


IN THE SUPREME COURT OF THE STATE OF NEVADA

LOUIS JAY LEVIN,
Appellant,
vs.
SUSAN KAY LEVIN,
Respondent.

No. 41707

FILED

APR 25 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  RICHARD
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a post-decree order concerning child custody, child support, and attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

"Matters of custody and support of minor children rest in the sound discretion of the trial court."¹ When resolving custody issues involving joint physical custody, the district court only has to consider the child's best interest.² Additionally, "[i]t is presumed that a trial court has properly exercised its discretion in determining a child's best interest."³ This court will not disturb the district court's judgment absent a clear abuse of discretion.⁴ Here, the district court concluded that it was in the

¹Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

²Truax v. Truax, 110 Nev. 437, 874 P.2d 10 (1994).

³Wallace, 112 Nev. at 1019, 922 P.2d at 543.

⁴Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993).

children's best interest for respondent to have primary physical custody of the parties' minor children, with appellant having visitation.

As for child support, the district court ordered appellant to pay support in the amount of \$550 per month, 25% of his gross monthly income, based on appellant's representation regarding his monthly income of \$2,200. But if appellant did not provide respondent's attorney with proof of his income, then his child support obligation would be \$660.89 per month, or 25% of \$2,643.56, based on the proof of appellant's income for 2002 provided by respondent's attorney.

Under NRS 125B.070(1)(b), a non-custodial parent with two children is required to pay twenty-five percent of his or her gross monthly income, up to \$500.00 per month per child,⁵ for child support. At a minimum, a non-custodial parent is required to pay \$100.00 per month per child, unless the court makes a written finding that the non-custodial parent is unable to pay that amount under NRS 125B.080(4). Courts are given limited discretion to deviate from the formula in NRS 125B.070.⁶ Thus, it does not appear that the district court abused its discretion regarding appellant's child support obligation.


⁵125B.070(2).

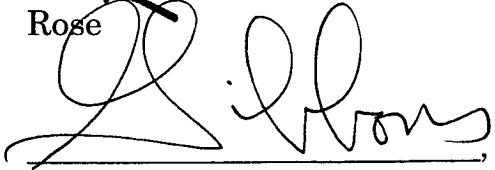
⁶Anastassatos v. Anastassatos, 112 Nev. 317, 320, 913 P.2d 652, 654 (1996); Westgate v. Westgate, 110 Nev. 1377, 1379, 887 P.2d 737, 738 (1994).

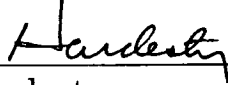
Finally, as for the award of attorney fees, we conclude that the district court acted within its sound discretion in awarding these fees.⁷

Having reviewed the record, we conclude that the district court did not abuse its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁷See Sprenger v. Sprenger, 110 Nev. 855, 878 P. 2d 284 (1994) (concluding that an award of attorney fees in divorce proceedings lies within the sound discretion of the district court).

⁸Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him.

In light of this order, we deny as moot appellant's August 27, 2004 motion for stay.

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Bruce I. Shapiro, Ltd.
Louis Jay Levin
Clark County Clerk