

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELE PARKER, N/K/A MICHELE
SEIFERS
Appellant,
vs.
RONALD E. PARKER,
Respondent.

No. 41568

FILED

NOV 09 2004

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

ORDER AFFIRMING IN PART, REVERSING IN PART, AND
REMANDING

This is an appeal from a district court order granting motions for reconsideration and clarification of a post-decree order regarding spousal and child support. Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, Judge.

FACTS

Ronald E. Parker and Michele Seifers married on April 5, 1986, and later had two children. On July 26, 1999, Parker and Seifers filed a joint petition in the Seventh Judicial District Court for summary divorce. Douglas R. Hill was Parker's attorney of record; Seifers appeared in proper person. The petition stated that Parker and Seifers would have joint legal and physical custody of their minor children pursuant to a marital settlement agreement (Agreement) that the parties executed on July 15, 1999. The Agreement also provided for property distribution and indicated that Parker would begin paying spousal and child support on June 1, 2000. The support provision stated as follows:

Husband will pay Wife alimony beginning June 1, 2000 and continue for a period of three years thereafter. Child support will be \$500 per month and alimony will be \$500 per month with payment divided equally between the 1st and 16th day of the month. These payments are based on

assumed salary to Husband of \$80,000 per year. If Husband makes more than this amount either in salary or bonuses he will pay 15% of this amount to Wife. The additional payment will be divided equally between alimony and child support. On June 1, 2003 Husband will no longer pay alimony and will commence paying child support according to the law then in effect.

The Agreement stipulated that the parties waived any present or future claims "for alimony, support or maintenance" and had no obligations toward each other besides those set forth in the Agreement. It further stated that both Parker and Seifers had been advised to seek independent counsel and, if either chose not to do so, that person intentionally waived that right. The Agreement also provided that each party had read, fully understood, and consented to all terms and provisions of the Agreement. Parker and Seifers attached the Agreement to the divorce petition and requested that the district court approve it and incorporate it into the divorce decree. On July 30, 1999, the Seventh Judicial District Court entered a divorce decree which incorporated the Agreement.

On March 31, 2001, Seifers remarried, and Parker immediately stopped paying spousal support. Parker continued to pay Seifers \$500 per month for child support. Although Seifers asked Parker to begin paying additional child support, Parker never increased his child support payments.

On July 29, 2002, Seifers filed a motion in the Seventh Judicial District Court for judgment for alleged arrears in spousal and

child support, requesting \$7,500¹ plus interest from the date each payment was due. Seifers alleged that under the Agreement Parker's spousal support obligation was to continue for three years, regardless of Seifers' marital status. Seifers argued that the parties did not intend for Parker to pay less than \$1,000 per month, whether it was a combination of spousal and child support or only child support. Alternatively, Seifers asserted that Parker should have paid the statutory limit of \$500 per child, per month. In a supporting affidavit, Seifers submitted that in December 2000, Parker paid Seifers approximately \$500 because his yearly salary and bonuses had exceeded \$80,000. Seifers alleged, however, that the \$500 was insufficient and Parker owed her an additional \$3,213. Seifers then asked the district court to compel Parker to execute a tax return request form so Seifers could verify the additional amount Parker owed her, based on his alleged income increase. Finally, Seifers requested attorney fees and costs incurred in bringing the motion.

Apparently, subsequent to Seifers' motion, the Seventh Judicial District Court granted a motion for change of venue to Washoe County, which the Second Judicial District Court accepted. As a result, the Second Judicial District court clerk dated the prior docket entries pertaining to the Seventh Judicial District Court proceedings as filed on October 16, 2002.

On October 21, 2002, in Washoe County, Parker opposed Seifers' motion and filed a countermotion, asking the district court to declare that Seifers' remarriage terminated Parker's obligation to pay

¹Parker was allegedly fifteen months in arrears (April 2001 through July 2002) at \$500 per month.

spousal support and to re-examine Parker's child support payments. In an affidavit, Parker stated that he had always believed that his spousal support obligations would cease if Seifers remarried. Parker also claimed that when Seifers remarried, she advised him that he had no further duty to pay spousal support and his non-payment resulted from this statement.

