IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYAN PAUL BROOKS,
Appellant,
vs.
AMY KARISA BROOKS,
Respondent.

No. 71113

FILED

JUN 29 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Bryan Paul Brooks appeals from a district court order modifying child support. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

Bryan and Amy Brooks have joint legal and physical custody of their minor child. Both parties sought modification of their respective child support obligations. After a motion hearing, the district court increased Bryan's child support obligation.[1]

This court reviews district court orders regarding child support for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). "Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error . . . ." *Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1142 (2015) (citing *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010)).

The district court based its child support calculations on Bryan's gross income of $8,140 per month and Amy's gross income of $1,666 per month. The district court, using the procedure articulated in

[1]We do not recount the facts except as necessary to our disposition.

Wright v. Osburn,[2] determined that Bryan's child support would have been $1,165 without the statutory cap, and set his support at $885 per month, which the district court believed was the statutory cap amount. However, the statutory cap amount for Bryan's gross monthly income was $819. *See* Memorandum from the Office of Court Administrator on Presumptive Maximum Amounts of Child Support (Mar. 22, 2017); *see also* NRS 125B.070(3) (requiring the Administrative Office of the Courts to adjust the presumptive maximum child support amounts and to notify the district courts annually). Therefore, we conclude the district court erred by setting child support at $885 per month.[3] *Cf. Kirkpatrick v. Temme*, 98 Nev. 523, 527, 654 P.2d 1011, 1014 (1982) (holding that a computational error is a clerical error).

Additionally, the district court erred when considering whether a deviation from the child support formula was appropriate. First, it is unclear from the order whether the district court used the correct methodology. Because the parties have joint physical custody, the district court should have applied the *Wright v. Osburn* offset, using only Amy's and Bryan's incomes, and then applied the statutory cap. *See Wesley v. Foster*, 119 Nev. 110, 113, 65 P.3d 251, 253 (2003) (holding that the offset is to be applied before the statutory cap); *Rodgers v. Rodgers*, 110 Nev. 1370, 1373-74, 887 P.2d 269, 271-72 (1994) (holding that only the parties' incomes can be used in calculating the child support formula pursuant to NRS 125B.070).

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[2]114 Nev. 1367, 970 P.2d 1070 (1998).

[3]It appears that the district court simply misread the child support chart, as the $885 figure is directly below the $819 figure in that chart.

The district court may then consider the factors enumerated in NRS 125B.080(9) to determine whether deviation is appropriate. *See Wesley*, 119 Nev. at 113, 65 P.3d at 253; *Rodgers*, 110 Nev. at 1374, 887 P.2d at 272. One of the enumerated factors is the relative income of the parties, which includes the parties' community interest in their current spouses' incomes. NRS 125B.080(9)(l); *see Rodgers*, 110 Nev. at 1374-76, 887 P.2d at 272-73 (holding that a party's community interest in their spouse's income can be considered when determining whether a deviation is warranted pursuant to NRS 125B.080(9)(l)).

But even if the district court applied the correct methodology, it erred because it considered the entire income of the parties' spouses when determining whether to deviate from the statutory formula.[4] Instead, it should have considered only the parties' community interest in their respective spouses' incomes.[5] *Rodgers*, 110 Nev. at 1374-76, 887 P.2d at 272-73; *cf. Frazier v. Drake*, 131 Nev. ___, ___, 357 P.3d 365, 373 (Ct. App. 2015) (concluding that a district court committed legal error by not following caselaw).

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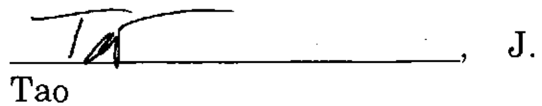
[4]We have reviewed the parties' other arguments and find them unpersuasive.

[5]Given the disposition of this case, we deny Amy's request for attorney fees. Additionally, this court need not even consider the request because it is not supported by citation to any relevant legal authority. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

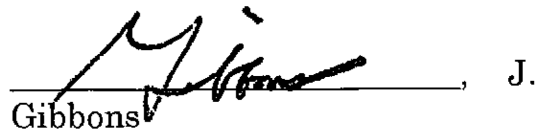
Accordingly, we

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

_________________, C.J.
Silver



_________________, J.
Tao



_________________, J.
Gibbons

cc: Hon. William S. Potter, District Judge
Ara H. Shirinian, Settlement Judge
Pintar Albiston LLP
Pecos Law Group
Eighth District Court Clerk