IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD SLEZAK,
Appellant,
vs.
BRIDGET SLEZAK,
Respondent.

No. 69518

FILED

APR 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

Richard Slezak appeals from findings of fact and conclusions of law and decree of divorce and award of attorney fees and costs. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

Richard and respondent Bridget Slezak share custody of two minor children. Following a trial, the district court awarded both parties a right of first refusal, ordered Richard pay child support, awarded Bridget alimony, and divided the community debt.[1] On appeal Richard contends the district court erred by: (1) ordering a right of first refusal, (2) awarding child support and alimony based upon an imputed income, (3) ordering an unequal distribution of community debts, and (4) awarding Bridget attorney fees.[2]

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[1]We do not recount the facts except as necessary to our disposition.

[2]Bridget requests that this court order Richard to provide the financial disclosure documents he submitted to the Legal Aid Center of Southern Nevada when he was awarded pro bono counsel but failed to support her request with any relevant authority. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 338 n.38, 130 P.3d 1280, 1288 n.38

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17-900825

The district court did not abuse its discretion in awarding the right of first refusal

This court reviews a district court's decision regarding parenting time schedules for abuse of discretion. *Rennels v. Rennels*, 127 Nev. 564, 568-69, 257 P.3d 396, 399 (2011). This court will uphold the district court's factual findings if they are supported by substantial evidence. *Id.* at 569, 257 P.3d at 399.

Richard argues the district court abused its discretion by failing to make specific, relevant findings on the NRS 125.480(4)[3] best interest factors before ordering a right of first refusal. Further, Richard argues that no evidence was presented showing that leaving the children alone overnight while he worked negatively impacted them or that the arrangements made for the children were inadequate.[4]

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(2006) (holding this court need not consider arguments unsupported by relevant authority). Although not dispositive of this issue, we also note that Bridget improperly placed this request in the routing statement of her answering brief. *See* NRAP 28(b)(2) (establishing that the respondent should address the issue of retention in the routing statement).

[3]The Nevada Legislature repealed NRS chapter 125 during the 2015 session. *See* 2015 Nev. Stat., ch. 445, at 2580–91. The content of chapter 125 was moved to NRS 125C. *See id.* As this case was decided under the previous statutes, and there are not any substantive changes that would affect this appeal, this order cites to chapter 125.

[4]Evidence was presented that the parties' son was failing the majority of his school courses and that teachers had described the child as "exhausted[.]" Although the parties presented conflicting testimony regarding the cause of the child's declining academic performance and exhaustion, Richard's argument fails because this court does not reweigh witness credibility. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (footnote omitted) (holding that an appellate court should

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In custody determinations, the child's best interest is the "paramount concern[.]" *St. Mary v. Damon*, 129 Nev. 647, 654, 309 P.3d 1027, 1033 (2013). Further, Nevada law requires "express findings as to the best interest of the child in custody and visitation matters[.]" *Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1143 (2015).

As the parties stipulated to joint legal and physical custody, Richard challenges only the portion of the order granting both parties a right of first refusal. Richard argues that, before awarding both parties the right of first refusal, the district court was required to make specific findings connecting individual NRS 125.480(4) factors to the right of first refusal. However, *Davis* only requires the district court make express findings regarding the children's best interest when determining custody and overall parenting time. *Davis* does not hold that every statutory factor must be individually tied to each individual portion of the parenting plan; rather, *Davis* found that the failure to articulate any findings for an order restricting parenting time was reversible error. *See Davis*, 131 Nev. at ___, 352 P.3d at 1143 (noting it is crucial that the order tie the child's best interest to the NRS 125.480(4) factors and any other relevant factors).

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"leave witness credibility determinations to the district court and . . . not reweigh credibility on appeal"). Next, although Richard argues there is no evidence that the daycare arrangements he made for the children are inadequate, our review of the record reveals that Richard made no such arrangements for the children when he worked overnight. In fact, Richard testified he would not hire a babysitter for the children when he worked unless he was ordered to do so by the district court. Accordingly, we conclude the district court did not abuse its discretion by finding that the right of first refusal was in the children's best interest.

Here, although the district court did not tie its findings regarding the best interest of the children to each NRS 125.480(4) factor, it was not required to do so. *See Davis*, 131 Nev. at ___, 352 P.3d at 1139 (holding that this court must be able to determine that the district court's order was made for appropriate reasons). The district court noted in its order that the best interest of the children was paramount, that Bridget was concerned about leaving the children alone overnight, that the temporary parenting time schedule contained the right of first refusal, and that maximizing the available time each child has with each parent is in their best interest. A review of the trial transcript also reveals that the parties' son was struggling in school and physically exhausted. The district court relied upon the totality of the evidence presented, and we conclude its determination was made for the appropriate reasons.[5] *See Davis*, 131 Nev. at ___, 352 P.3d at 1143.

