

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY COLEMAN,
Appellant,
vs.
LONA JOHNSON; AND CLARK
COUNTY DISTRICT ATTORNEY,
FAMILY SUPPORT DIVISION,
Respondents.

No. 52718

FILED

JUN 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal challenging a district court order concerning child support arrearages. Eighth Judicial District Court, Clark County; Gerald W. Hardcastle, Judge.

FACTS

In November 2002, appellant Anthony Coleman and respondent Lona Johnson had a child together; the parties never married. In 2004, the district court ordered Coleman to pay child support and provide health insurance coverage for the child, if available through his employer. In December 2007, Johnson filed a motion requesting that the district court order Coleman to provide medical insurance for the child and to reimburse Johnson for unreimbursed medical expenses, including the annual insurance deductible for the child.

With her request, Johnson submitted copies of several unpaid medical bills. From the billing, it appears that the parties' child received treatment at a hospital on September 23, 2004, January 6, 2005, and March 21, 2006. Johnson also submitted a bill for a hospital visit

pertaining to treatment provided to a "Xavier Cleveland"¹ and for Johnson's hospital treatment that she received when she delivered the parties' minor child in November 2002.

Subsequently, because Coleman had still not provided medical insurance for the child, the district court ordered Johnson to provide health insurance for the child and to provide proof of the insurance to respondent Clark County District Attorney's office within 90 days. Thereafter, a hearing master prepared recommendations regarding health insurance and unpaid medical expense arrears. Coleman objected to the monthly amount set for his share of the child's medical insurance premiums and the unpaid medical bills. The district court sustained Coleman's objection and remanded the matter to the hearing master to require that Coleman, among other things, pay only one-half of the child's medical insurance premiums and for the hearing master to correctly determine the unreimbursed medical arrears through March 21, 2008. Although Coleman again objected to the hearing master's revised recommendation following remand, the district court nonetheless approved it.

The district court order provides that Coleman is required to reimburse Johnson \$1,834, half of the unreimbursed medical expenses. The order further requires Coleman to reimburse Johnson \$62.50 for the monthly medical insurance premium that Johnson had paid for the child from December 1, 2002, through March 21, 2008. This figure was reached

¹The district court record does not reflect who this individual is, although it appears from the billing information that this individual is also covered under Johnson's health insurance plan.

based on Johnson's assertion that she paid \$250 a month in premiums. Using this information, the master divided \$250 in half to get \$125. Then, the master divided \$125 in half, which is \$62.50. Thus, the master recommended that Coleman pay \$62.50 for each month that Coleman did not carry insurance for the child, through March 21, 2008. Therefore, the total amount of arrears ordered by the district court was \$5,021.50. Coleman timely appealed this order.

DISCUSSION

On appeal, Coleman asserts that the district court erred in calculating the medical insurance premium and arrears because Johnson failed to submit evidence establishing the actual premium amount that she paid. Coleman further contends that the district court's order requiring him to reimburse Johnson for unpaid medical expenses is improper because the order requires him to reimburse Johnson for expenses that were incurred more than four years ago.

Pursuant to our directive, Johnson and respondent Clark County District Attorney Family Support Division filed responses to Coleman's proper person civil appeal statement. Johnson contends that the district court's order is proper. Clark County District Attorney argues that the district court order is proper because the district court is permitted to rely on Johnson's bald assertion regarding the premium amount that she paid on a monthly basis, contending that because the "Child Support Court also operates based on a lower standard of evidence, and is not bound by the strict rules of evidence that would apply in a criminal matter." Neither respondent addresses Coleman's argument regarding the improper calculation of medical expense arrears.

Standard of Review

The district court has wide discretion in all matters involving the care, custody, maintenance, and control of a minor child. Noble v. Noble, 86 Nev. 459, 470 P.2d 430 (1970), overruled on other grounds by Westgate v. Westgate, 110 Nev. 1377, 887 P.2d 737 (1994). Thus, the district court's order will not be disturbed absent an abuse of discretion. Noble, 86 Nev. at 464, 470 P.2d at 433. Substantial evidence in the appellate record must exist for this court to uphold a district court's factual findings. See Gibellini v. Klindt, 110 Nev. 1201, 1204, 885 P.2d 540, 542 (1994); see also Hermann Trust v. Varco-Pruden Buildings, 106 Nev. 564, 566, 796 P.2d 590, 591-92 (1990) ("Findings of fact of the district court will not be set aside unless clearly erroneous.").

Medical insurance premiums

The rules of evidence apply equally in all Nevada court proceedings, unless relaxed by a statute or procedural rule that applies to that specific situation. NRS 47.020. Further, NRS 52.235 requires that the original writing be provided when the proponent seeks to prove the writing's content. In reviewing claims of prejudice concerning errors in admitting evidence, the appellant must demonstrate from the record that the error substantially affected his or her rights. Hallmark v. Eldridge, 124 Nev. ___, ___, 189 P.3d 646, 654 (2008). To do this, based on the record, the appellant must show that "but for the error, a different result 'might reasonably have been expected.'" Id. (internal citation omitted).

