IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL MARTIN,
Appellant,
vs.
STATE OF NEVADA DIVISION OF WELFARE AND SUPPORTIVE SERVICES; AND MARCELLA A. RICO,
Respondents.

No. 77795-COA

ORDER OF REVERSAL AND REMAND

Daniel Martin appeals from a district court order in a child support matter. First Judicial District Court, Carson City; James E. Wilson, Judge.

In the proceedings below, Daniel was ordered to pay child support to respondent Marcella Rico for their minor child pursuant to *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998). In November 2017, the district court entered an order approving the child support hearing master's findings and recommendations setting Daniel's child support at $396.00 per month plus an additional $20.00 per month toward the child's health insurance premium. In December 2018, the district court entered an order modifying child support following a hearing held in November 2018. Pursuant to the order, the district court found that Daniel's gross monthly income was $4,689.00, and the district court added an additional $2,250, representing Daniel's one-half community interest in his wife's gross monthly income, for a total gross monthly income of $6,939.00. The district court also found that Marcella's gross monthly income was $1,604.00. Accordingly, Daniel was ordered to pay Marcella $855.00 per

month in child support. Additionally, Daniel was ordered to pay $377.00 per month for the child's health insurance premium through his employer, but was not provided any offsets for this cost due to the disparity in the parties' incomes. This appeal followed.

On appeal, Daniel contends that the district court abused its discretion by modifying child support when there had been no change in circumstances; by including one-half of his wife's income in calculating his gross monthly income; and by requiring him to pay for the child's health insurance through his employer, when the cost is more than five percent of his gross income. In her responsive brief, Marcella asserts that the district court's child support order is proper.

This court reviews a child support order for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996); *see also Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013); *Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992) (explaining that in divorce proceedings, this court generally will uphold a district court decision that is supported by substantial evidence). Additionally, the district court must apply the correct legal standard in reaching its conclusion and no deference is owed to legal error. *See Davis v. Ewalefo*, 131 Nev. 445, 450-51, 352 P.3d 1139, 1142-43 (2015); *Williams*, 108 Nev. at 471, 836 P.2d at 617-18.

Pursuant to NRS 125B.145, the district court must review a child support order once every three years and may review a child support order at any time if there has been a change in circumstances. But the district court cannot modify a child support order unless it finds "that there

has been a change in circumstances since the entry of the order and the modification is in the best interest of the child." *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009). Here, the court entered a child support order in November 2017 and then modified that order in December 2018. However, the district court's order fails to make any findings regarding whether there had been a change in circumstances during that time and nothing in the record indicates whether a change in circumstances had occurred. Moreover, the district court's order states that the court will modify child support if it "determines, taking into account the best interests of the child, that modification or adjustment of the order is appropriate," suggesting that the court did not consider whether a change in circumstances occurred here as required under *Rivero*. *See id.* Thus, we necessarily must reverse and remand this matter for the district court to determine whether there has been a substantial change in circumstances, such that modification is warranted, and whether it is in the child's best interest to modify the child support obligation. *Id.*

Additionally, we note that even if modification were warranted here, the district court's order incorrectly includes one-half of Daniel's wife's income as part of Daniel's gross monthly income. *See Rodgers v. Rodgers*, 110 Nev. 1370, 1373-76, 887 P.2d 269, 271-73 (1994) (explaining that gross monthly income, for purposes of child support, does not include a remarried parent's community property interest in the new spouse's income, but noting that the income may be considered when determining whether a deviation is warranted pursuant to NRS 125B.080(9)). Thus, on remand, if the district court determines that there has been a change in circumstances and that it is in the child's best interest to modify child support, the court shall not consider Daniel's community property interest in his wife's income

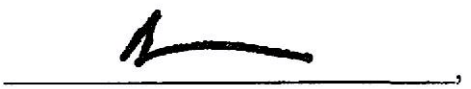
as part of Daniel's gross monthly income. However, the court may, if appropriate, consider this income in determining whether it is appropriate to deviate from the statutory child support amount. Similarly, if the district court determines modification is warranted on remand, the court must consider whether the cost of the child's health insurance premium is reasonable pursuant to NRS 125B.085.

Accordingly, we

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

_____, C.J.
Gibbons

_____, J.
Tao



_____, J.
Bulla

cc: Hon. James E. Wilson, District Judge
Daniel Martin
Attorney General/Carson City
Marcella A. Rico
Carson City Clerk