

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON JUDE RIOS,
Appellant,
vs.
CONSUELO MEDINA,
Respondent.

No. 42822

FILED

MAR 17 2005

ORDER OF AFFIRMANCE

JANE T. M. BLOOM
CLERK OF SUPREME COURT
BY J. M. P.
DEPUTY CLERK

This is an appeal from a district court order concerning child custody and visitation and from an order awarding attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Robert W. Lueck, Judge.

Appellant Aaron Jude Rios contends on appeal that the district court abused its discretion in (1) awarding respondent Consuelo Medina primary physical custody of the minor child, (2) permitting Medina to relocate to California, (3) ordering Rios to pay child support of \$1,500 per month for six months and then \$1,250 per month thereafter, and (4) awarding Medina \$15,000 in attorney fees. We disagree.

Standard of review

We presume that the district court properly exercised its discretion in determining the best interests of the child.¹ "Matters of custody and support of minor children of parties . . . rest in the sound discretion of the trial court, the exercise of which will not be disturbed on appeal unless clearly abused."² Although the parties to this lawsuit were

¹Culbertson v. Culbertson, 91 Nev. 230, 233, 533 P.2d 768, 770 (1975).

²Id.

never married, the same rules of law apply here as in a divorce proceeding dealing with child custody and support. Therefore, in reviewing the issues raised by the parties in the instant case, we review the district court's decisions for an abuse of discretion.

Primary physical custody award

Matters of custody rest in the sound discretion of the district court.³ We will not disturb the district court's judgment concerning child custody absent a clear abuse of discretion.⁴ Additionally, the district court is the proper forum for determining the issue of child custody based on the welfare of the child.⁵

In the instant case, the district court order recognized that both parties desired primary physical custody of the minor child. The district court awarded joint legal custody to both parties and primary physical custody to Medina. The district court found that Rios would have to leave the minor child in daycare because he regularly works fifty-five to sixty hours per week or more. Furthermore, the district court found that with Medina as primary custodian, Rios could focus on his work during the time that he did not have visitation and work less when the minor child was in his care.

The district court's findings are sound because Rios often had to work overtime and would not be able to spend as much time with the minor child as Medina would. Substantial evidence supports the district

³Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

⁴Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

⁵Culbertson, 91 Nev. at 233, 533 P.2d at 770.

court's decision.⁶ Accordingly, the district court did not abuse its discretion in granting Medina primary physical custody of the parties' minor child.

Medina's relocation to California

NRS 126.031(2)(a) provides for a presumption of primary physical custody with an unmarried mother when a court has not determined paternity. Therefore, if no father-child relationship had been legally established at the time a mother relocates from Nevada to another state, she need not seek permission to remove the child.⁷

In this case, Medina relocated to California with the minor child on December 4, 2002. This occurred two days before Rios filed his petition with the district court to determine paternity. Because Medina and Rios were not married and no court order established Rios' paternity, Medina did not need to file a petition with the district court for permission to relocate to California.

Child support award

NRS 125B.070 provides the applicable formula for determining the appropriate amount of child support. According to the statutory formula, the "obligation for support" for one child is 18 percent of the parent's gross monthly income.⁸ The statutory minimum award of child support is \$100 per month per child.⁹ The presumptive maximum

⁶See Flynn v. Flynn, 120 Nev. ___, ___, 92 P.3d 1224, 1229 (2004).

⁷NRS 126.031(2)(a).

⁸NRS 125B.070(1)(b)(1).

⁹NRS 125B.080(4).

award of child support is approximately \$750 per month for Rios' income category.¹⁰

“Although the district court has discretion in setting child support awards, it must act within the confines of the statutory scheme.”¹¹ Specifically, NRS 125B.080 allows the district court to deviate from the statutory formula set forth in NRS 125B.070 if it specifically finds facts justifying a deviation.¹² NRS 125B.080(9) sets forth twelve factors that the district court may use when adjusting the amount of child support. Additionally, the district court may use equitable principles in considering a deviation, as long as the deviation is based on at least one of the factors enumerated in NRS 125B.080(9).¹³

In 2002, Medina testified that she earned an approximate gross income of \$2,200 to \$2,400 per month as a Wal-Mart employee. However, after moving to California, Medina moved in with her mother and began looking for employment opportunities. In June 2003, Medina was unemployed and had no income. Rios, however, earned approximately \$150,000 per year as a district manager with Wal-Mart. Additionally, Rios did not object to the district court's award of child support during a hearing on his motion to reopen the case.

Under NRS 125B.080(9)(l) the district court may deviate from the child support payments based on the relative income of both parents.

¹⁰NRS 125B.070(2).

¹¹Jackson v. Jackson, 111 Nev. 1551, 1553, 907 P.2d 990, 991 (1995).

¹²NRS 125B.080(6),(9).

¹³Khaldy v. Khaldy, 111 Nev. 374, 376, 892 P.2d 584, 585 (1995).

Although the statutory maximum in NRS 125B.070(2) is \$750 per month, NRS 125B.070(1)(b)(1) states that child support for one child should be 18 percent of a parent's gross monthly income. The district court acknowledged that the statutory guideline for child support was \$750 per month in this case. However, the district court determined that an upward deviation was needed because Medina was unemployed and Rios earned \$150,000 per year. Substantial evidence supports the district court's decision. The district court awarded Medina child support in the amount of \$1,500 per month for the first six months and \$1,250 per month thereafter. Because the child support deviation was based upon the relative incomes of the parties, the district court did not abuse its discretion.

Attorney fees award

Rios contends the district court's \$15,000 attorney fees award to Medina lacks a statutory basis. Under NRS 126.171, a district court may award reasonable attorney fees in a paternity dispute. Rios' petition to the district court was to establish paternity. Medina's request for attorney fees was based on NRS 126.171. Accordingly, the district court had statutory authority for an attorney fees award.

A district court's attorney fees award will not be reversed absent an abuse of discretion.¹⁴ In this case, the district court awarded Medina \$15,000 in attorney fees in order to enable Medina to employ an attorney and be on the same level as Rios. The district court determined

¹⁴See Sprenger v. Sprenger, 110 Nev. 855, 861, 878 P. 2d 284, 288 (1994) (Although Sprenger involved a divorce proceeding, the standard of review is the same in paternity actions. The attorney fees award in a paternity action is within the sound discretion of the district court.).


that the attorney fees award was warranted based on NRS 126.171. The district court determined that other jurisdictions with statutes similar to NRS 126.171 have awarded attorney fees in similar circumstances.

Substantial evidence also supports the district court's attorney fees award. For example, the district court concluded that there was a large economic disparity between Rios and Medina. The district court also sought to allow Medina to have an attorney and meet Rios on an equal basis. Therefore, the award of attorney fees pursuant to NRS 126.171 was proper and within the district court's discretion.


CONCLUSION

We conclude that the district court did not abuse its discretion in awarding Medina primary physical custody of the minor child. The district court properly permitted Medina to relocate to California with the minor child. Further, the district court did not abuse its discretion in ordering Rios to pay \$1,500 per month for six months, then \$1,250 per month in child support, and \$15,000 in attorney fees because Rios earned \$150,000 per year and Medina was unemployed. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: District Judge, Family Court Division, Department E
Dickerson, Dickerson, Consul & Pocker
Smith Larsen & Wixom
Consuelo Medina
Clark County Clerk