

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANE M. B.,  
Appellant,  
vs.  
STATE OF FLORIDA; REBECCA E. W.,  
MOTHER; AND C. AND D. B., MINOR  
CHILDREN,  
Respondents.

No. 36683

FILED

AUG 21 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court establishing paternity and a child support obligation.

In April 1999, respondent State of Florida and respondent Rebecca E. W., a Florida resident who was receiving public assistance for two minor children, filed in the Nevada district court and served appellant Shane M. B., a Nevada resident, with a Uniform Support Petition seeking to establish paternity of the two children and for child support. Under Nevada's Uniform Interstate Family Support Act, when a Nevada court receives a petition from another state to establish paternity and child support, the Nevada court may determine parentage, order child support, order the withholding of income, determine the amount of arrears and specify the method of payment.<sup>1</sup> Accordingly, we conclude that the district court had jurisdiction to (1) order appellant to submit to genetic testing, (2) determine the child support obligation and arrears, and (3) order appellant to pay the paternity test costs.

As to the issue of paternity, the record reveals that appellant was given numerous opportunities to submit to genetic testing, but declined to do so. When a party refuses to submit to genetic testing for the purpose of establishing parentage, "the court may presume that the result

<sup>1</sup>See NRS 130.305(2)(a), (c) and (d).

of the test would be adverse to the interests of that party."<sup>2</sup> Accordingly, we conclude that the district court properly presumed appellant to be the minor children's father.

After the district court declared appellant the children's father, the court ordered appellant to pay child support in the amount of \$468.75 per month. During the August 7, 2000 hearing, evidence was admitted that established appellant's projected income, upon his release from prison, at \$1,875.00 per month. The obligation for child support for two children is, by statute, determined based on 25% percent of the parent's gross monthly income.<sup>3</sup> Twenty-five percent of \$1,875.00 is \$468.75. Additionally, the district court entered a judgment for \$2,401.00 for arrears. This amount includes the amount of support determined from February 2000 to August 2000, and the \$126.00 costs associated with the genetic testing. Appellant was ordered to pay \$46.00 per month toward the judgment, and wage withholding was ordered. Interest on the judgment was waived based on undue hardship. Under NRS 125B.140(1)(a), a payment for child support becomes a judgment as a matter of law on the date it is due. Accordingly, we conclude that the district court did not abuse its discretion when it ordered appellant to pay the statutory child support obligation and arrears.

Finally, the order directed appellant to pay retroactive child support beginning on February 1, 2000, the date of his release from prison. A parent has a duty to provide for the necessary maintenance, health care, education, and support of his or her child.<sup>4</sup> A non-marital child has the right to be supported to the same extent and in the same manner as a

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<sup>2</sup>NRS 126.121(2).

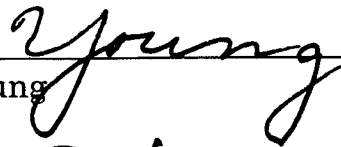
<sup>3</sup>NRS 125B.070(b)(2).

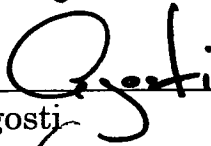
<sup>4</sup>NRS 125B.020; NRS 425.350(1).

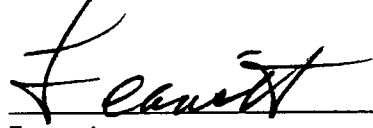
child born during a marriage.<sup>5</sup> Accordingly, we conclude that the district court did not abuse its discretion when it ordered child support retroactive to the date of appellant's release from prison.<sup>6</sup>

Based on the foregoing discussion, we conclude that the district court did not abuse its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. David R. Gamble, District Judge  
Carson City District Attorney  
Shane M. B.  
Carson City Clerk

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<sup>5</sup>See 14 C.J.S. Children Out-of-Wedlock § 40 (1991); see also 41 Am. Jur. 2d Illegitimate Children § 91 (1995) (explaining that under the Equal Protection Clause of the Fourteenth Amendment, a state law may not permit natural born children of a marriage to judicially enforce the right to support from their father, and at the same time deny that right to children born out of wedlock).

<sup>6</sup>See Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (noting that matters of child support are within the discretion of the district court).