IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFF RANDALL,
Appellant,
vs.
FANCHON BRIANNA CALDWELL,
Respondent.

No. 73533

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Jeff Randall appeals from a district court order dismissing an action regarding custody and support for his first child with respondent Fanchon Brianna Caldwell. Second Judicial District Court, Family Court Division, Washoe County; Cynthia Lu, Judge.[1]

Randall and Caldwell were in a relationship, but never married. After Caldwell gave birth to the parties' first child in California, Randall filed the instant complaint in Nevada. Caldwell then filed a motion to dismiss Randall's complaint for lack of jurisdiction, as she had initiated proceedings in California. Following a dismissal decision in Caldwell's California case, she withdrew her motion to dismiss this action and the parties proceeded with a case management conference.

Thereafter, the district court in Nevada entered a case management conference order that set a temporary child custody

[1]We have considered Randall's motion to strike unsupported assertions in Caldwell's amended fast track response, and find no merit to the motion. We therefore deny the motion and will consider Caldwell's response in this appeal. We also deny Randall's motion to file a reply related to the motion to strike.

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arrangement. The court's order also awarded child support to Caldwell in the amount of $5,000.00 per month based on Randall's failure to provide complete financial disclosures. Caldwell also requested attorney fees but the district court held that request in abeyance for later consideration.

Randall and Caldwell continued their relationship through the proceedings and Caldwell later gave birth to the parties' second child. Caldwell then moved to dismiss Randall's Nevada action for lack of jurisdiction, or in the alternative, for forum non conveniens. The district court subsequently directed Caldwell to set a hearing on the forum non conveniens issue and also ordered Randall to pay $25,000 in attorney fees "to place the parties on equal footing" as Randall disclosed that he had paid his attorney over $27,000.00.

The district court held a hearing on Caldwell's motion to dismiss at which it ruled in Caldwell's favor, directed her to file a new action in California, and stayed the Nevada action. While the Nevada suit was stayed, Randall moved to modify the child support order, asserting that his income had declined by more than twenty percent warranting modification. *See* NRS 125B.145(4) (noting that a change of 20 percent or more in gross monthly income for a support obligor constitutes changed circumstances requiring a review for modification of a support order). The district court denied Randall's motion for modification because it was waiting to dismiss the Nevada suit once notice was provided that the California court had assumed jurisdiction.

Caldwell later filed a new action in California regarding both of her children with Randall. The California case proceeded with regard to child custody but not support for the first child, as the California court found

that Nevada's temporary order on child support gave the Nevada district court continuing and exclusive jurisdiction over the first child's support.

Thereafter Judge Lu dismissed Randall's entire complaint. Randall subsequently filed a notice with the Nevada district court that the California court had dismissed the child support claims for the first child as Nevada's initial support order established continuing and exclusive jurisdiction in Nevada. Caldwell similarly filed a motion for reconsideration of dismissal of the support claim for the first child on the same grounds presented in Randall's notice. The district court denied the requested relief and this appeal followed.

Child Custody

On appeal, Randall contests the dismissal of the case as he argues that Nevada has proper jurisdiction. Randall posits that Caldwell's inconvenient forum argument in favor of California does not eliminate Nevada's exclusive and continuing jurisdiction under the UCCJEA, as there are only two grounds that remove jurisdiction and they do not exist here. *See* NRS 125A.315. But the Nevada court did not find that it did not have continuing and exclusive jurisdiction, instead it found only that California is a more convenient forum. *See* NRS 125A.365(1) (stating that if a court *with jurisdiction under the UCCJEA* determines that another court is the more appropriate forum, it may decline to exercise *its* jurisdiction). Reviewing this determination as a legal question de novo, we hold that the district court did not err in considering whether inconvenient forum arguments are an appropriate avenue to eliminate Nevada's authority over this child custody case. *See Ogawa v. Ogawa*, 125 Nev. 660, 667-68, 221 P.3d 699, 704 (2009) (regarding de novo review of legal conclusions).

We review a district court's order dismissing an action for forum non conveniens for an abuse of discretion. *See Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 300, 350 P.3d 392, 395-96 (2015). Considering whether another court is the more appropriate forum under the UCCJEA is a factual determination best addressed by the district court in the first instance. *See* NRS 125A.365(2) (setting out the various factors for consideration on inconvenient forum issues); *see also Kar v. Kar*, 132 Nev. ___, ___, 378 P.3d 1204, 1205 (2016) (citing *Friedman v. Eighth Judicial Dist. Court*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011) (stating that only when jurisdictional facts are undisputed will UCCJEA questions of law be reviewed de novo)).