On November 5, 2002, Seifers replied to Parker's opposition and countermotion. She asked the district court to enter judgment against Parker in the amount of \$9,750 (\$500 multiplied by 19.5 months) for spousal and child support arrears and to increase Parker's child support obligations to \$610 per child per month commencing July 1, 2002, allegedly pursuant to NRS 125B.070(2). Finally, Seifers asserted that she was entitled to 15 percent of any salary or bonuses Parker received in excess of \$80,000. In another affidavit, Seifers stated that she and Parker agreed to child support based upon this court's holding in Wright v. Osburn.² Both parties agreed that the district court should review Parker's child support obligation in light of NRS 125B.070, NRS 125B.080, and Wright because the parties had joint physical custody.

On December 13, 2002, the district court entered an order detailing its findings of fact and conclusions of law. The district court concluded that NRS 125.150(5) mandated termination of Parker's spousal support obligation upon Seifers' remarriage and denied Seifers' request for spousal support arrears. The district court also found that Parker had

²114 Nev. 1367, 970 P.2d 1071 (1998) (holding that when parents share equal custody, the determination of who receives the child support payment and the amount of that payment rests on calculating the appropriate gross income percentage for each parent, subtracting the difference between the two, and requiring the parent with the higher income to pay the difference to the parent with the lower income).

made timely and sufficient child support payments and had no arrears obligation in that respect. However, the district court stated that Parker could have an arrears obligation based on any income in excess of \$80,000 that he might have generated and ordered both parties to file updated financial declarations supported by tax returns and W-2 statements.

The parties submitted financial declarations pursuant to the district court's order. Seifers' declaration indicated that her business income for 2001 as a self-employed hairdresser was \$24,088. Parker's adjusted gross income as a graphic designer was \$97,896 in 2000 and \$116,218 in 2001. Parker's financial declaration stated that his average gross monthly income since April 2002 was \$5,000.³

On February 13, 2003, after examining the parties' financial declarations, the district court entered another order regarding Parker's spousal and child support obligations. The district court stated that because Parker's income in 2000 was \$101,418, Parker owed Seifers \$3,212 or 15 percent of the \$21,418 in excess of \$80,000 pursuant to the Agreement. The district court utilized Parker's total income, not the adjusted gross income figure.

The district court also determined that Parker's reported income in 2001 was \$116,218 and this amount created an excess of \$36,218 for that calendar year. This time, the district court used Parker's adjusted gross income figure for 2001. However, the district court concluded that Seifers was not entitled to a percentage of the entire amount because she remarried in March 2001. To calculate Seifers'

³Parker allegedly undertook a new business venture starting in April 2002.

entitlement, the district court divided the \$36,218 excess for 2001 by twelve and found that the monthly excess was \$3,018. The district court then determined that Seifers was entitled to 15 percent of the excess for January, February, and March 2001 or \$1,358. The district court stated that Seifers should receive only 7.5 percent of the remaining excess because the original 15 percent was to be divided equally between spousal and child support. Since Parker's spousal support obligation had terminated, his only remaining obligation was for child support. Consequently, the district court awarded Seifers \$226 per month from April 2001 until December 2001, for a total of \$2,037. The total amount Parker owed Seifers for 2001 was \$3,395, leading to a total of \$6,607 for both 2000 and 2001.

The district court also recalculated Parker's child support obligation and stated that Parker's reported monthly income of \$5,000 resulted in a presumptive maximum support payment of \$1,118 under NRS 125B.070.⁴ Seifers' reported monthly income of \$1,500 yielded a child support obligation in the amount of \$375. Offsetting the two amounts pursuant to Wright,⁵ the district court found that Parker's monthly child support obligation was \$743 per month for both children.

⁴NRS 125B.070 states that the monthly support obligation for two children is based on 25 percent of the parent's gross monthly income, but the presumptive maximum monthly payment for two children is \$1,100 when the parent's monthly income is \$5,000. The \$18 difference results from an adjustment pursuant to the Consumer Price Index increase, as NRS 125B.070(3) stipulates.

⁵114 Nev. 1367, 970 P.2d 1071.

