IN THE UTAH COURT OF APPEALS

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Bentley Wilson, Petitioner and Appellant, v. Brenda Wilson, Respondent and Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20070359-CA F I L E D (December 4, 2008) 2008 UT App 437

Fourth District, Provo Department, 034402561
The Honorable Gary D. Stott

Attorneys: Rosemond G. Blakelock, Provo, for Appellant
Scott P. Card and Aaron P. Dodd, Provo, for Appellee

Before Judges Thorne, Billings, and Orme.

THORNE, Associate Presiding Judge:

Bentley Wilson (Petitioner) appeals from the district court's March 27, 2007 judgment enforcing the parties' divorce decree (the Amended Decree)[1] and ordering Petitioner to pay $107,066 in past due child support and alimony owed to Brenda Wilson (Respondent). We affirm.

Upon the stipulation of the parties, the district court first awarded child support and alimony to Respondent in its August 10, 2004 Order of Temporary Support (the Temporary Order). The Temporary Order awarded child support in the amount of $700

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[1]The district court entered the parties' original Decree of Divorce on October 7, 2004, and entered the Amended Decree on November 2, 2004. Although the district court interpreted the language of the original decree in reaching its judgment below, the Amended Decree is the document that now governs Petitioner's child support and alimony obligations. Thus, we refer to and analyze the Amended Decree. The language of the two decrees is substantially identical for purposes of the issues raised in this appeal, except as noted herein. Petitioner refers to both decrees in his briefing and does not distinguish between the two.

per child per month, for a total of $2100 per month for the parties' three minor children. Alimony was set at $4000 per month. The Amended Decree, issued several months later, stated:

> Petitioner has requested a reduction in both child support, which has previously been ordered in the amount of $2,100.00 per month, and alimony[,] which has been ordered in the amount of $4,000.00 per month. The issue of whether or not a reduction should be granted shall be reserved for a period of six months so that each party is able to obtain further information regarding the Petitioner's actual income.[2]

Both parties proceeded to participate in discovery and otherwise prepare for trial on issues reserved by the Amended Decree. Petitioner did not further pursue the reduction issue after the six-month reservation period expired, nor did he appeal from the Amended Decree.

In August 2006, Respondent notified the district court that Petitioner was substantially in arrears in his child support and alimony payments and asked for relief. Petitioner objected, arguing that the Temporary Order merged into the Amended Decree and that the Amended Decree did not specifically continue the temporary awards. According to Petitioner, this rendered the child support and alimony obligations unenforceable against him as of the date of entry of the Amended Decree because the Amended Decree did not expressly reimpose those obligations. The district court determined that the Amended Decree implicitly adopted the awards from the Temporary Order, and entered a judgment for arrearages against Petitioner. Petitioner now appeals solely from that judgment.

On appeal, Petitioner argues that the district court erred in ruling that the Amended Decree incorporated the child support and alimony awards of the Temporary Order. The district court determined, and we agree, that the Amended Decree implicitly continued the Temporary Order's child support and alimony awards. The district court, interpreting its own prior language, noted that the Amended Decree expressly reserved the issue of whether Petitioner should be granted a reduction of his $6100 monthly obligation. The district court then reasoned that an award must exist before it can be reduced and stated that the Amended Decree

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[2]The parties' original Decree of Divorce contained very similar language, omitting only the recitation of the amount of each award.

"implicitly acknowledges that Petitioner is seeking a reduction of the Temporary Order. The $700 per-child [support award] and $4,000 in alimony are the only amounts that had ever been entered and are logically the amounts referred to in the Decree."[3]

We affirm the district court on this issue but note that the Amended Decree is even more clear than indicated by the district court in its reasoning. The Amended Decree expressly referenced "child support, which has previously been ordered in the amount of $2,100.00 per month, and alimony which has been ordered in the amount of $4,000.00 per month." We also note that acceptance of Petitioner's argument would require us to interpret the Amended Decree as awarding no child support or alimony whatsoever, a result that is nonsensical under the circumstances of this case. Indeed, the only logical interpretation of the Amended Decree is that Petitioner was to continue paying Respondent $6100 per month in child support and alimony until such time as the district court might reduce that amount, an event that was contingent upon further information being provided by the parties and had not occurred as of the time of the judgment.

Petitioner also argues that the Amended Decree failed to include fact findings in support of the awards as required by statute; that the parties' stipulation does not relieve the district court of the obligation to make such findings; and that Petitioner is entitled to a full hearing on child support and alimony issues as a matter of equity. However, these arguments represent collateral challenges to the Amended Decree itself and are not properly before us on Petitioner's appeal from the district court's judgment enforcing the terms of the Amended Decree. Cf. Olsen v. Board of Educ., 571 P.2d 1336, 1338 (Utah 1977) (discussing the general rule against collateral attacks on prior judgments). Although the Amended Decree was entered in this same case rather than in a prior proceeding, cf. id. ("[A]n attack upon a judgment is regarded as collateral if made when the judgment is offered as the basis of a claim in a subsequent proceeding." (emphasis added)), we nevertheless apply the reasoning behind the rule against collateral attacks and decline to address Petitioner's arguments. Petitioner did not appeal from the Amended Decree, nor does he identify any attempt on his part to have the Amended Decree "vacated or revised or modified" in the district court. See id. Instead, Petitioner allowed arrearages to accrue under the Amended Decree and only now, when faced with enforcement proceedings, attempts to avoid those arrearages by challenging the sufficiency of the required

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[3]The language quoted by the district court in the judgment being appealed came from the parties' original Decree of Divorce rather than from the Amended Decree.

supporting findings and thereby attacking the Amended Decree itself. Under the circumstances, Petitioner is not entitled to attack the underlying Amended Decree in this appeal.[4]

We hold that the district court did not err in determining that the child support and alimony amounts awarded by the Temporary Order were incorporated by reference in the Amended Decree and therefore continued in force until future modification by the district court. Accordingly, we affirm the judgment below.[5]

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William A. Thorne Jr.,
Associate Presiding Judge

WE CONCUR:

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Judith M. Billings, Judge

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Gregory K. Orme, Judge

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[4]Even if this appeal was an appropriate vehicle for addressing Petitioner's collateral attacks on the Amended Decree, Petitioner has not identified in the record any preservation of these issues before the district court. See 438 Main St. v. Easy Heat, Inc., 2004 UT 72, ¶ 51, 99 P.3d 801 (explaining that to preserve an issue for appeal, "the issue must be presented to the trial court in such a way that the trial court has an opportunity to rule on that issue" (internal quotation marks omitted)). Accordingly, we would also decline to address Petitioner's arguments due to his failure to preserve them.

[5]Today's opinion addresses only the district court's arrearage judgment entered and is not to be interpreted to resolve other, prospective child support and alimony issues that may be pending or arise below.