

IN THE SUPREME COURT OF THE STATE OF NEVADA

DREW MCCONAUGHY,  
Appellant,  
vs.  
KELLI MCCONAUGHY,  
Respondent.

No. 41794

FILED

NOV 15 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a post-decree order concerning child custody, child support and arrears, and attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge.

"Matters of custody and support of minor children rest in the sound discretion of the trial court."<sup>1</sup> Additionally, "[i]t is presumed that a trial court has properly exercised its discretion in determining a child's best interest."<sup>2</sup> This court will not disturb the district court's judgment absent a clear abuse of discretion.<sup>3</sup> Here, the district court concluded that it was in the child's best interest for the parties to continue to share joint legal custody. As for child support, in the divorce decree, the district court ordered appellant to pay child support in the amount of \$1,000 per month, knowing that that the parties' oldest child would reside primarily with

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<sup>1</sup>Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

<sup>2</sup>Id.; see also Truax v. Truax, 110 Nev. 437, 874 P.2d 10 (1994) (concluding that only the child's best interest need be considered by the district court in situations involving joint physical custody).

<sup>3</sup>Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993).

appellant. The decree recognized that the oldest child was not subject to the visitation arrangement. Moreover, the record shows that at the time of appellant's motion for a change in the child support amount, the court was aware of respondent's remarriage, and of appellant's new responsibilities for additional family members. While appellant asserts that he is currently unemployed, it appears from the record that at the time that he moved the district court to modify the child support obligation, he had a source of income and respondent was unemployed. Thus, it does not appear that the district court abused its discretion when it denied appellant's motion to modify the child support obligation.

To the extent that appellant is appealing from the portion of the district court order regarding arrears, this issue is not substantively appealable because the district court merely determined the amount of arrears and structured a payment for the purpose of enforcing the child support obligation under the 2000 divorce decree.<sup>4</sup>

Finally, as for the award of attorney fees, respondent sought fees in the amount of \$1,000, and the district court awarded her \$500. We conclude that the district court acted within its sound discretion to award attorney fees.<sup>5</sup>

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<sup>4</sup>See NRS 125B.140 (providing that the district court has the authority to enforce orders for support); Khaldy v. Khaldy, 111 Nev. 374, 377, 892 P.2d 584, 586 (1995) (noting that once payments for child support have accrued they become vested rights and cannot be modified or voided).

<sup>5</sup>See Sprenger v. Sprenger, 110 Nev. 855, 878 P. 2d 284 (1994) (concluding that an award of attorney fees in divorce proceedings lies within the sound discretion of the district court).

Having reviewed the record, and after considering appellant's contentions raised in his proper person opening brief,<sup>6</sup> we conclude that the district court did not abuse its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.  
Becker

Agosti, J.  
Agosti

Gibbons, J.  
Gibbons

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division  
Lukens & Kent, Chtd.  
Drew McConaughy  
Clark County Clerk

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<sup>6</sup>We grant appellant's October 27, 2003 motion to proceed in proper person for the limited purpose of filing an opening brief. We direct the clerk of this court to file the proper person opening brief provisionally received on September 4, 2003.