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# Griffith v. Gonzales-Alpizar, 132 Nev. Adv. Op. 38 (May 26, 2016)

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FAMILY LAW: DISTRICT COURT JURISDICTION

**Summary**

A district court may grant attorney fees pendente lite for post-divorce appeals.

**Background**

Appellant Edwin Griffith and respondent Gabriela Gonzales-Alpizar began divorce litigation in 2007. In October 2014, respondent received judgment for child support arrears and penalties and was awarded attorney fees. Appellant's appeal of this order was concurrent with the instant case.

Meanwhile, respondent filed a motion for attorney fees pendente lite to defend the said appeal and the district court granted her motion and \$15,000 for attorney fees pendente lite. Appellant filed the instant appeal.

**Discussion**

A district court has subject matter jurisdiction to award attorney fees pendente lite for costs of an appeal. Such fees are considered pendente lite because they cover lawsuit costs while a divorce action is pending

NRS 125.040 reads: "1. *In any suit for divorce* the court may, in its discretion . . . require either party to pay moneys necessary to assist the other party in accomplishing one or more of the follow: . . . (c) *To enable the other party to carry on or defend such suit.*"<sup>2</sup> The Court concluded that "suit for divorce" was ambiguous as to whether the statute included appellate proceedings.

When construing an ambiguous statute, legislative intent is controlling and a court will look to legislative history for guidance; the policy and spirit of the law; and, avoid an interpretation that leads to absurd results.<sup>3</sup> The court concluded that precedent and public policy showed that a divorce action is pending once an appeal has been filed.<sup>4</sup> Therefore, NRS 125.040 grants district courts subject matter jurisdiction to award attorney fees pendente lite for appeal costs.

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<sup>1</sup> By Michael Hua

<sup>2</sup> NEV. REV. STAT. ANN. § 125.040 (emphasis added).

<sup>3</sup> Washoe Med. Ctr. v. Second Judicial Dist. Court, 122 Nev. 1298, 1302, 148 P.3d 790, 793 (2006).

<sup>4</sup> See Braddock v. Braddock, 91 Nev. 735, 743, 542 P.2d 1060, 1065 (1975) (stating a divorce action "is pending from the time of filing the complaint until its final determination on appeal") cf. Fleming v. Fleming, 58 Nev. 179, 185, 72 P.2d 1110, 1112 (1937) (stating that, with regard to the 1929 equivalent of NRS 125.040, a divorce action remains pending after the entry of a divorce decree for some purposes, such as modifications to child custody); see e.g., Sargeant v. Sargeant, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972) (stating that parties in a divorce action should "be afforded [their] day

The district court did not abuse its discretion in the instant case. Respondent presented evidence that she earns \$200 a month and therefore showed necessitous circumstance.<sup>5</sup>

### **Conclusion**

NRS 125.040 grants district courts subject matter jurisdiction to award attorney fees pendente lite for costs of an appeal and affirm the district court's order in awarding attorney fees in favor of respondent.

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in court without destroying [their] financial position" and that they "should be able to meet [their] adversary in the courtroom on an equal basis").

<sup>5</sup> *Sargeant*, 88 Nev. at 227, 495 P.2d at 621 (even though a party does not need to show "necessitous circumstances" to be awarded attorney fees under NRS 125.040).