IN THE SUPREME COURT OF THE STATE OF NEVADA

NATHANIEL EDMANDS,
Appellant,
vs.
ALISSA EDMANDS,
Respondent.

No. 58764

FILED

NOV 16 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

This is a fast track appeal from a district court divorce decree. First Judicial District Court, Carson City; James E. Wilson, Judge.

On appeal, appellant challenges the district court's child custody designation, the spousal support award to respondent, the finding of marital waste, and the refusal to allow him to deduct his share of the cost of the children's extracurricular activities from his child support payment. We address each of these arguments in turn.

CHILD CUSTODY

Appellant first contends that the child custody arrangement established in the divorce decree was mischaracterized as one giving primary physical custody of the parties' two minor children to respondent rather than joint physical custody to both parties. Respondent disagrees.

In Rivero v. Rivero, this court established guidelines for determining physical custody arrangements, and held that "each parent must have physical custody of the child at least 40 percent of the time to constitute joint physical custody." 125 Nev. 410, 425-26, 216 P.3d 213, 224 (2009). We further stated that primary physical custody focuses on the child's residence, and that the primary physical custodian is the parent

with "the primary responsibility for maintaining a home for the child and providing for the child's basic needs." Id. at 428, 216 P.3d at 226. Having reviewed the record, we conclude that the district court's characterization of the time share as primary physical custody in favor of respondent was not an abuse of discretion. See Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (recognizing that child custody matters rest in the district court's sound discretion).

SPOUSAL SUPPORT

Appellant next challenges the district court's award of spousal support. The district court awarded spousal support to respondent for approximately ten years in the following amounts: $3,000 per month through May 2013; $2,800 per month through May 2015; $2,600 per month through May 2017; $2,400 per month through May 2019; and $2,200 per month through May 2021. Appellant argues that the spousal support award was excessive and that his request for a five-year term of spousal support in the amount $1,700 per month for the first three years and $1,200 per month for the following two years, was more reasonable. Appellant argues that the district court erred in failing to find that respondent was willfully underemployed and in failing to impute income to her. Appellant asserts that respondent has a college degree and a history of earning a substantial income in the securities industry between 1994 and 2001, that her part-time dog training business has an average gross monthly income of only $529.28, and that she has no intention of seeking additional employment or education. Respondent contends that she is not willfully underemployed because she and appellant made a mutual decision that she would not work outside the home, but would home-school and raise their two children over the past several years.

When granting a divorce, the district court "[m]ay award such [spousal support] to the wife or to the husband, in a specified principal sum or as specified periodic payments, as appears just and equitable." NRS 125.150(1)(a). The district court has wide discretion in determining spousal support issues, and this court will not disturb the district court's award of spousal support absent an abuse of discretion. See Wolff v. Wolff, 112 Nev. 1355, 929 P.2d 916 (1996). NRS 125.150(8) sets forth various factors that the court may consider when awarding spousal support, including: the spouses' respective financial conditions; the duration of the marriage; each spouses' income, earning capacity, age, and health; the standard of living during the marriage; the recipient spouse's career before marriage; the marketable skills obtained by either spouse during the marriage; and the contribution of either spouse as a homemaker. We have held that in marriages of significant length, spousal support serves the purpose of narrowing any large gaps in the post-divorce earning capacities of the parties and to allow the recipient party to live as closely as possible to the station in life enjoyed during the marriage. Shydler v. Shydler, 114 Nev. 192, 198-99, 954 P.2d 37, 40 (1998).

Here, the district court found that respondent spent the past ten years as a mother and homemaker, and now, at the age of 40, has limited earning potential. The court stated its intent to give respondent time to obtain additional education or training, and to maintain a standard of living close to that enjoyed by the parties during the marriage. The district court further found that the spousal support constituted less than 20 percent of appellant's 2010 earnings and was intended in part to compensate respondent for appellant's career asset. Having reviewed the

record, we conclude that the spousal support ordered by the district court was supported by the record and not an abuse of discretion.

