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RETROACTIVE CHILD SUPPORT: DISTRICT COURT MAY AWARD RETROACTIVE
CHILD SUPPORT IN ACTION INITIATED THREE YEARS AFTER CHILD REACHES
MAJORITY

SUMMARY

The Court examined whether a district court may award retroactive child support in a paternity action initiated after the child reaches the age of majority. The Court further examined the circumstances under which a parent's promise to support a child is enforceable. The Court concluded that one may, holding that the 3-year statute of limitations to bring a paternity action after the child reaches the age of majority applies to a parent's request for retroactive child support. The Court also determined that a promise in writing to support a child is enforceable under NRS 126.900(1) when the writing sets forth a clear commitment to provide support in specific terms. The district court correctly determined that no written promise was made here.

FACTS AND PROCEDURAL HISTORY

Appellant Lillian Hargrove and respondent Thomas Ward were never married but had one child together, G.W. born December 3, 1999. Paternity is not disputed by the parties, and Ward is named as the father of G.W.'s birth certificate. The parties never obtained a formal custody or child support order during G.W.'s minority. Hargrove alleged that the parties agreed at that time that instead of Ward paying child support, he would visit G.W. and remain actively involved in G.W.'s life. Hargrove alleged that in April 2012 the parties verbally agreed that Ward would deposit \$400 per month into Hargrove's bank account for support of G.W. Ward disputed that the parties ever agreed to do so.

On March 12, 2019, 1 year and 3 months after G.W. turned 18, Hargrove filed a paternity action against Ward in order to seek back child support. Hargrove asked the district court to recognize the parties' agreement for \$400 a month under NRS 126.900(1). Hargrove argued that even without an agreement, under 125B.030, she was entitled to retroactive child support. The district court concluded that it did not have the legal authority to grant post-emancipation child support. Hargrove appealed.

DISCUSSION

Ward did not make an enforceable promise under NRS 126.900(1)

This court reviews a district court's order regarding a child support determination for an abuse of discretion.² "Questions of statutory construction, including the meaning and scope of a statute, are questions of law, which we review de novo."³ This court will defer to and uphold the district court's findings that are not clearly erroneous and are supported by substantial evidence.⁴

NRS 126.900(1) provides that "[a]ny promise in writing to furnish support for a child, growing out of a supposed or alleged parent and child relationship, does not require consideration and is enforceable according to its terms." Specifically at issue here is the meaning of "promise in writing." Hargrove argued that text messages over a period of 11 months, banking records, and her testimony show Ward's promise in writing to make month child support payments under NRS 126.9000(1) and the statute should be interpreted to enforce informal agreements. The court

¹ By Colleen C. Freedman

² *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018).

³ *Id.* at 122, 412 P.3d at 1083.

⁴ *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

disagreed finding that nothing in the statute supported Hargrove's interpretation, and the statute specifically forecloses a consideration requirement. Further, the court found that Legislature could have directed informal commitments enforceable under the statute had it intended to. The court reasoned that the banking records and Hargrove's testimony did not demonstrate Ward's expression of intent to pay child support, and while text message may constitute a "writing," the text messages did not demonstrate a "promise" to make ongoing child support payments. The court concluded that the phrase, "promise in writing" is unambiguous as used in the statute. The district court did not abuse its discretion denying Hargrove's NRS 126.900(1) claim.

NRS 125B.030 permits the recovery of retroactive child support after the child reaches the age of majority.

The court held that a parent may file for retroactive child support after a child has reached the age of majority under NRS 125B.030. The court reasoned that other statutes within NRS Chapter 26 contemplate the imposition of retroactive support obligations in paternity actions filed within 3 years after the child attains the age of majority.⁵ Further the court reasoned other jurisdictions established retroactive child support may be awarded in timely filed paternity actions initiated after the child reached the age of majority, and because the court has authority to order support after paternity is established, a court has the authority to order retroactive child support. Thus, because a parent may bring a paternity action up to 3 years after the child reaches the age of majority, and because a court may order a parent to pay child support after paternity is established, the court held that a parent has 3 years after the age of majority to seek retroactive child support.

CONCLUSION

In sum, the court held that a parent has 3 years after the child turns the age of majority to seek retroactive child support. Hargrove's request for retroactive child support was permitted because her paternity action was brought 1 year and 3 months after G.W. turned 18, which is within the period permitted by NRS 126.081(1). As Hargrove is permitted to bring a paternity action, she was consistently permitted to seek retroactive child support. The district court therefore abused its discretion by concluding it did not have the authority to grant retroactive child support. Ward, however, did not make a promise in writing to make monthly support payments and the district court correctly denied Hargrove's NRS 126.900(1) claim. Accordingly, the court affirmed in part, reversed in part, and remanded this claim for further proceedings.

⁵ See NEV. REV. STAT. § 126.081(1); NEV. REV. STAT. § 126.161(4)(a).