On March 6, 2003, Parker moved for reconsideration of the district court's February 13, 2003, order and alleged two errors. First, Parker claimed that the order failed to reflect a \$500 payment Parker had made to Seifers in December 2000 based upon his salary and bonuses exceeding \$80,000. Second, Parker claimed that the district court incorrectly arrived at the Wright differential by using Seifers' net monthly income, as opposed to her gross monthly income after deduction of business expenses. Parker argued that Seifers' total gross income before deduction of business expenses was \$32,350. After subtracting the business expenses, Seifers' total net profit from her business was \$24,088 per year or \$2,007 per month.⁶ Twenty-five percent of \$2,007 per month yielded \$501.75, and when Parker's presumptive maximum payment of \$1,118 was offset by this amount, Parker's child support obligation was allegedly \$616.25. As a result of the two errors, Parker requested that the district court diminish his excess support obligation to \$6,107 and his child support obligation to \$616.25 per month.

On March 17, 2003, Seifers filed a motion for clarification and opposed Parker's reconsideration motion. Seifers conceded that the district court should give Parker credit for the \$500 payment Parker had made to her in December 2000, but asserted that the district court committed other alleged errors. Seifers requested that the district court clarify why it used Parker's adjusted gross income, instead of Parker's total income, in arriving at the excess support payment due for 2001. Seifers claimed that had the district court used Parker's total income, the

⁶Parker seems to have used the figures from Seifers' 2001 tax return.

excess would have been \$42,248 for 2001, resulting in a \$3,520.67 monthly excess. This figure would have entitled Seifers to \$528.10 (15 percent of \$3,520.67) per month, for a total of \$1,584.30 for the first three months of 2001, not \$1,358 as the district court had determined. Consequently, Parker's excess payment for April through December 2001 would have been \$264.05 (7.5 percent of \$3,520.67) per month, not \$226 per month as the district court's order had indicated. According to Seifers' calculations, Parker owed her a total of \$3,960.75 for 2001⁷; thus, after deducting the \$500 Parker had already paid, Parker owed her a total of \$6,673.45,⁸ not \$6,607 as the district court had found.

Additionally, Seifers requested that the district court clarify the beginning date of Parker's increased child support obligation. Seifers alleged that the district court should increase Parker's child support obligation to \$1,000 per month for both children, effective April 1, 2001, and to \$1,320 effective August 1, 2002. Seifers reasoned that if Parker's spousal support obligation terminated on April 1, 2001, she was entitled to "child support according to the law then in effect," beginning April 1, 2001, which allegedly entitled her to \$500 per child, per month. Seifers claimed that the district court found Parker's reported 2002 income to be \$5,000 per month and her reported monthly income for the same year was

⁷Nine multiplied by \$264.05 plus the \$1,584.30 excess due for January through March 2001.

⁸It is unclear why Seifers uses this figure. The district court concluded that Parker owed Seifers \$3,212 for 2000, which Seifers did not dispute. Adding this amount to the alleged \$3,960.75 due for 2001 and subtracting the \$500 Parker had already paid results in \$6,672.75, not \$6,673.45, as Seifers alleges.

allegedly \$1,500. Applying the Wright principles, 25 percent of \$5,000 is \$1,250 and 25 percent of \$1,500 is \$375. Seifers contended that after offsetting the \$1,250 with the \$375, she was entitled to \$875 per month in child support for both children because \$875 was less than the presumptive \$1,118 maximum.

Alternatively, Seifers claimed that the district court should have used the total income figure on Parker's 2001 tax return, which was \$122,248. Had the court used this figure, Parker's monthly income would have been \$10,187.33, resulting in a \$1,320 presumptive maximum child support payment.⁹ Seifers requested that Parker's alleged \$1,320 obligation begin August 1, 2002, because she filed the motion seeking support arrears in July 2002.¹⁰

On March 28, 2003, Parker responded to Seifers' opposition and motion for clarification. Parker countered that the district court properly used his adjusted gross income of \$116,218 for 2001 instead of his total income figure of \$122,248 because the Agreement provided that Parker owed Seifers 15 percent of any salary and bonuses in excess of \$80,000 and he earned an additional \$5,861 from other sources.¹¹ Parker conceded that the Agreement was unclear, but argued that it did not

⁹The presumptive maximum monthly child support payment under NRS 125B.070 for this income bracket is \$1,300 for both children. The \$20 difference resulted from the Consumer Price Index offset pursuant to NRS 125B.070(3).

¹⁰Seifers is referring to the date she filed the motion in the Seventh Judicial District Court.

