

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON CASTLEFORTE,
Appellant,
vs.
JACLYN SPENCER,
Respondent.

No. 57025

FILED

DEC 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court post-judgment order concerning child custody, child support, and attorney fees in an action that established paternity. Eighth Judicial District Court, Family Court Division, Clark County; Robert Teuton, Judge.

Having considered the parties' appellate arguments and the district court record, we conclude that appellant's arguments do not warrant reversal of the district court's order. First, the district court did not abuse its discretion in modifying the parties' joint physical custody arrangement by awarding respondent primary physical custody of the parties' child for the school year and conditioning the parties' exercise of joint physical custody during the summer months on specific terms. See Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (providing that this court reviews district court child custody decisions for an abuse of discretion). The district court found that the child's best interest would be served by modifying custody because appellant was inconsistent in taking the child to school, which negatively impacted her ability to receive appropriate and necessary therapeutic interventions. Those findings are supported by substantial evidence in the record. See

Rivero v. Rivero, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009) (providing that when a party seeks to modify a joint physical custody arrangement, the party must demonstrate that the child's best interest is served by the modification); Truax v. Truax, 110 Nev. 437, 438-39, 874 P.2d 10, 11 (1994) (same). As the district court's modification to the parties' child custody arrangement is supported by substantial evidence, we affirm that portion of the district court's order. Gepford v. Gepford, 116 Nev. 1033, 1036, 13 P.3d 47, 49 (2000) (explaining that a district court's factual findings will be upheld if supported by substantial evidence in the record).

Second, we conclude that the district court did not abuse its discretion in modifying appellant's child support obligation. See Wallace, 112 Nev. at 1019, 922 P.2d at 543 (providing that this court reviews district court child support orders for an abuse of discretion). When the district court modified the parties' joint physical child custody arrangement by awarding respondent primary physical custody, it also recalculated appellant's child support obligation. This was not an abuse of discretion in light of the change in physical custody. See Rivero, 125 Nev. at 436, 216 P.3d at 231 (explaining how to calculate child support when one party has primary physical custody and the other visitation). Even though the district court's order allows the parties to exercise what amounts to joint physical custody during the summer months, provided certain conditions are met, that custody designation does not require the application of the Wright v. Osburn formula for those months. 114 Nev. 1367, 970 P.2d 1071 (1998); see Rivero, 125 Nev. at 427, 437, 216 P.3d at 225, 232 (providing that the minimum threshold to qualify a child custody arrangement as joint physical custody is met when each parent has physical custody of the child for 40 percent of the time, which is calculated


over one year; providing that the Wright formula applies to calculate child support when the parties have joint physical custody).

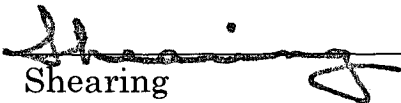
Third, to the extent that appellant is challenging the district court's denial of appellant's request for attorney fees, we conclude that the district court did not abuse its discretion. See Miller v. Wilfong, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005) (reviewing a district court's award of attorney fees for an abuse of discretion).

Based on the discussion above, we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Pickering


_____, Sr. J.
Rose


_____, Sr. J.
Shearing

cc: Hon. Robert Teuton, District Judge, Family Court Division
Jason Castleforte
Jillian M. Tindall
Eighth District Court Clerk

¹The Honorable Robert E. Rose and the Honorable Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.