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Davitian-Kostanian v. Kostanian, 139 Nev. Adv. Op. 27 (Aug. 31, 2023)¹

NRS 125B.110 CREATES A STATUTORY EXCEPTION FOR ADULT HANDICAPPED CHILDREN IN REGARD TO CHILD SUPPORT MODIFICATIONS AND GIVES THE DISTRICT COURT JURISDICTION FOR SUCH CASES.

Summary

NRS 12B.110 creates a statutory exception to the general rule under NRS 125C.0045(1)(a) which requires that modification to child support order may only be made when the child is still a minor. Further, while a change in monthly income may constitute a change in circumstances under NRA 125.150(8), this doesn't mean that increased monthly income is sufficient to approve modified alimony.

Background

Noune Davitian-Kostanian (Appellant) and Varoujan Kostanian (Respondent) entered a divorce after over 25 years of marriage in February 2012 through a stipulated divorce decree. The decree required that Varoujan gave alimony to Noune from November 1, 2011, until October 1, 2021. Their youngest child, Alex, was a minor at the time of the divorce. The decree granted the district court jurisdiction over treatment decisions until Alex reached the age of majority and required Varoujan to pay \$1,010 a month in child support which continued until Alex turned 18 or until 19 if he was still attending high school. Once Alex turned 18, Varoujan stopped paying the child support payments. However, he was still required to pay alimony until October 1, 2021.

One day before Varoujan's alimony payment obligation was set to expire, Noune filed a motion seeking changes to the alimony schedule and the reinstatement of child support payments. Following a hearing, the court denied Noune's motion stating that it lacked jurisdiction over the request for child support because Alex had passed the age of majority and because the motion wasn't filed while child support was still in effect. The district court also denied Noune's request for continued alimony, citing a lack of significant changes in circumstances that would warrant modification under NRS 125.150(8). Noune then appealed.

Discussion

The district court has jurisdiction to award adult child support after the age of majority under NRS 125B.110

Appellant argued that the district court was wrong in determining that it lacked jurisdiction to order child support beyond the age of majority due to NRS 125B.110 which sometimes makes an exception for continued support for handicapped adult children. In making this decision, the court looked to the plain language of the statute following its decision in *Arguello v. Sunset Station, Inc.* The court acknowledged that while generally a parent's court ordered child support ends when the child reaches the age of majority², NRS 125B.110 provides an exception by stating that "A parent shall support beyond the age of majority his or her child with a handicap until the child is no longer handicapped or until the child becomes self-

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² *Edgington v. Edgington*, 119 Nev. 577, 582, 80 P.3d 1282, 1286 (2003).

supporting. The handicap of the child must have occurred before the age of majority for this duty to apply³”

The Court concluded that the district court incorrectly rejected Nouné’s motion because of NRS 125B.110. They stated that the plain language explicitly provides for child support “beyond the age of majority” in certain circumstances.⁴ The Court also notes that a time gap between child support payment doesn’t preclude the court from awarding it later, but rather that it is just one of many factors that are considered.

The district court failed to make the necessary findings under NRS 125B.110

When evaluating a request for child support, the district court must find 1) whether the impairment of the adult child occurred before the age of majority and 2) whether the child is unable to support themselves, and 3) if there is a casual relationship between the impairment and the inability of the child to “engag[e] in substantial gainful activity.”⁵ The Court states that because the district court determined it lacked jurisdiction, it didn’t make the requisite findings resulting in the hampering of “meaningful appellate review.”⁶

Nouné did not demonstrate that there was a change in circumstances to warrant modifying the parties’ alimony agreement

Nouné argued when the district court considered the alimony request, they considered Varoujan’s income change and not whether her obligation to take care of Alex with the lack of alimony constituted a change in circumstances therefore warranting the court to continue alimony. The Court looks at district court decisions regarding divorce proceedings “for an abuse of discretion.”⁷

NRS 125.150(8) states that unaccrued alimony payments “*may* be modified upon a showing of changed circumstances.”⁸ Specifically, the court has previously noted that “a change of 20 percent or more in the gross monthly income of [the paying spouse] shall be deemed to constitute changed circumstances requiring a *review* for modification of the payments of alimony.”⁹ However, in this circumstance, the Court decided that because the only change in circumstances was an increase in 20% of Varoujan’s income, this wasn’t enough evidentiary evidence to support her claims.

Conclusion

NRS 12B.110 creates a statutory exception to the general rule under NRS 125C.0045(1)(a) which requires that modification to child support order may only be made when the child is still a minor. Because of this exception, the Court is allowed to modify previous child support orders for adult handicapped children. Therefore the district court’s decision denying adult child support was reversed and remanded.

Further, while a change in monthly income may constitute a change in circumstances under NRA 125.150(8), this doesn’t mean that increased monthly income is sufficient to approve

³ NEV. REV. STAT. §125B.110(1).

⁴ See Edgington, 119 Nev. at 582.

⁵ Id. at 585-87.

⁶ Rivero v. Rivero, 125 Nev. 410, 438 (2009).

⁷ Williams v. Williams, 120 Nev. 559, 566 (2004).

⁸ NEV. REV. STAT. §125.150(8).

⁹ Id.

modified alimony. Because Nouné couldn't provide other evidence regarding change in circumstance other than Varoujan's 20% increase in income, the Court denied the request to modify alimony.