¹¹The basis for this contention is unclear. While Parker's assertion is true, \$122,248 minus \$5,861 is \$116,387, not \$116,218.

mandate continued spousal support after Seifers' remarriage. Parker claimed that Seifers improperly requested a retroactive increase of Parker's child support obligation to an amount due from a non-custodial parent. He further contended that the district court's decision to increase Parker's child support to \$743 should relate back to October 21, 2002, the date of Parker's motion for reconsideration of his child support obligations.

In response, Seifers argued that the district court erroneously applied the presumptive maximum before it performed the Wright calculation and thus the \$743 child support payment was incorrect.

On May 7, 2003, after considering all the pleadings, the district court issued an order regarding the parties' motions for reconsideration and clarification. The court amended its prior excess support finding to reflect the \$500 payment Parker had made to Seifers based on excess salary. The district court explained that it used Parker's adjusted gross income for 2001 because the difference between Parker's total gross income and his adjusted gross income was spousal support Seifers had allegedly already received according to Parker's 2001 tax return. However, the court noted that Parker admitted he had stopped paying spousal support in April 2001 and thus he had paid only \$1,500, instead of \$6,030 as his tax return indicated.¹² Accordingly, the district court recalculated the excess payment due, using an annual income figure of \$120,748 (\$122,248, Parker's total gross income for 2001, minus the \$1,500 Parker had actually paid in spousal support). The new figure resulted in a \$3,395.66 excess per month which, multiplied by three and

¹²The \$6,030 figure is incorrect. Parker's 2001 tax return indicates that he paid \$6,000 in spousal support and \$30 as "one-half of self-employment tax."

then by 15 percent, yielded \$1,528.04 for January through March 2001. Multiplying \$3,395.66 by nine and then by 7.5 percent yielded an excess payment of \$2,292.07 for the remainder of 2001. Adding these amounts to Parker's \$3,212 excess obligation for 2000 and subtracting the \$500 payment Parker had already made, the district court determined that Parker owed Seifers \$6,532.11 in excess arrears.

Regarding Parker's modified child support payment, the district court stated that it mistakenly used Seifers' net income of \$1,500 per month, rather than her gross income after deduction of business expenses or \$2,007 per month. The district court also noted that this court's decision in Wesley v. Foster,¹³ issued subsequent to the district court's February 13, 2003, order, mandated recalculation of the child support obligation. The district court determined that Parker's gross monthly income was \$5,000, resulting in a monthly obligation of \$1,250 for both children. Seifers' gross income of \$2,007 resulted in a monthly support obligation of \$501.75. Offsetting the two amounts, without first applying the cap pursuant to Wesley, yielded a \$748.25 monthly child support payment, as opposed to the \$743 per month the district court had previously found.

The district court denied Seifers' request for retroactive child support on several grounds. First, the court stated that a motion for clarification was not a proper vehicle to challenge an order. Second, Seifers was collaterally estopped from raising the retroactive increase

¹³119 Nev. 110, 65 P.3d 251 (2003) (clarifying that in child support calculations involving equally shared custody, the statutory presumptive maximum applies after calculation of the appropriate percentage of gross income for each parent and subtraction of the difference between the two).

argument because she did not include it in her original child support pleadings and the supplemental pleadings the court requested to determine the excess support payment. Third, retroactive increase of child support would contradict Parker's reasonable expectations. Fourth, Seifers' retroactive child support request ignored the joint custody arrangement between the parties and resulted in a substantially higher monthly obligation. Finally, the district court determined that Parker's current support obligation was effective November 2002, the month after Seifers filed her motion.¹⁴ The district court denied Seifers' attorney fees and costs request because Parker's willful failure to pay resulted from the Agreement's ambiguity and attorney fees awards were discretionary. This appeal followed.

DISCUSSION

The duty to pay spousal support terminated upon remarriage

Seifers argues that Parker should have continued paying spousal support even after she remarried and thus the district court erroneously concluded that Parker's spousal support obligation terminated on April 1, 2001. We conclude that this argument lacks merit.

Although the Agreement specified that Parker's spousal support obligation would continue until June 1, 2003, it was silent as to the effect of remarriage. Because NRS 125.150(5) mandates the termination of spousal support upon the receiving spouse's remarriage, the district court properly determined that Parker's spousal support obligation terminated on April 1, 2001.

¹⁴Apparently, the district court was under the impression that Seifers' original motion was dated October 16, 2002.