In this case, Randall's argument that the court wrongly dismissed this action because California had previously dismissed other actions fails to acknowledge that the district court properly stayed its dismissal until notice was filed that a California court had assumed jurisdiction. *See Kar*, 132 Nev. at ___, 378 P.3d at 1208 (holding that a Nevada district court must stay proceedings to allow the parties to file in the appropriate forum). Here, after fully considering the factors under NRS 125A.365(2) and finding California was a more convenient forum, the district court properly waited for Caldwell to file in California and for the California court to accept jurisdiction for child custody issues involving the first child before acting on the request for dismissal. Any prior California orders that may have declined jurisdiction of custody matters for the first child do not negate California's exercise of jurisdiction following the Nevada court's inconvenient forum determination. *See* NRS 125A.365(2) (requiring the court to consider relevant factors, such as the ability of the court of each

state to decide the issues). As such, we affirm the district court's dismissal of Randall's complaint as to the child custody issues involving the first child.

Child Support

The issue of child support for the first child, however, remains with Nevada. Once the Nevada court entered an order regarding support, Nevada established continuing and exclusive jurisdiction over support of the first child, as Randall maintains his residence in Nevada. *See* NRS 130.205(1) (stating that Nevada "shall exercise continuing and exclusive jurisdiction" where a Nevada court enters a child support order and Nevada is the residence of the obligor). The California court acknowledged this and directed the parties back to Nevada to address any support issues related to the first child.

The UCCJEA inconvenient forum determination does not remove the issue of support from Nevada as support and custody are distinct issues. *See Kar*, 132 Nev. at ___ n.1, 378 P.3d at 1205 n.1 (noting the separate considerations of custody and support jurisdiction). Nonetheless, on appeal, Caldwell argues that the support order at issue is not controlling and therefore the dismissal is justified to allow California to act in this realm. But here, the record demonstrates that the order setting support for the first child is the controlling order as it was entered in accordance with the court's jurisdiction at the time. Further, Randall maintains Nevada as his residence, and the parties have not consented to transfer the issue to California. Accordingly, we conclude that, pursuant to NRS 130.205, Nevada shall exercise continuing and exclusive jurisdiction to modify its child support order.

Under these circumstances, the district court erred in dismissing this matter with regard to child support issues for the first child

and that determination must be reversed. *See Ogawa*, 125 Nev. at 667-68, 221 P.3d at 704. To the extent Randall challenges the district court's refusal to modify the initial support award, because the district court never reached the merits of this request and resolving this issue will require factual determinations, that issue must be addressed by the district court in the first instance. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172-73 (2012) (noting that trial courts are better suited to make factual determinations in the first instance). Accordingly, we reverse and remand this matter to the district court for further proceedings on the child support issue, including consideration of Randall's motion to modify child support.

Attorney fees

With regard to the $25,000.00 in attorney fees awarded to Caldwell's counsel, this court will not overturn an award of attorney fees on appeal unless there is an abuse of discretion by the district court. *See Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). NRS 125C.250 allows the court to order reasonable fees to be paid "in proportions and at times determined by the court." "[W]hile it is within the trial court's discretion to determine the reasonable amount of attorney fees under a statute or rule, in exercising that discretion, the court must evaluate the factors set forth in *Brunzell v. Golden Gate National Bank*." *Miller v. Wilfong*, 121 Nev. at 623, 119 P.3d at 730 (citing *Brunzell*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969)). The district court must consider various factors in family law matters, such as the qualities of the advocate, the character and difficulty of the work performed, the work actually performed by the attorney, the result obtained, as well as the disparity in income of the

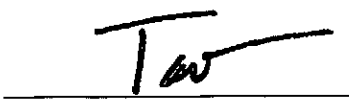
parties when awarding fees. *See Brunzell*, 85 Nev. at 349, 455 P.2d at 33; *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998).

Here, the district court failed to address the *Brunzell* factors. The only reasoning provided for the interim award of $25,000.00 in attorney fees to Caldwell was that Randall had paid his attorney over $27,000.00 and this award would "place the parties on equal footing." While disparity in income is a relevant consideration, the district court abused its discretion by failing to consider the other relevant factors. As such, we reverse the award of fees and remand this determination to the district court for proceedings consistent with this order.

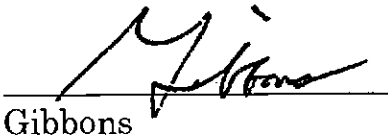
Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Cynthia Lu, District Judge, Family Court Division
Jeff Randall
Anderson Keuscher, PLLC
Washoe District Court Clerk