IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES E. SCHILLING,
Appellant,
vs.
CHANEL M. SCHILLING,
Respondent.

No. 56859

FILED

OCT 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

Under the terms of the divorce decree, the parties share joint physical custody of the parties' minor children. On appeal, appellant challenges the district court's decision to not award him child support. Specifically, appellant contends that the district court improperly imputed income to him under the Wright v. Osburn, 114 Nev. 1367, 1368-69, 970 P.2d 1071, 1072 (1998), framework.

In determining a child support obligation under the Wright v. Osburn framework, a district court may impute income to one party when that party "purposely earns less than his reasonable capabilities permit." Rosenbaum v. Rosenbaum, 86 Nev. 550, 554, 471 P.2d 254, 256-57 (1970); see also Barry v. Lindner, 119 Nev. 661, 670, 81 P.3d 537, 543 (2003) (upholding an income imputation when it was supported by substantial evidence). Appellant asserts two alternative grounds for why this imputation was improper: (1) he and respondent had previously agreed that he would retire after 25 years in the work force; or (2) he was forced to retire following a series of work-related mistakes.

Although appellant contends that he and respondent made an agreement wherein each would retire after 25 years of respective service as air-traffic controllers, the district court determined that any agreement the parties made concerning retirement did not encompass child support, and thus, did not absolve appellant of his support obligations. See NRS 125B.020(1) (concerning a parent's duty to provide child support); Rosenbaum, 86 Nev. at 554, 471 P.2d at 256-57; Barry, 119 Nev. at 670, 81 P.3d at 543. And while appellant alternatively contends that he was forced to retire, the only evidence supporting that contention is his doctor's recommendation to not immediately return to work after appellant's final work-related mistake. Absent evidence suggesting that appellant was incapable of working as an air-traffic controller in the near future, the district court was within its discretion to conclude that appellant was not forced to retire.[1] Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (recognizing that child support matters are within the district court's discretion).

Having considered the parties' arguments on appeal and reviewed the record, we perceive no abuse of discretion in the district court's decision to impute to appellant a gross income comparable to that of respondent's for purposes of making the Wright v. Osburn calculation.

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[1]Relying on Wheeler v. Upton-Wheeler, 113 Nev. 1185, 946 P.2d 200 (1997), appellant also suggests that the district court should have awarded him child support as punishment for respondent's alleged marital misconduct. Wheeler dealt with unequal distribution of community property and is therefore inapplicable to child support cases. Id. Namely, in a Wheeler scenario, the party suffering the consequence of the unequal property distribution is the wrongdoer him/herself. Id. In appellant's proffered scenario, those suffering the consequence of what would amount to a decrease in financial support would be appellant's own children.

Cf. NRS 125B.020(1) ("The parents of a child . . . have a duty to provide the child necessary maintenance, health care, education and support."); In re Marriage of Stephenson, 46 Cal. Rptr. 2d 8, 14 (Ct. App. 1995) (imputing income to a parent who chose to retire early); Osborne v. Osborne, 497 S.E.2d 113, 117 (N.C. Ct. App. 1998) (same). We therefore ORDER the judgment of the district court AFFIRMED.

Saitta, J.
Saitta

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
Glenn C. Schepps
Pecos Law Group
Eighth District Court Clerk