Seifers argues that NRS 125.150(5) supports her position because the district court incorporated the Agreement into the divorce decree and, therefore, ordered Parker to continue spousal support even after she remarried. We find this argument unpersuasive. While the district court did incorporate the Agreement into the decree, the Agreement says nothing about the effect of remarriage. Absent such language, the statutory language controls. NRS 125.150(5) was in existence at the time the district court incorporated the Agreement into the divorce decree.¹⁵ If the parties intended to circumvent the statute, they would have expressly stated so. Because the Agreement in this case did not address the effect of possible remarriage, applicable statutory authority governs. Thus, the district court properly terminated Parker's spousal support payments.

Seifers' reliance on Wilde v. Wilde is inapposite because the agreement language in Wilde indicated that the parties had contemplated the wife's remarriage and thus the district court correctly effectuated the parties' intent as evidenced by the divorce decree.¹⁶ Although in Waltz v. Waltz¹⁷ and Krick v. Krick¹⁸ we held that the district court could not terminate a spousal support obligation pursuant to an agreement incorporated in the divorce decree upon the spouse's remarriage, Waltz and Krick are also distinguishable. In these cases, the spousal support

¹⁵1995 Nev. Stat., ch. 576, § 2, at 1969.

¹⁶74 Nev. 170, 171-73, 326 P.2d 415, 416 (1958).

¹⁷110 Nev. 605, 877 P.2d 501 (1994).

¹⁸76 Nev. 52, 348 P.2d 752 (1960).

payments were in consideration of the receiving spouse's release of community property or other property claims.¹⁹ Unlike Waltz and Krick, nothing in the Agreement suggests that Seifers gave up any property rights in consideration of spousal support.

The district court properly addressed ambiguity issues at trial, and we will not disturb its determination on appeal.

Automatic increase of child support

Seifers argues that if her remarriage terminated Parker's spousal support obligation, the district court should have automatically increased Parker's child support obligation according to the law in effect at the time she remarried. We find this argument unpersuasive.

Under NRS 125B.140(1)(a), "[i]f an order issued by a court provides for payment for the support of a child, that order is a judgment by operation of law on or after the date a payment is due. Such a judgment may not be retroactively modified or adjusted." Furthermore, in Khaldy v. Khaldy, we expressly stated "Nevada case law clearly prohibits retroactive modification of a support order."²⁰

NRS 125B.140 and Khaldy leave no room for questioning the district court's decision. Because April 1, 2001, preceded the date of Seifers' original motion, a child support increase beginning April 1, 2001, constitutes a retroactive modification of a prior support order. Since such modifications are impermissible, the district court properly declined Seifers' request.

¹⁹Waltz, 110 Nev. at 609, 877 P.2d at 503; Krick, 76 Nev. at 58, 348 P.2d at 755.

²⁰111 Nev. 374, 377, 892 P.2d 584, 586 (1995).

Support arrears and excess arrears

Seifers argues that the district court erroneously calculated Parker's support and excess arrears. We conclude that Seifers' arguments lack merit.

As an initial matter, Seifers' contentions regarding support arrears essentially reargue the issues of whether the district court should have ordered Parker to continue paying spousal support despite her remarriage or retroactively increased Parker's child support obligations. As we stated above, these contentions are inapposite.

Turning to Seifers' excess arrears allegations, Seifers claims that the district court erred in determining Parker's excess arrears obligation for 2001 because the district court inappropriately subtracted the amount of spousal support Parker had already paid her from Parker's total gross income figure. We agree.

For the purposes of calculating child support,

"[g]ross monthly income" means the total amount of income received each month from any source of a person who is not self-employed or the gross income from any source of a self-employed person, after deduction of all legitimate business expenses, but without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension or for any other personal expenses.²¹

²¹NRS 125B.070(1)(a).

