IN THE COURT OF APPEALS OF THE STATE OF NEVADA

COLLEEN L. ROBINSON, N/K/A COLLEEN LENNOX,
Appellant,
vs.
MICHAEL B. ROBINSON,
Respondent.

No. 69217

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order modifying child support. Second Judicial District Court, Family Court Division, Washoe County; David Humke, Judge.

Under NRS 125B.080(8), "[i]f a parent who has an obligation for support is willfully underemployed or unemployed to avoid an obligation for support of a child, that obligation must be based upon the parent's true potential earning capacity." In the underlying action, the district court found that both parties were willfully underemployed and modified the existing child support order in accordance with its findings. This appeal followed.

As an initial matter, appellant argues the district court abused its discretion by imputing income to her because she did not have an obligation for support within the meaning of NRS 125B.080(8). *See Barry v. Lindner*, 119 Nev. 661, 663, 670, 81 P.3d 537, 538, 543 (2003) (reviewing a district court's decision to impute income to a parent for an abuse of discretion and substantial evidentiary support). In support of this argument, she asserts that, although the parties share joint physical custody, respondent, as the higher wage earner, has always paid child

support to appellant, making respondent the obligor and appellant the obligee. Under NRS 125B.020 and NRS 125B.070, however, both parents have an obligation for support of their children. *See Wright v. Osburn*, 114 Nev. 1367, 1368, 970 P.2d 1071, 1072 (1998) (explaining that NRS 125B.020 and NRS 125B.070, "when read together, require each parent to provide a minimum level of support for his or her children, specified by the [L]egislature as a percentage of gross income"). Thus, the district court correctly concluded that it could impute income to appellant under NRS 125B.080(8) in order to calculate the amount of support owed.

Appellant also contends that a prior district court order requiring respondent to continue to pay $1766 per month in child support "pending the hearing in this matter and/or further court order" constituted law of the case preventing the district court from making a subsequent order retroactive. But the law-of-the-case doctrine only applies "when an appellate court decides a principle or rule of law," *Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010); *see also Recontrust Co. v. Zhang*, 130 Nev. ___, ___, 317 P.3d 814, 818 (2014) ("Normally, 'for the law-of-the-case doctrine to apply, *the appellate court* must actually address and decide the issue explicitly or by necessary implication.'" (emphasis added) (quoting *Dictor*, 126 Nev. at 44, 223 P.3d at 334)), and a child support obligation may be modified retroactive to "the date a motion to modify the decree is filed." *Ramacciotti v. Ramacciotti*, 106 Nev. 529, 532, 795 P.2d 988, 990 (1990). Thus, this argument does not provide a basis for reversing the district court's decision.

Nevertheless, other problems with the district court's decision prevent us from concluding that the district court properly exercised its discretion in this case. In particular, the district court failed to make any

specific findings explaining why it concluded that modification of respondent's child support was in the children's best interest. *See Rivero v. Rivero*, 125 Nev. 410, 433, 216 P.3d 213, 229 (2009) (explaining that a modification of a "child support order must be supported by factual findings that a change in support is in the child's best interest"); *see also Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1142 (2015) (explaining that, while a district court's discretionary decisions are generally reviewed deferentially, "deference is not owed to . . . findings so conclusory they may mask legal error").

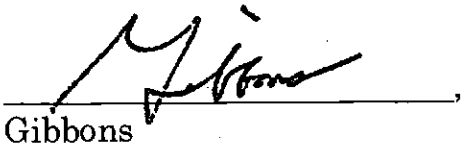
Moreover, while the court found that respondent's earning capacity is $55,000 per year, it is unclear from the court's oral or written findings how it arrived at that amount. *See* NRS 125B.080(8) (providing that, if a party is willfully underemployed, that party's child support obligation must be based on "the parent's true potential earning capacity"). As a result, we are unable to determine whether substantial evidence supports the district court's conclusion in this regard. *See Rivero*, 125 Nev. at 431, 216 P.3d at 228 (reversing an order denying a motion to modify support for failure to include factual findings supported by substantial evidence).

Similarly, the court found that appellant was willfully underemployed, but, in its written order, the court's only finding on that point was that appellant had made minimal attempts to obtain a degree or certification and that her "educational efforts bear on her employment." And nothing in the court's oral findings provides a clear explanation as to the court's reasons for concluding that appellant was willfully underemployed. Thus, again, we cannot determine whether the district

court's decision was supported by substantial evidence.[1] *See Rivero*, 125 Nev. at 431, 216 P.3d at 228.

Accordingly, in light of the district court's failure to make findings explaining its conclusions that modification was in the best interest of the children, that respondent's earning capacity was $55,000 per year, and that appellant should have income imputed to her, we reverse the district court's order modifying child support and remand this matter to the district court for further proceedings consistent with this order.

It is so ORDERED.[2]



_____, C.J.
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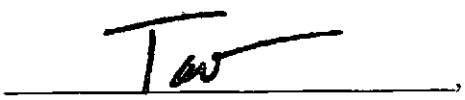

_____, J.
Tao

_____, J.
Silver

cc: Hon. David Humke, District Judge, Family Court Division
Allison MacKenzie, Ltd.
William D. McCann
Michael B. Robinson
Washoe District Court Clerk

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[1]Because we reverse and remand on this basis, we do not reach appellant's argument that the district court abused its discretion based on the amount of income it imputed to appellant.

[2]We deny both parties' requests for sanctions.