,
vs.
JEFFREY ALLEN KELLY,
Respondent/Cross-Appellant.

No. 40366

FILED

JUL 11 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from an order denying motions to amend a divorce decree. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

DISCUSSION

In this appeal and cross-appeal, we review a district court order denying the parties' respective motions to amend the divorce decree. Ms. Schroeder argues that the district court erred in not requiring Mr. Kelly to pay $2,500 in spousal support per month and between $10,000 and $12,000 of her legal fees incurred in connection with the divorce proceedings. Ms. Schroeder also asserts that the spousal support award should date back to the time Mr. Kelly obtained sole possession of the marital home. Mr. Kelly, on the other hand, argues that the district court should have decreased the spousal support award to $1,000 per month and limited the term of the award to 5 years.

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"This court reviews district court decisions concerning divorce proceedings for an abuse of discretion."[1] Further, the district court has broad discretion in ruling on a motion to modify spousal support.[2]

Awards of spousal support must be "just and equitable."[3] In Sprenger v. Sprenger,[4] this court specified the factors relevant in making such an award:

> (1) the wife's career prior to marriage; (2) the length of the marriage; (3) the husband's education during the marriage; (4) the wife's marke-tability; (5) the wife's ability to support herself; (6) whether the wife stayed home with the children; and (7) the wife's awards, besides child support and alimony.

Pursuant to NRS 125.150(7), a district court may modify an alimony award approved by a divorce decree if it determines that a payor's decrease in income or other changes in circumstances warrant such modification.

With regard to attorney fees, NRS 125.150(3) provides that a district court may grant a reasonable fee award to either party in a divorce action.[5] This award "lies within the sound discretion of the district court and will not be overturned on appeal absent an abuse of discretion."[6]

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[1]Shydler v. Shydler, 114 Nev.192, 196, 954 P.2d 37, 39 (1998).

[2]Gilman v. Gilman, 114 Nev. 416, 422, 956 P.2d 761, 764 (1998).

[3]NRS 125.150(1)(a).

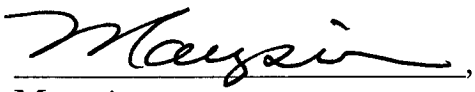
[4]110 Nev. 855, 859, 873 P.2d 284, 287 (1994).

[5]Carrell v. Carrell, 108 Nev. 670, 671-72, 836 P.2d 1243, 1244 (1992).

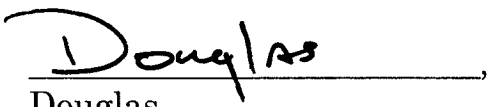
[6]Id. at 672, 836 P.2d at 1244.

While reasonable minds may differ with regard to the final award of spousal support, we conclude that the district court did not abuse its discretion under Sprenger or NRS 125.150(7). We reach a similar conclusion regarding the award of attorney fees. Therefore, we

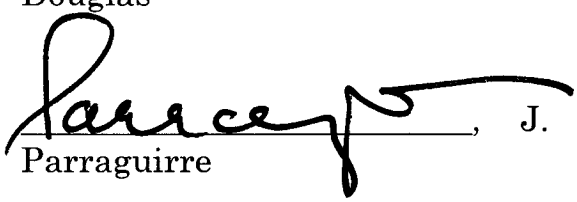
ORDER the judgment of the district court AFFIRMED.[7]



_____, J.
Maupin



_____, J.
Douglas



_____, J.
Parraguirre

cc: Hon. J. Michael Memeo, District Judge
Law Offices of Lisa K. Mendez
Woodburn & Wedge
Elko County Clerk

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[7]We note that, at some point, Mr. Kelly may either elect or be forced by circumstance to cease or considerably reduce overtime employment. Because that has not yet occurred, it was not an abuse of discretion for the district court to defer consideration of these possibilities in the proceedings below. It was likewise not an abuse of discretion for the district court to refuse to limit the term of alimony under the current circumstances. However, the district court should consider limiting the term of alimony at such time as the future financial situations of these parties become more stable. Further, voluntary or involuntary cessation of overtime cannot be considered as willful underemployment. See Rosenbaum v. Rosenbaum, 86 Nev. 550, 554, 471 P.2d 254, 256-57 (1970) (in determining spousal support, a district court may consider the husband's good-faith earning capacity).