

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANA DEWEY, SR.,
Appellant,
vs.
STATE OF NEVADA WELFARE
DIVISION, CHILD SUPPORT
ENFORCEMENT,
Respondent.

No. 41440

FILED

NOV 05 2003

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order adopting a master's recommendation concerning child support and arrears.

This court reviews a district court's child support order for abuse of discretion.¹ Parents have a duty to provide support for their children.² NRS 125B.070 provides that child support for two children is 25% of a parent's gross monthly income. "[T]he minimum amount of support that may be awarded by a court in any case is \$100 per month per child, unless the court makes a written finding that the obligor is unable to pay the minimum amount."³ In addition, under NRS 125B.140(1)(a), a payment for child support becomes a judgment as a matter of law on the

¹Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996).

²NRS 125B.020.

³NRS 125B.080(4).

date it is due, and that judgment “may not be retroactively modified or adjusted.” Although some courts have concluded that incarceration justifies modifying an obligor parent’s child support obligation,⁴ we agree with those courts that have concluded that incarceration alone is not a sufficient reason to modify a child support obligation.⁵

In the present case, when the parties were granted a divorce in 1989, appellant was ordered to pay the \$100 monthly statutory minimum in child support. Subsequently, appellant was incarcerated. Appellant argued that his child support obligation should be modified because he is incarcerated and cannot afford to purchase personal items.

The district court denied appellant’s request to modify his child support obligation on the basis that incarceration does not justify modifying a child support obligation. Moreover, the district court found that since 1989, appellant has only paid approximately \$600 in child support. Further, the court found that appellant was in arrears approximately \$29,903.37, \$20,000 of which is owed to respondent.


We have reviewed the record, and we conclude that the district court did not abuse its discretion when it declined to modify

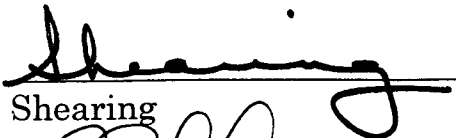
⁴See, e.g., Nab v. Nab, 757 P.2d 1231 (Idaho Ct. App. 1988) (holding that obligor parent is not liable for child support payments while incarcerated, unless it is established that obligor parent has income or assets to make payments).

⁵See, e.g., State ex rel. v. Ayala, 916 P.2d 504, 508 (Ariz. Ct. App. 1996); Petition of R.H.N., 710 P.2d 482, 487 (Colo. 1985).

appellant's child support obligation during his incarceration and when it determined the amount of arrears and reduced the amount to judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. J. Michael Memeo, District Judge
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Dana Dewey Sr.
Elko County Clerk

⁶Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from appellant.