IN THE SUPREME COURT OF THE STATE OF NEVADA

NOEL L. TERRACINA,
Appellant,
vs.
DUSTIN A. HINDS,
Respondent.

No. 52959

FILED

NOV 06 2009

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order in a child custody and support proceeding. Eighth Judicial District Court, Family Court Division, Clark County; Sandra Pomrenze, Judge.

The parties divorced in 1999, and appellant was awarded primary physical custody of the parties' minor child. In September 2007, respondent moved the district court for primary physical custody and to enjoin appellant from relocating with the child out of state. Appellant opposed respondent's motion for a change in custody and moved the district court to, among other things, reduce respondent's child support arrears to judgment, increase respondent's child support obligation, and allow her to relocate to Ohio with the parties' minor child.

After an evidentiary hearing, the district court denied appellant's motion for relocation, reduced respondent's child support obligation for the last four years to judgment, and awarded interest but no penalty on the arrears. Appellant now challenges these district court rulings.

Relocation decision

Appellant contends that the district court improperly denied her request to relocate with the parties' child because all of the requisite factors were met.

Child custody matters rest in the district court's sound discretion, Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996), and this court will not disturb the district court's custody decisions absent a clear abuse of that discretion. Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993). This court nevertheless must be satisfied that the district court's determination was made for appropriate reasons. Id. We will not set aside the district court's factual findings in a custody matter if they are supported by substantial evidence. Ellis v. Carucci, 123 Nev. 145, 161 P.3d 239 (2007).

When a parent who is the minor child's primary physical custodian wishes to relocate with the child out of state and the noncustodial parent does not consent, the custodial parent may petition the district court for permission to move with the child. NRS 125C.200. In reviewing a petition to relocate, the district court first must determine whether the custodial parent wishing to leave Nevada demonstrates that she has a "'sensible, good-faith reason to move.'" Davis v. Davis, 114 Nev. 1461, 1466, 970 P.2d 1084, 1087 (1998) (quoting Trent v. Trent, 111 Nev. 309, 315, 890 P.2d 1309, 1313 (1995)). If the petitioning parent so demonstrates, the district court next must weigh the factors outlined in Schwartz v. Schwartz, 107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991), namely, whether (1) the move likely will improve the moving parent and child's quality of life; (2) the moving parent's motives are honorable; (3) the custodial parent will comply with the court's visitation orders; (4) the noncustodial parent's motives for resisting the move are honorable; and

(5) the noncustodial parent will have a realistic opportunity to exercise visitation, if the move is approved, so that the parent's relationship with the child will be adequately fostered.

Having considered the appellate record in light of the parties' arguments, we conclude that substantial evidence supports the district court's factual findings. In particular, the district court record reveals that while appellant had a good-faith reason for moving out of Nevada, it was not sensible as she was moving so that her boyfriend could be closer to his children, but appellant was effectively taking her child away from her father and extended family. Also, the move out of Nevada does not appear to provide an actual advantage to the child's life, and the child's best interest is served by remaining in Nevada. Further, the child has a strong bond with her father, which would be unnecessarily disrupted by a move out of state. Thus, we affirm this portion of the district court's order.

Child support arrears

Appellant argues that the district court abused its discretion in calculating respondent's child support arrears because the district court erred in applying a four-year statute of limitations and the district court abused its discretion when it refused to impose a penalty on the arrearages.

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. Id. A child's parents have the duty to provide the child with necessary maintenance, health care, education, and support. NRS 125B.020(1). A

court order directing the support of a child becomes a judgment by operation of law on or after the date a support payment is due. NRS 125B.140. When the court has issued a written order for child support, there is no limitation as to when a party may commence an action to collect the arrears. NRS 125B.050(3).

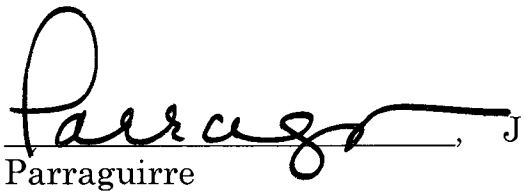
Under NRS 125B.095(1), "if an installment of an obligation to pay support for a child which arises from the judgment of a court becomes delinquent in the amount owed for 1 month's support, a penalty must be added by operation of this section to the amount of the installment." (Emphasis added.) The court must include the penalty in a computation of arrearages. Id. The penalty amount is ten percent per annum. NRS 125B.095(2).

Here, the parties' 1999 divorce decree ordered respondent to pay $400 a month for the support of the parties' child. After appellant moved the district court to reduce respondent's child support obligation to judgment, respondent countered that appellant had waived her right to the child support because she had told respondent not to worry about paying child support. The district court, however, found no waiver and that respondent had an obligation to pay child support. Thus, the district court assessed respondent's support arrears from October 2003 to October 2007. The district court refused to add a penalty to the arrearages.

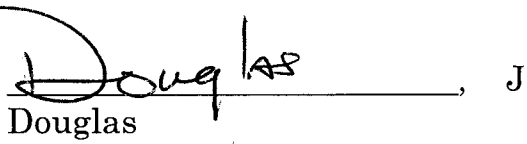
Having considered the parties' arguments and the appellate record, we conclude that the district court abused its discretion because it applied a four-year statute of limitations in contravention of NRS 125B.050(3) and when it refused to impose a penalty on respondent's child support arrears. Appellant is entitled to child support for all accrued arrears and a penalty for the nonpayment of arrears, as required

by NRS 125B.095. Thus, we reverse this portion of the district court's order regarding the calculation of respondent's child support arrears and for the imposition of a penalty pursuant to NRS 125B.095, and we remand this matter to the district court for further proceedings consistent with this order.

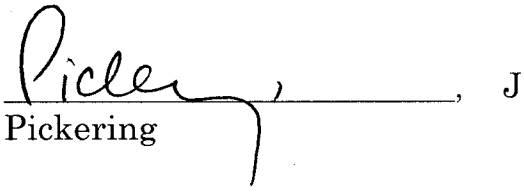
It is so ORDERED.[1]



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Eighth Judicial District Court Dept. E, District Judge,
Family Court Division
Abrams Law Firm, LLC
Kelleher & Kelleher, LLC
Eighth District Court Clerk

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[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.