

IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHLEEN ROLDAN-STIEGLER  
F/K/A KATHLEEN RODRIGUEZ,  
Appellant,  
vs.  
ANTONIO RODRIGUEZ,  
Respondent.

No. 53674

FILED

JUN 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Anderson*  
DEPUTY CLERK

ORDER AFFIRMING IN PART,  
REVERSING IN PART AND REMANDING

This is an appeal from a post-decree district court order concerning child support and visitation and awarding attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Sandra L. Pomrenze, Judge.

DISCUSSION

Appellant contends that the district court abused its discretion when it refused to consider appellant's untimely opposition, refused to allow appellant to argue against respondent's motion, and failed to consider appellant's countermotion, which was filed on the day of the district court hearing. Having reviewed the fast track statement, respondent's response, and the appendices on appeal, we conclude that the district court did not abuse its discretion on these points. See EDCR 2.20(c) (providing that the district court may consider the failure to file an opposition as an admission that the motion is meritorious); Browning v. Dixon, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998) (providing that the notice required under due process must be "reasonably calculated" to inform interested parties "of the pendency of the action and afford them

an opportunity to present their objections” (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

#### Children’s best interests

We further conclude that the district court did not abuse its discretion in clarifying the “right of first refusal” condition related to the parties’ visitation schedule. Matters of custody, including visitation, rest in the district court’s sound discretion. Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). NRS 125C.010(1) provides, in relevant part, that a party’s right of visitation must ensure that the children’s best interests are achieved. It is presumed that a trial court has properly exercised its discretion in determining the children’s best interests. Wallace, 112 Nev. at 1019, 922 P.2d at 543. Here, the record reveals that appellant wanted to pick the children up in the early morning hours if respondent exercised his right of first refusal. The district court found, however, that it was not in the children’s best interests to be awakened that early. Thus, we conclude that the district court did not abuse its discretion.

#### Child support

Regarding the modification to respondent’s child support obligation, we conclude that the district court abused its discretion in determining that the purported reduction in respondent’s income amounts to a 20-percent change in his gross monthly income and in calculating the support obligation owed by respondent. A district court’s order modifying child support is reviewed for an abuse of discretion. Wallace, 112 Nev. at 1019, 922 P.2d at 543. Here, it appears from the documents submitted by respondent in the district court that respondent failed to provide the district court with a copy of one of his September pay statements. Further, respondent’s documents demonstrate that, in addition to the two

regular paychecks received in October 2008, respondent received additional funds in October 2008 that do not appear to be included in the district court's calculation. Thus, the record does not clearly establish that respondent experienced a 20-percent decrease in his average monthly income.

We also conclude that the district court abused its discretion when it used an incorrect Wright calculation. Wright v. Osburn, 114 Nev. 1367, 1369, 970 P.2d 1071, 1072 (1998). To calculate respondent's new child support obligation, the district court subtracted appellant's gross monthly income from respondent's average gross monthly income and multiplied the result by the statutory formula. The Wright formula, however, requires the district court to take appellant's gross monthly income and multiply that number by the appropriate statutory formula, then take respondent's average gross monthly income and multiply that by the same statutory formula. Id. Under the Wright formula, the district court then must subtract the lower number from the higher number and the difference is the support obligation of the party with the higher income. Id. When the district court failed to utilize the proper Wright calculation, it abused its discretion.<sup>1</sup>

#### Attorney fees

Concerning the district court's award of attorney fees, we conclude that, in light of our decision to reverse and remand the issue of

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<sup>1</sup>Because we are reversing and remanding to the district court for further proceedings the issue of respondent's modified support obligation, we need not determine whether the district court abused its discretion when it failed to make findings of fact purportedly required by NRS 125B.080(6)(a).

respondent's modified support obligation to the district court for further proceedings, the award of attorney fees must also be reversed. See Baker v. Noback, 112 Nev. 1106, 1112, 922 P.2d 1201, 1204 (1996).

CONCLUSION

Because the district court did not abuse its discretion when it refused to consider appellant's untimely opposition, refused to allow appellant to argue against respondent's motion, failed to consider appellant's countermotion, and clarified the parties' right of first refusal, but the district court did abuse its discretion in determining that respondent experienced a 20-percent change in income and then in calculating respondent's modified support obligation, we

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

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division  
Carolyn Worrell, Settlement Judge  
Evans & Rivera-Rogers, Ltd.  
Antonio Rodriguez  
Eighth District Court Clerk