District courts have discretion in determining the amount of spousal support awards because there is no objective statutory standard for determining spousal support.²²

In calculating Parker's excess payment obligations, the district court determined that Parker's income for 2000 was \$101,418. The district court utilized Parker's total income figure. Consequently, Parker's excess payment due for 2000 was \$3,212 or 15 percent of the \$21,418 in excess of \$80,000 pursuant to the Agreement. The district court also determined that Parker's total income for 2001 was \$120,748. Perplexingly, this time the district court subtracted \$1,500, the spousal support Parker had already paid, from Parker's total income amount of \$122,248.²³ The district court reasoned that "[i]t seemed inequitable to require Mr. Parker to pay the 15% excess support payment on money that, under the federal tax code, is not considered his income, and which was already paid directly to Ms. Seifers." Using the \$120,748 figure resulted in a \$3,395.66 excess per month, which multiplied by three and then by 15 percent, yielded \$1,528.04 for January through March 2001. Multiplying \$3,395.66 by nine and then by 7.5 percent yielded an excess payment of \$2,292.07 for the remainder of 2001. Adding these amounts to Parker's

²²Wright v. Osburn, 114 Nev. 1367, 1369, 970 P.2d 1071, 1072 (1998).

²³This is the amount the district court determined after correcting its February 13, 2003, order. In that order, the district court had given Parker credit for \$6,000 or the total amount of spousal support Parker had allegedly paid for the year. Upon realizing that Parker had paid spousal support only for the first three months of the year (until Seifers remarried), the district court diminished Parker's spousal support payment credit to \$1,500.

\$3,212 excess obligation for 2000 and subtracting the \$500 payment Parker had already made, the district court determined that Parker owed Seifers \$6,532.11 in excess arrears.

The district court did not offset Parker's total income for 2000 with his spousal support obligation for that year, although Parker's 2000 tax return indicated that Parker had paid \$3,500 in spousal support. This is consistent with the Agreement and the facts of the case because under the Agreement Parker had to begin paying \$500 per month in spousal support on June 1, 2000. Because he did not stop paying spousal support until April 1, 2001, he would have made seven payments of \$500 per month in 2000. We conclude that the district court should not have offset Parker's 2001 total income with the spousal support he had already paid.

The plain language of NRS 125B.070(1)(a) defines the "gross monthly income" of a person who is not self-employed as "the total amount of income received each month from any source . . . without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension or for any other personal expenses." (Emphasis added.) The statute contains no exceptions for spousal support. The district court should not have deducted Parker's spousal support payments when determining the excess due because a portion of the excess pertained to child support. Although the Agreement designated half of the excess payments as spousal support, the other half of the excess related to a child support obligation. Since NRS 125B.070 mandates utilization of total income for child support calculation purposes and absent a statute on point regarding spousal support, NRS 125B.070 controls. Consequently, the district court should not have offset Parker's total income for 2001 with the spousal support he had already paid.

Modified child support

Seifers argues that the district court improperly determined Parker's modified child support payment because it considered Parker's purported 2002 income, but used Seifers' 2001 income in calculating support. We disagree.

Under NRS 125B.070, a non-custodial parent's child support obligation for two children is the lesser of 25 percent of the parent's gross monthly income or a presumptive maximum set forth in NRS 125B.070(2), according to the parent's gross monthly income. Where both parents share equal custody, the court must modify the NRS 125B.070 calculation to account for the gross monthly incomes of both parents.²⁴ Pursuant to Wright, in equal custody situations, the determination of who receives child support payments and the amount of those payments rest on calculating the appropriate gross income percentage for each parent, subtracting the difference between the two, and requiring the parent with the higher income to pay the difference to the parent with the lower income.²⁵ In Wesley, we clarified that in child support calculations involving equally shared custody, the NRS 125B.070 presumptive maximum applies after calculating the appropriate percentage of gross income for each parent and subtracting the difference between the two.²⁶ The district court's determination of what constituted the proper income figure is a question of fact. "This court will uphold a district court's

²⁴Wesley v. Foster, 119 Nev. 110, 65 P.3d 251 (2003); Wright, 114 Nev. 1367, 970 P.2d 1071.

²⁵114 Nev. at 1368-69, 970 P.2d at 1072.

²⁶119 Nev. at 113, 65 P.3d at 253.

findings of fact if they are supported by substantial evidence."²⁷ We conclude that there is substantial evidence to support the district court's decision.

In its February 13, 2003, order, the district court recalculated Parker's modified child support obligation based on the \$1,500 net monthly income Seifers reported in her November 5, 2002, declaration. Upon Parker's motion for reconsideration, in its May 7, 2003, order, the district court stated that it erroneously used Seifers' net income of \$1,500 per month, rather than her gross income after deduction of business expenses of \$2,007. Seifers contends that the November 5, 2002, declaration she submitted indicated that her 2002 monthly income was \$1,500 and, therefore, the district court should have offset Parker's 2002 income with this figure, not Seifers' 2001 monthly income of \$2,007. Seifers claims that if the district court wanted to use her 2001 income, the district court should have also used Parker's 2001 income, not Parker's reported \$5,000 monthly income for 2002.

