

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WARHOLAK,

Appellant,

vs.

DEBRA WIDRIG,

Respondent.

No. 35431

FILED

AUG 09 2001

JANETTE M. BLOOM
CLERK OF THE COURT
DEPUTY CLERK

ORDER OF REMAND WITH INSTRUCTIONS

This is an appeal from an order of the district court determining child support.

Appellant Michael Warholak and respondent Debra Widrig were never married, but lived together for ten years. They have two children. Warholak and Widrig separated in April 1999, and have since attempted to divide the property and debts and establish custody and child support. During mediation, the parties stipulated to joint legal and physical custody of the children, but the child support issue remained unresolved.

Therefore, on October 25, 1999, the district court held a hearing regarding child support. The district court concluded that an upward deviation from the statutory formula for child support was warranted, and Warholak was ordered to pay child support in the amount of \$1,450.00 per month. Due to the joint custody arrangement, Widrig was also ordered to pay Warholak \$450.00 per month in child support. The court offset the amounts and concluded that Warholak was required to pay a net \$1000.00 per month in child support to Widrig. Warholak filed this timely appeal.

The district court's discretion in setting child support awards is limited to the confines of the present

statutory scheme.¹ Furthermore, a district court has "limited discretion to deviate from child support guidelines set forth in NRS 125B.070."²

Warholak contends that the trial court did not enter specific findings of fact sufficient to justify its deviation from the statutory child support formula. Widrig contends, however, that the district court properly identified the statutory factors used for the statutory deviation. We agree with Warholak that the findings of fact in this case were insufficient to justify a deviation.

NRS 125B.070 sets a parent's obligation for support of two children at the lesser of \$500.00 per child or 25 percent of that parent's gross monthly income.³ NRS 125B.080 allows the district court to deviate from the statutory formula set forth in NRS 125B.070 if the court specifically finds facts justifying a deviation.⁴ Specifically, NRS 125B.080(6) provides:

If the amount of the awarded support for a child is greater or less than the amount which would be established under the applicable formula, the court shall: (a) set forth findings of fact as to the basis for the deviation from the formula; and (b) Provide in the findings of fact the amount of support that would have been established under the applicable formula.

Additionally, NRS 125B.080(9) sets forth twelve factors that the district court may use when adjusting the amount of child

¹See Lewis v. Hicks, 108 Nev. 1107, 1111-112, 843 P.2d 828, 831 (1992).

²Love v. Love, 114 Nev. 572, 579, 959 P.2d 523, 528 (1998) (citing Anastassatos v. Anastassatos, 112 Nev. 317, 320, 913 P.2d 652, 654 (1996)).

³See NRS 125B.070(1)(b).

⁴See NRS 125B.080(6) and (9); Jackson v. Jackson, 111 Nev. 1551, 907 P.2d 990 (1995).

support, which includes "[t]he relative income of both parents."⁵ This court has previously construed this statutory provision to include such things as "relative standard of living and financial circumstances."⁶ Furthermore, this court has acknowledged that an increase or reduction in the formula amount should be supported by written findings of fact and a statement of reasons.⁷

In this case, the district court deviated upward from the father's statutory obligation of \$750.00 representing 25% of his gross monthly income. In doing so, NRS 125B.080(6) required that the district court "set forth findings of fact as to the basis for the deviation." The general factors listed by the district court are not sufficient as findings of fact to support its deviation. The record does not reflect how the district court concluded that Warholak's obligation would amount to \$1,450.00. Given the state of the record, we cannot determine, without speculating, the basis for the district court's deviation. While this court may, at times, infer findings from the record, such an inference is not possible from the record before us.

We conclude that the district court's findings of fact are inadequate to satisfy the statutory requirement that supports the basis for the deviation from the statutory child support formula. Therefore, we remand this case to the

⁵NRS 125B.080(9)(1).

⁶Rodgers v. Rodgers, 110 Nev. 1370, 1374, 887 P.2d 269, 272 (1994).

⁷See Barbagallo v. Barbagallo, 105 Nev. 546, 552, 779 P.2d 532, 536-37 (1989).

district court to make specific findings of fact and conclusions of law with regard to any deviation.

Young J.
Young

Leavitt J.
Leavitt

Becker J.
Becker

cc: Hon. T. Arthur Ritchie, Jr., District Judge,
Family Division
Philip Beuth
Manos & Michaelides
Clark County Clerk