

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKY G. WINKELMAN,
Appellant,
vs.
DAWN K. WINKELMAN, A/K/A DAWN
K. MAGER,
Respondent.

No. 76776-COA

FILED

DEC 18 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Ricky G. Winkelman appeals from a district court order addressing child support, child custody, and attorney fees and costs in post-decree divorce proceedings. Second Judicial District Court, Washoe County; Bridget E. Robb, Judge.

Ricky G. Winkelman and Dawn K. Winkelman entered into a global settlement agreement, incorporating the agreement into their divorce decree on February 24, 2017. At the time of divorce, the Winkelmans had two minor children: K.W. (17) and G.W. (11). The parents agreed to share joint custody, and Ricky agreed to pay \$1,092 per child per month in child support. K.W. turned 18¹ on May 30 and decided to live with Ricky full-time.

Dawn and Ricky filed several motions below. Dawn filed two motions asking the district court to hold Ricky in contempt for violating the divorce decree. Ricky filed a motion asking the district court to hold Dawn in contempt for violating the divorce decree, a motion to modify the divorce decree, and a motion to modify custody and reduce child support. The district court heard the motions and found Ricky in contempt on several

¹K.W. was still attending high school and did not graduate until after he turned 19 years old.

issues. The district court also denied his request for attorney fees and costs. However, the district court ordered Dawn to repay the child support payments she received for K.W. after he had moved in with Ricky full-time, beginning on the date that Ricky filed his motion to modify custody and reduce child support.² This appeal followed.

Ricky argues the district court abused its discretion by failing to (1) hear the custody modification issue, (2) order Dawn to pay Ricky child support for K.W., (3) order Dawn to repay Ricky's child support payments for K.W. from the date K.W. moved instead of from the date Ricky filed the motion to modify custody and reduce child support, (4) award Ricky attorney fees and costs, and (5) recuse herself for bias.³

Ricky argues that the district court abused its discretion by concluding his request for a custody modification was moot. We review the district court's child custody decisions for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009). The district court has jurisdiction over a motion to modify child custody when the motion is filed before the child turns 18 years old, or 19 years old if the child is still enrolled in high school. *See Ramacciotti v. Ramacciotti*, 106 Nev. 529, 531, 795 P.2d 988, 988 (1990); *see also* NRS 125C.0045(9)(b).

²We do not recount the facts except as necessary to our disposition.

³We need not review Ricky's claim of judicial bias because he failed to raise it below. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Nevertheless, based on our review of the record, we note that Ricky failed to overcome the presumption that judges are unbiased because his complaints center on the district court's rulings. *See Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009); *Whitehead v. Nev. Comm'n on Judicial Discipline*, 110 Nev. 380, 427, 873 P.2d 946, 975 (1994).

Ricky moved to modify the child custody agreement on July 26, 2017 when K.W. was 18 years old and still enrolled in high school. Therefore, the district court had jurisdiction to rule on this issue, and it was not moot. Accordingly, we reverse the district court's finding that the custody modification issue was moot, and we remand for the district court to reconsider this issue.

In light of our reversal of the custody modification issue, we necessarily must also reverse and remand the child support issue, which should be considered by the district court after it decides the custody modification issue. However, although Ricky failed to request additional child support from Dawn below, Ricky argues on appeal that the district court abused its discretion by failing to order Dawn to pay Ricky child support for K.W., and in failing to do so, effectively deviating from the statutory formula without making the required specific findings of fact.

We review the district court's child support decisions for an abuse of discretion. *Rivero*, 125 Nev. at 438, 216 P.3d at 232. "Where the parents of a child do not reside together, the physical custodian of the child may recover from the parent without physical custody a reasonable portion of the cost of care, support, education and maintenance provided by the physical custodian." NRS 125B.030. A parent's support obligation for one child is 18 percent of their gross monthly income, and the district court must award at least \$100 per month per child. NRS 125B.070(1); NRS 125B.080(4). "When a district court deviates from the statutory child support formula, it must set forth specific findings of fact stating the basis for the deviation and what the support would have been absent the deviation." *Rivero*, 125 Nev. at 438, 216 P.3d at 232. In making the modification, the district court must also consider the best interests of the child. NRS 125B.145.


By ordering Dawn to repay Ricky the child support she received while K.W. lived with Ricky full-time, the district court implicitly recognized a primary custody arrangement. However, by not also ordering Dawn to pay child support to Ricky, the court implicitly found that Dawn's child support obligation was zero, which is a deviation from the statutory formula.⁴ Because the district court deviated from the statutory formula, it was required to also make specific factual findings explaining the deviation. The district court must also consider the best interests of the child when modifying child support. The district court's order does not include factual findings regarding the statutory deviation or the best interests of the child. Therefore, we reverse and remand this issue to the district court for either written findings of fact to justify its decision to deviate from the statutory formula or redetermination of the amount of child support.


Ricky also argues that the district court should have ordered Dawn to repay Ricky's child support payments for K.W. beginning from the date that K.W. moved on May 30, 2017, instead of from the date that Ricky filed his motion to modify custody and reduce child support on July 26, 2017. Nevada law prohibits retroactive modification of a support order, but a court may modify a support obligation from the date the modification was requested. *Ramacciotti*, 106 Nev. at 532, 795 P.2d at 990. We conclude, therefore, that the district court did not abuse its discretion and properly applied the child support modification from the date that Ricky requested the modification.


⁴We note that the record on appeal supports the district court's implicit finding and remand only for the court to develop the statutorily required findings of fact.

Finally, Ricky argues that the district court was required to award him attorney fees and costs because he was the prevailing party. We review the denial of attorney fees for an abuse of discretion. *See Mack-Manley v. Manley*, 122 Nev. 849, 860, 138 P.3d 525, 533 (2006). While Ricky focuses on his presumed status as a prevailing party, under NRS 18.010 and NRS 18.020, the award of attorney fees and costs in a divorce or child custody proceeding is discretionary. *See* NRS 125.150(4); NRS 125C.250. Here, the district court determined that there was no prevailing party, and also found Ricky in contempt on several issues within Dawn's motion. Therefore, based on our review of the record, we cannot conclude that the district court abused its discretion in denying Ricky's request for attorney fees.⁵ *See Mack-Manley*, 122 Nev. at 860, 138 P.3d at 533.⁶ Accordingly, 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.


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

⁵Ricky argues that he is owed both attorney fees and costs on appeal. However, the district court's order only addresses attorney fees, not costs.

⁶Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Bridget E. Robb, District Judge
Margaret M. Crowley, Settlement Judge
Karla K. Butko
Fennemore Craig P.C./Reno
Berkich Lucey Law Group/Reno
Washoe District Court Clerk