The district court abused its discretion by basing Richard's child support obligation on imputed income without making the necessary findings

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[5]At oral argument before this court, Richard asserted for the first time that the right of first refusal effectively resulted in Bridget receiving primary physical custody. We find this argument unpersuasive as a careful review of the record does not support such a conclusion. Further, we note that the district court's temporary timeshare arrangement contained a right of first refusal. Yet, Richard failed to raise this argument before the district court, thus depriving the district court of the ability to address the impact on joint physical custody. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.")

This court reviews an award of child support for abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019-20, 922 P.2d 541, 543 (1996). NRS 125B.080(8), provides that "[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." Accordingly, NRS 125B.080(8) requires not only a finding that the parent is willfully underemployed, but requires the additional finding that the parent is willfully underemployed for the specific purpose of avoiding a support obligation. *See Minnear v. Minnear*, 107 Nev. 495, 498, 814 P.2d 85, 86 (1991). "[W]here evidence of willful underemployment preponderates, a presumption will arise that such underemployment is for the purpose of avoiding support." *Id.*

Here, the district court made several factual findings which would support a conclusion that Richard is willfully underemployed. However, the district court failed to make the specific finding that Richard is willfully underemployed in a specific attempt to avoid his future child support obligation. Although Bridget urges this court to consider the *Minnear* presumption, the district court did not reference this case or the presumption therein and we cannot therefore assume the district court relied on it. On remand, should the district court determine the presumption applies, it must also determine if Richard successfully rebutted the presumption. Accordingly, we remand the matter to the district court to either clarify its order and make the necessary written

findings or, alternatively, enter a child support order based upon Richard's actual income.[6]

The district court abused its discretion by ordering an unequal distribution of community debt

This court reviews a district court's disposition of community debt for abuse of discretion. *Wolff*, 112 Nev. at 1359, 929 P.2d at 918-19. "[C]ommunity property and debt must be divided in accordance with the law. NRS 125.150(1)(b) requires the court make an equal disposition of property upon divorce, unless the court finds a compelling reason for an unequal disposition and sets forth that reason in writing." *Blanco v. Blanco*, 129 Nev. 723, 731-32, 311 P.3d 1170, 1175 (2013). The district court abuses its discretion when it awards an unequal distribution of community debt without finding a compelling reason to do so. *See Wolff*, 112 Nev. at 1361, 929 P.2d at 920 (citing NRS 125.150(1)(b)).

Here, the district court ordered an unequal distribution of community debt without setting forth any compelling reasons for the distribution. Although there was testimony presented that may support an unequal distribution of debt, the district court failed to comply with

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[6]Richard additionally argues that the district court abused its discretion by basing his alimony obligation upon imputed income. The district court did not abuse its discretion, as NRS 125.150 (unlike the child support statute) does not require the district court to determine why an individual is underemployed before awarding alimony. However, we recognize the possibility that on remand the district court's decision regarding Richard's income may require reconsideration of its alimony award if its decision would affect Richard's "ability to pay" alimony. *See generally Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996) (we review an award of alimony for abuse of discretion); NRS 125.150(9)(a)-(k) (providing the statutory factors that a court must consider when determining whether to award alimony).

NRS 125.150(1)(b) by failing to make clear written findings. *See Wolff*, 112 Nev. at 1361, 929 P.2d at 920. Accordingly, we reverse the order dividing the community debt and remand to the district court to clarify its order or reassign the debt in accordance with NRS 125.150(1)(b).

The district court did not abuse its discretion by awarding attorney fees

This court reviews an award of attorney fees for abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). Moreover, when awarding attorney fees in family law cases, the district court is required to "consider the disparity of income of the parties[.]" *Id.* at 623, 119 P.3d at 730. Further, the district court must consider the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Miller*, 121 Nev. at 623, 119 P.3d at 730. "While it is preferable for a district court to expressly analyze each factor relating to an award of attorney fees, express findings on each factor are not necessary for a district court to properly exercise its discretion." *Logan v. Abe*, 131 Nev. ___, ___, 350 P.3d 1139, 1143 (2015). "[T]he district court need only demonstrate that it considered the required factors, and the award must be supported by substantial evidence." *Id.*

Although the district court did not articulate its consideration of the *Brunzell* factors, we find that it sufficiently demonstrated that it had considered all necessary factors in awarding Bridget attorney fees. First, the district court identified the statute authorizing the fee award, noted that it had considered the disparity in income of the parties, and requested a *Brunzell* brief before setting the attorney fees amount. Second, in its order awarding Bridget attorney fees, the district court noted that it had considered Bridget's *Brunzell* brief and reduced the requested fee amount by nearly 60%. Accordingly, we conclude the district

court did not abuse its discretion by awarding Bridget attorney fees.[7] Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.[8]

Tao, J.

Gibbons, J.

Saitta, Sr. J.

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Morris Polich & Purdy, LLP/Las Vegas
Valarie I. Fujii & Associates
Eighth District Court Clerk

[7]We have considered all other arguments raised on appeal and conclude that they are unpersuasive.

[8]Chief Judge Abbi Silver voluntarily recused herself from this case. The Honorable Nancy M. Saitta, Senior Justice, participated in the decision of this matter under a general order of assignment entered on January 6, 2017. Nev. Const. Art. 6, § 19(1)(c); SCR 10.