

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDA L. THOMPSON A/K/A
BRENDA L. DAY,
Appellant,
vs.
JOSEPH L. SMITH,
Respondent.

No. 52295

FILED

MAR 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Chop*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order modifying a child support award. Eighth Judicial District Court, Family Court Division, Clark County; Lisa M. Kent, Judge.

Appellant Brenda Thompson argues that the district court abused its discretion in reducing respondent Joseph Smith's child support obligations from \$10,399 per month to \$968 per month without making any findings as to whether the parties' circumstances had changed or whether the modification was in the child's best interests. We agree, and therefore reverse and remand to allow the district court to determine whether modification is warranted under the standard set forth in Rivero v. Rivero, 125 Nev. ___, 216 P.3d 213 (2009).¹

In Rivero, we clarified "the circumstances under which a district court may modify a child support order." Id. at ___, 216 P.3d at 219. We concluded that "the district court only has authority to modify a child support order upon finding that there has been a change in circumstances since the entry of the order and the modification is in the

¹We have recognized that Rivero applies retroactively. See Fernandez v. Fernandez, 126 Nev. ___, ___, 222 P.3d 1031, 1038 (2010).

best interest of the child.”² Id. at ___, 216 P.3d at 228. In evaluating these concerns, a district court must “make specific findings of fact supported by substantial evidence” as to whether a change in circumstances and the best interests of the child warrant modification. Id.

The party seeking modification bears the burden of showing that changed circumstances warrant modification.³ See Fernandez, 126 Nev. at ___, 222 P.3d at 1038 (“Rivero requires [the party seeking modification] to demonstrate changed circumstances.”). This requirement exists to prevent parties from filing “immediate, repetitive, serial motions until the right circumstances or the right judge allows them to achieve a different result, based on essentially the same facts” as the original child support order. Rivero, 125 Nev. at ___, 216 P.3d at 228 (quoting Ellis v. Carucci, 123 Nev. 145, 151, 161 P.3d 239, 243 (2007)).

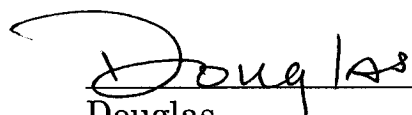
²We reject Smith’s contention that registered support orders, such as the registered California support order at issue in this case, are not subject to Rivero’s modification requirements. When a Nevada court takes jurisdiction of a support order issued in another state, it takes jurisdiction to modify the order, not to reestablish an initial support amount. NRS 130.611(2) provides that the “[m]odification of a registered child-support order is subject to the same requirements, procedures and defenses that apply to the modification of an order issued by a tribunal of this State.” See also NRS 130.303(1) (“[A] responding tribunal of this State . . . [s]hall apply the procedural and substantive law generally applicable to similar proceedings originating in this State.”).


³Smith also argues that he does not have to show changed circumstances because it has been more than three years since the entry of the initial support order. This argument is meritless. “[A]lthough a party need not show changed circumstances for the district court to review a support order after three years, changed circumstances are still required for the district court to modify the order.” Rivero, 125 Nev. at ___, 216 P.3d at 229.

Here, rather than requiring Smith to show why modification was warranted, the district court required Thompson to show why the child support obligation should not be modified. Likely as a result of this flawed approach, the district court failed to make specific findings on the record as to whether changed circumstances and the best interests of the child warranted modification.⁴ Accordingly, we conclude that the district court abused its discretion in modifying the child support order, and we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to determine whether modification is warranted under Rivero v. Rivero, 125 Nev. ___, 216 P.3d 213 (2009).


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

⁴Smith also argues that this court lacks the jurisdiction to decide this appeal because Thompson appealed from an interlocutory order. While Thompson's appeal from the August 6, 2008 order filed by the district court was premature, the subsequent entry of a final order on October 9, 2008 rendered jurisdiction in this court proper. NRAP 4(a)(6).

cc: Hon. Lisa M. Kent, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Bruce I. Shapiro, Ltd.
Willick Law Group
Eighth District Court Clerk