IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN HELMS,
Appellant,
vs.
SUSIE HELMS,
Respondent.

No. 40745

FILED

AUG 03 2005

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying appellant's motion to terminate his spousal support obligation. Eighth Judicial District Court, Family Court Division, Clark County; Lisa Brown, Judge.

When our preliminary review of the documents before this court revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the November 25, 2002 order denying appellant's motion to terminate his spousal support obligation was not substantively appealable.[1] Moreover, it was unclear whether the November order affected the rights of the parties growing out of the divorce decree, or whether the motion to terminate the spousal support was based on changed factual or legal circumstances.[2] Both appellant and respondent have filed responses to our order.

In his response to our show cause order, appellant contends that this court has jurisdiction to consider this appeal because his rights

[1]See NRAP 3A(b).

[2]Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002); Burton v. Burton, 99 Nev. 698, 669 P.2d 703 (1983).

and liabilities have been affected by both the March 28, 2000, and November 25, 2002 orders. Appellant suggests that there was a clerical mistake in the divorce decree by the district court's use of the terms "permanent and long-term" to describe the length of his spousal support obligation. Although appellant did not appeal from the final divorce decree, he asserts that the district court has the "inherent power to correct mere clerical errors at any time," and that the March 2000 order "attempted to make the record speak the truth" because, according to appellant, the order directed him to file a motion to modify the support when his obligation came close to one-half the duration of the marriage. Thus, appellant contends that "a motion to modify an original decree, nunc pro tunc, is an appealable, special order made after final judgment."

Here, the record shows that when appellant moved the district court, in 1999, to modify the decree, he based his motion on changed circumstances, because he had remarried and respondent had a job, not on the basis of an alleged clerical error. Moreover, it does not appear from the record that the district court found an oversight or omission in the divorce decree that warranted the decree's correction nunc pro tunc.[3]

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[3]See NRCP 60(a) (providing that "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders"); Allen v. Allen, 70 Nev. 412, 270 P.2d 671 (1954) (explaining that where appellant is not entitled to error correction as a matter of right, whether to grant relief is within the district court's sound discretion); Koester v. Estate of Koester, 101 Nev. 68, 71-73, 693 P.2d 569, 571-73 (1985) (recognizing that a district court order modifying a divorce decree, nunc pro tunc, that affects the rights of the parties arising out of the original decree is substantively appealable as a special order made after final judgment).

Additionally, the March 2000 order did not direct appellant to file an additional motion to modify the spousal support obligation under the decree, rather the order simply denied appellant's motion to modify "without prejudice to file a similar motion at a later date." Even so, appellant did not appeal from the March 2000 order, even though it was an appealable special order after final judgment.[4]

With respect to the November 2002 order, from which appellant has appealed, appellant does not contend that he moved the district court, in 2002, to change his support obligation based on changed factual or legal circumstances. Rather, appellant contends that the November order affects his rights because it refused to correct and/or modify the spousal support obligation under the decree. The record shows that appellant moved the district court to terminate his support obligation based on comments made by Judge Ritchie, in the March 2000 order, that the support obligation should end at some point. Appellant insists that Judge Ritchie "ordered [that] the alimony obligation must end at a specific point in the future." To the contrary, the November 2002 order shows that the district court concluded that Judge Ritchie did not set a termination date for support and that appellant had failed to demonstrate that changed circumstances warranted a change in the support obligation.

Thus, we conclude that appellant has failed to demonstrate that this court has jurisdiction to consider this appeal because the November 2002 order does not affect the rights of the parties growing out of the divorce decree, as no change has resulted from the order,[5] and the

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[4]Burton, 99 Nev. 698, 669 P.2d 703.

[5]Gumm, 118 Nev. 912, 59 P.3d 1220.

2002 motion to terminate spousal support was not based on changed factual or legal circumstances.[6] Accordingly, as we lack jurisdiction, we

ORDER this appeal DISMISSED.

_____, J.
Rose

_____, J.
Gibbons

_____, J.
Hardesty

cc: Hon. Lisa Brown, District Judge, Family Court Division
Law Offices of Patricia L. Vaccarino
Law Office of Daniel Marks
Clark County Clerk

[6]Burton, 99 Nev. 698, 669 P.2d 703.