

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFTON JAMES JACKSON,
Appellant,
vs.
THE STATE OF NEVADA WELFARE
DIVISION AND STACI WATKINS,
Respondents.

No. 52729

FILED

JAN 11 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER AFFIRMING IN PART AND
REVERSING IN PART

This is a proper person appeal from a district court order reaffirming a hearing master's recommendations regarding paternity and child support following remand by this court. Second Judicial District Court, Family Court Division, Washoe County; Scott Jordan, Senior Judge.

Appellant Clifton James Jackson filed a motion to modify a child support order that, under NRS 425.3828(2)(a)(1) and (2), declared him to be the biological father of respondent Staci Watkins' two children and ordered him to pay \$221 per month in child support; he also challenged the paternity finding. A hearing master reduced Jackson's support obligation to the statutory minimum of \$100 a month per child due to his incarceration, but departed upward an additional \$100 per month under NRS 125B.080(9)(b) for child care costs, for a total support obligation of \$300 per month. The hearing master also found Jackson to be the children's biological father but nonetheless ordered paternity testing.

Following a hearing on Jackson's objections, the district court granted Jackson's request to waive interest and penalties on support arrearages during the period of his incarceration, beginning in July 2004



and ending the month after he is no longer incarcerated. The court also found that the hearing master did not abuse her discretion in deviating upward for child care costs. However, the district court failed to make a finding as to Jackson's paternity. Jackson appealed from the district court's order. This court reversed and remanded to the district court for a proper determination on the issue of paternity. This court also stayed the temporary support recommendations of the court master, pending the district court's ruling on paternity. Jackson v. Nevada State Welfare Div., Docket No. 49645 (Order of Reversal and Remand, May 14, 2008).

After the hearing on remand, the district court accepted the genetic test evidence and found that Jackson was the biological father of the two minor children. The district court then reaffirmed the remaining portions of the hearing master's recommendations. Jackson timely appealed from the court's order on remand, arguing that an upward departure from the statutory minimum support obligation was improper and that Watkins did not provide sufficient evidence of her child care costs.¹

This court reviews a district court's child support decisions for an abuse of discretion. Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). In reviewing a hearing master's recommendation, factual findings are reviewed for clear error, and legal conclusions are reviewed de

¹In this appeal, Jackson also argues that this court should dismiss the accruing interest and penalties on his child support arrearages during the time he is incarcerated. As the district court's order waived all interest and penalties throughout Jackson's incarceration, however, Jackson is not aggrieved by this portion of the district court's order, and we do not consider his argument.

novo. Cf. Venetian Casino Resort v. Dist. Ct., 118 Nev. 124, 41 P.3d 327 (2002).

At the hearing on Jackson's motion to modify child support, the hearing master found that Jackson's gross monthly income was \$0. Accordingly, the master deviated from the statutory formula for child support and did not calculate Jackson's child support payments according to the formula set forth in NRS 125B.070. Instead, the master recommended that Jackson be required to pay the minimum monthly statutory child support amount of \$100 per child under NRS 125B.080(4).

The master also determined that Watkins' request for additional support for child care expenses was proper under NRS 125B.080(9)(b). Based on Watkins' testimony that she paid approximately \$368 for child care each month, the master made an upward departure from the statutory maximum, based on NRS 125B.080(9)(b), and determined that Jackson should pay an additional \$100 each month toward child care expenses.

Under NRS 125B.080(9), child care is one of the factors the court may consider when determining whether a departure from the statutory formula is warranted. However, this court has held that, in reviewing those factors, "[g]reater weight . . . must be given to the standard of living and circumstances of each parent, their earning capacities and the 'relative financial means of parents' than to any of the other factors." Barbagallo v. Barbagallo, 105 Nev. 546, 551, 779 P.2d 532, 536 (1989), cited in Rivero v. Rivero, 125 Nev. ___, 216 P.3d 213 (2009); see also Rodgers v. Rodgers, 110 Nev. 1370, 1374, 887 P.2d 269, 272 (1994); Lewis v. Hicks, 108 Nev. 1107, 1114, 843 P.2d 828, 833 (1992). Therefore, in determining whether an upward departure for the cost of

child care is warranted, the master must give Jackson's circumstances, his earning capacity, and his relative financial means greater weight than the weight given to the cost of child care. As the master had previously determined under NRS 125B.080(4) that the statutory minimum child support amount of \$100 a month per child was proper based on Jackson's inability to pay, an upward departure for child care expenses was not warranted. Accordingly, the district court abused its discretion in affirming the master's recommendation of an upward departure of \$100 a month for child care expenses.

As the district court properly affirmed the master's recommendation that Jackson pay the statutory minimum child support payment of \$100 a month per child, we affirm that portion of the district court's order on remand. However, because the district court abused its discretion in affirming the master's recommendation of an upward departure of \$100 a month for child care costs, we reverse that portion of the district court's order. The remainder of the order is affirmed.

It is so ORDERED.²

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

²In light of this order, all pending motions or requests are denied as moot.

cc: Chief Judge, Second Judicial District
Hon. Scott Jordan, Senior Judge, Family Court Division
Clifton James Jackson
Attorney General/Carson City
Attorney General/Reno
Staci Watkins
Washoe District Court Clerk