IN THE SUPREME COURT OF THE STATE OF NEVADA

JAN TORRES,
Appellant,
vs.
GUY TORRES,
Respondent.

No. 49076

FILED

APR 09 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order modifying respondent's child support obligations. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie Jr., Judge.

FACTS AND PROCEDURAL HISTORY

In April 2003, the parties reached a divorce settlement, which was memorialized in a final divorce decree. That decree provided that respondent's child support obligation was $3,000 a month for the two minor children. The divorce decree also recognized that respondent was paying more than the statutory maximum and that the child support order "shall be reviewed at any time upon a showing of changed circumstances, or every three (3) years."

Three years after the parties' divorce decree was entered, respondent moved the district court to, among other things, reduce the amount of his child support obligation. Appellant opposed the motion. The district court found that it could review respondent's child support obligations under NRS 125B.145 and that there had been significant changes in the child support guidelines since the divorce decree was entered. Ultimately, the district court granted respondent's motion and

reduced his child support obligation to the statutory maximum. In consideration for reducing the amount of child support, the district court ordered respondent to pay all the medical, school, and extracurricular expenses for the minor children. This appeal followed.

DISCUSSION

On appeal, appellant contends, among other things, that the district court erred in modifying respondent's child support obligation because respondent's voluntary agreement to pay more than the statutory caps cannot be modified. Alternatively, appellant also claims that if the voluntary agreement to pay more than the statutory maximum is modifiable, it can only be modified up, not down to the statutory cap. Appellant further argues that modification down to the statutory cap is improper even though the district court ordered respondent to pay all the medical, school, and extracurricular expenses for the minor children because the children are in public school and there are very few extracurricular expenses. Respondent, however, asserts that the child support order is modifiable and that modification was proper considering that the district court also ordered respondent to pay all of the minor children's unreimbursed medical expenses, school tuition, and extracurricular activities.

A district court's order modifying child support is reviewed for an abuse of discretion. Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996). A settlement agreement that is ratified, approved, and incorporated into the divorce decree may be modified. Cf. Renshaw v. Renshaw, 96 Nev. 541, 611 P.2d 1070 (1980).

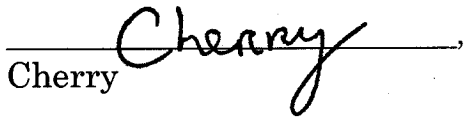
A motion seeking to modify child support may be based upon a parent's statutory right to have the order reviewed every three years or

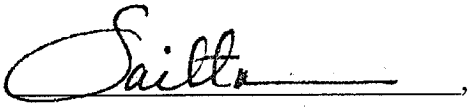
upon changed circumstances. NRS 125B.080(3); NRS 125B.145. Although a child support award may be modified pursuant to the statutory formula, "regardless of a finding of changed circumstances," Scott v. Scott, 107 Nev. 837, 840, 822 P.2d 654, 656 (1991), the district court must comply with the requirements of NRS 125B.070 and 125B.080 in modifying or adjusting a previous support order. NRS 125B.145(2)(b). Under NRS 125B.070, a child support obligation is based on the parents' financial condition. Thus, unless special circumstances exist, in establishing a child support award, the court "must focus exclusively upon the noncustodial parent's duty to pay a fixed percentage of income." Lewis v. Hicks, 108 Nev. 1107, 1114, 843 P.2d 828, 831-33 (1992). Further, when adjusting a child support sum, the court is mandated to consider various factors and is required to provide specific findings of fact that support a modification. NRS 125B.080(9); NRS 125B.145(2)(b).

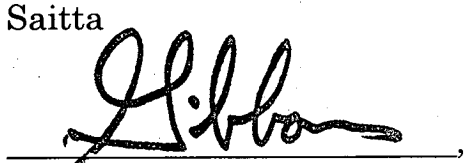
Having reviewed the parties' appellate arguments and the district court record in light of these principles, we conclude that the district court abused its discretion in modifying respondent's child support obligations. Although respondent's child support obligation is modifiable, the district court failed to make factual findings as to whether a reduction in respondent's child support obligation was in the children's best interests. NRS 125B.145(2)(b). And even though the district court's order suggests that modification was warranted because significant changes in the governing statutes had occurred since the divorce decree was entered, a legislative amendment is not an enumerated factor supporting a child support modification. NRS 125B.080(9). Further, it does not appear that the district court considered the factors set forth in NRS 125B.080. Accordingly, the portion of the district court order that modified

respondent's child support obligation must be reversed. We note that, because we have determined that the district court abused its discretion in reducing respondent's child support obligation, the district court's decision to modify the parties' obligations with respect to the children's expenses, which was made in consideration of its decision to reduce respondent's child support obligation, must also be reversed. Accordingly, we

ORDER the judgment of the district court, which reduced respondent's child support obligation and that ordered respondent to pay all the children's expenses, REVERSED.[1]


Cherry, J.


Saitta, J.


Gibbons

cc: Hon. T. Arthur Ritchie Jr., District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Randall J. Roske
Bruce I. Shapiro, Ltd.
Eighth District Court Clerk

[1]Because the parties did not challenge any other provision of the district court's order, our reversal pertains only to the district court's order regarding respondent's child support obligations and the children's expenses.