MARITAL WASTE

Appellant next contends that the district court abused its discretion in finding that appellant committed marital waste in the amount of $63,832.94 and in making an unequal distribution of the community property for that amount in respondent's favor. Respondent argues that the amount of marital waste is supported by appellant's own exhibit concerning the nature and amount of the waste claim.

NRS 125.150(1)(b) provides that while the district court must make an equal disposition of community property to the extent practicable, it may make an unequal distribution if it finds, and states in writing, compelling reasons for doing so. We have recognized that unauthorized gifts of community property may constitute a compelling reason for an unequal disposition. Putterman v. Putterman, 113 Nev. 606, 608, 939 P.2d 1047, 1048 (1997).

Having reviewed the record, we conclude that although appellant's share of the community property should be offset by community funds spent on his new girlfriend, Ms. Carden, the amount of waste found is not supported by the record. Appellant presented the district court with credible evidence that the $63,832.94 in waste found by the district court should have been offset by the following amounts: (1) the amount of $9,685.41 in community credit card debt that appellant spent on Ms. Carden, but then was assumed by him as his separate credit card debt in the divorce decree; (2) the amount of $11,700 received by appellant when the parties evenly divided their savings account in March 2010, after their separation, which appellant argued was essentially his

separate property and could be spent on Ms. Carden without reimbursing the marital estate; and (3) the amount of $6,666 that appellant loaned to Ms. Carden, but was repaid during the marriage. Accordingly, we reverse the divorce decree as to the amount of waste found by the district court, and remand this matter to the district court to reconsider the amount of marital waste in light of our order.

EXTRACURRICULAR ACTIVITIES

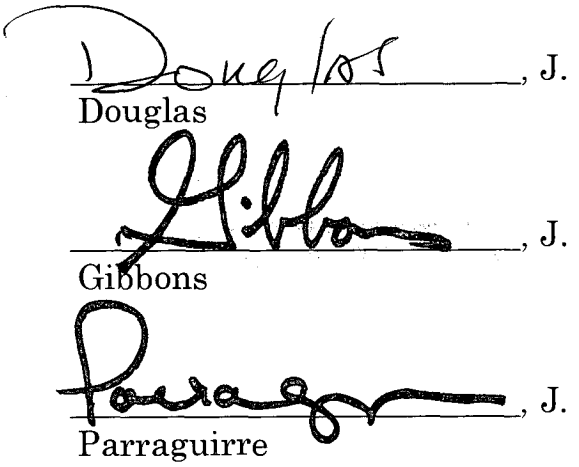
Appellant next contends that the district court abused its discretion when it amended the divorce decree to include a provision ordering him to pay one-half of the expenses for the children's extracurricular activities in addition to his child support payment. Essentially, appellant sought a downward deviation in his statutory child support obligation for his share of these expenses. Appellant argues that the court allowed the downward deviation in the temporary support orders and heard no argument or evidence justifying the change.

This court reviews a child support order for an abuse of discretion. See Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). NRS 125B.080(9) sets forth several factors the court may consider in deviating from the statutory child support formula, including the needs of the children. Having reviewed the record, we conclude that the district court did not abuse its discretion in ordering appellant to pay one-half of the children's extracurricular activities expenses in addition to his statutory child support.

For the reasons set forth above, we affirm the portions of the divorce decree granting respondent primary physical custody, awarding spousal support, and ordering appellant to pay for one-half of the children's extracurricular activities. We reverse the divorce decree as to

the amount of marital waste, and we remand this matter to the district court for further proceedings consistent with this order.

It is so ORDERED.[1]



Douglas, J.

Gibbons, J.

Parraguirre, J.

cc: Hon. James E. Wilson, District Judge
Shawn B. Meador, Settlement Judge
Jonathan H. King
Kathleen B. Kelly
Carson City Clerk

[1]We conclude that this appeal shall be submitted on the fast track briefs and appellate record, without any further briefing or oral argument. See NRAP 3E(g)(1); NRAP 34(f)(1).