While Seifers' contentions seem plausible, nothing in the November 5, 2002, declaration indicates the period it reflects. The only dates the declaration lists are the dates of Seifers' varying employment occupations from December 1997 until "present." Presumably, the declaration reflected Seifers' financial condition as of November 5, 2002, but if this is so, the declaration unexplainably lists Parker under the heading of "Husband." Because the November 5, 2002, declaration is unclear, we defer to the district court's income determination. The fact that the district court initially used the \$1,500 figure, but later

²⁷Barry v. Lindner, 119 Nev. ___, ___, 81 P.3d 537, 543 (2003).

reconsidered it, lends further support to the district court's decision. We conclude that the record contains substantial evidence to support the district court's finding.

Child support starting date

Seifers argues that the district court improperly determined that Parker's modified child support obligations should begin in November 2002, "the month following the filing of Ms. Seifers' motion" because Seifers filed her original motion in July 2002. We agree.

We have held that district courts have discretion to determine the date for commencing an increased child support obligation.²⁸ In Anastassatos v. Anastassatos, we concluded that the district court properly ordered the husband's modified child support payments to begin on August 1, 1995, rather than on May 1, 1995, the date the wife had filed her motion for increased support.²⁹ We reasoned that NRS 125B.140 placed child support modification decisions within the district court's discretion and the district court reasonably concluded that the delay in proceedings was unintentional. Consequently, the district court did not abuse its discretion in not using the date the wife had filed her motion as the starting date of the modified support obligation.³⁰

The December 13, 2002, February 13, 2003, and May 7, 2003, orders stated that Seifers filed her motion for judgment for arrears in October 2002. This appears to have resulted from the confusion the

²⁸Anastassatos v. Anastassatos, 112 Nev. 317, 321-22, 913 P.2d 652, 654-55 (1996).

²⁹Id.

³⁰Id.

change of venue caused because Seifers did file her original motion for judgment for arrears in the Seventh Judicial District Court on July 29, 2002. While the district court has discretion to set the starting date of a modified child support obligation, the district court's decision seems to have resulted from an inadvertent error, not from an exercise of discretion. Consequently, Parker's modified child support obligation should have begun in August 2002, the month following Seifers' July 29, 2002, motion.

Attorney fees and costs

Finally, Seifers contends that the district court improperly declined her attorney fees and costs request because Parker wrongfully terminated his support payments and thus she had to incur fees and costs in pursuing this action. This argument lacks merit.

Under NRS 125.180(1),

[w]hen either party to an action for divorce[] makes default in paying any sum of money as required by the judgment or order directing the payment thereof, the district court may make an order directing entry of judgment for the amount of such arrears, together with costs and a reasonable attorney's fee.

(Emphasis added.) The plain language of the statute dictates that attorney fees and costs awards are discretionary. Because Parker properly terminated his spousal support payments after Seifers' remarriage, the district court did not abuse its discretion in refusing Seifers' request.

CONCLUSION

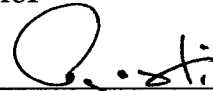
We conclude that the district court properly determined that Parker's spousal support obligation terminated upon Seifers' remarriage. Because the Agreement was silent on the effect of remarriage, the district

court correctly applied NRS 125.150. The district court also properly refused to increase Parker's child support payment to the requisite statutory amount at the time of Seifers' remarriage because Nevada law precludes retroactive support modifications. The district court correctly computed Parker's modified child support obligation, but erred in calculating the amount of excess arrears. The district court also inadvertently erred in determining the starting date of Parker's modified child support obligation. The district court did not abuse its discretion in refusing to award attorney fees and costs to Seifers. Consequently, we

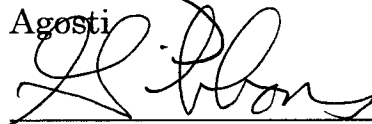
ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

 _____, J.

Becker

 _____, J.

Agosti

 _____, J.

Gibbons

cc: Hon. Deborah Schumacher, District Judge, Family Court Division
Clarkson Law Office, Ltd.
Byron L. Bilyeu
Washoe District Court Clerk