Here, Johnson testified that she paid \$250 a month for health care coverage through her employer; Johnson failed, however, to provide the district court with any written documentation to support her assertion. The only documentation provided by Johnson, presumably to support her assertion, is a copy of the available health care plans offered

by her employer. In the list of health care plans, the only reference to the sum of \$250 concerns the family's annual deductible in a particular plan. The document does not support a finding that \$250 was the premium amount that Johnson paid.

Having considered the parties' arguments and the district court record, we conclude that the district court abused its discretion in arriving at its calculation of \$62.50 in monthly health insurance premiums because substantial evidence does not support this calculation. In particular, and contrary to the Clark County District Attorney's perception, the rules of evidence apply equally in all Nevada court proceedings. The Clark County District Attorney failed to provide any Nevada authority holding that Nevada's evidentiary rules are different in "child support court." Consequently, the best evidence rule applies in this matter, because Johnson was attempting to prove a writing's contents by secondary evidence. See One 1970 Chevrolet v. County of Nye, 90 Nev. 31, 518 P.2d 38 (1974). The best evidence rule requires that a party who is trying to prove the contents of a writing must generally produce the original document. Young v. Nevada Title Co., 103 Nev. 436, 744 P.2d 902 (1987). In the underlying proceedings, however, the district court merely relied on Johnson's bald assertion that she paid a specific amount each month for her health care premium.

Also, the formula used by the district court in calculating an approximate monthly health insurance premium is not supported by the record because it appears that, in 2004, Johnson carried health insurance coverage for more individuals than just herself and the child at issue, namely an Xavier Cleveland. Consequently, dividing the purported premium amount in half several times may not accurately reflect the

premium paid by Johnson for the parties' minor child. Thus, the district court erred in relying on Johnson's testimony to establish an estimate for the monthly premium amount owed by Coleman.² On remand, the district court shall establish the correct amount of the medical insurance premium attributable to the child and assess Coleman's responsibility for his share of the child's medical insurance premium.

Unreimbursed medical bills

Coleman also contends that the district court's order requiring him to reimburse Johnson for unpaid medical expenses is improper because he should not have to pay for expenses that were incurred more than four years ago.

A child's parents have the duty to provide the child with necessary maintenance, health care, education, and support. NRS 125B.020(1). Under NRS 125B.080(7), the parents are required to equally bear the expense of health insurance premiums and uncovered medical expenses. A child's father is also responsible for paying the mother's expenses incurred as a result of her pregnancy. NRS 125B.020(3). Reimbursement for these costs, however, is subject to a four-year statute of limitations, unless a written demand is mailed to the noncustodial parent's last known address. NRS 125B.050(1).

Here, in December 2007, Johnson requested reimbursement for unpaid medical expenses. The district court determined that Coleman

²We note that although the district court ordered the master to calculate arrears from December 2002 through March 2008, the master properly calculated the arrears from January 2004 forward, based on Johnson's December 2007 request for reimbursement, pursuant to NRS 125B.050.


was responsible for all the bills submitted by Johnson, including the November 2002 hospital delivery bill and a September 24, 2004, emergency room visit for Xavier Cleveland. The district court further found that the total for unpaid medical bills is \$3,668, so that Coleman's responsibility for his share is \$1,834.


Having reviewed the district court record, however, the district court's conclusion is not supported by the record, and the district court erred in not applying the four-year statute of limitations under NRS 125B.050(1). In particular, the few copies of medical bills that are contained in the district court record do not reflect that Johnson incurred out-of-pocket medical expenses of \$3,668. Further, the record does not support the district court's calculation because the district court erred by including in its calculation (1) a September 24, 2004, hospital bill for treatment rendered to Xavier Cleveland, not the subject child; (2) a duplicate bill for March 21, 2006, as there is no indication that the child was treated at the hospital twice during the same day; and (3) the November 2002 hospital bill because the record contains no evidence that Johnson complied with NRS 125B.050(1)'s tolling provision. Accordingly, we reverse the district court's judgment regarding its order of medical arrears.

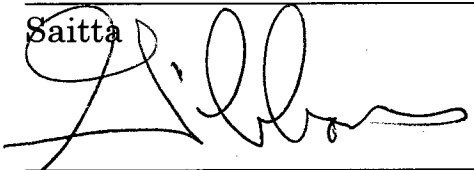
CONCLUSION

Because we have concluded that substantial evidence does not support the district court's factual findings, the district court abused its discretion in rendering its decisions on the amounts owed by Coleman for medical insurance premium arrears and unpaid medical expenses owed. Accordingly, we

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.³


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District
Hon. Gerald W. Hardcastle, Senior Judge
Anthony Coleman
Clark County District Attorney David J. Roger/Family Support
Division
Lona Johnson
Eighth District Court Clerk

³In light of this order, we deny as moot appellant's December 1,
2008, request for transcripts.