IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RYAN PATRICK DAVIS,
Appellant,
vs.
KELLY L. HIGGINS,
Respondent.

No. 66683

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court post-divorce-decree order imposing a child support obligation and reducing child support arrearages to judgment. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

When the parties divorced, they agreed to joint physical custody with an equal timeshare. Appellant Ryan Patrick Davis would have been entitled to child support under the statutory formula, but he waived that right, and no child support was ordered at that time. A little over three years later, respondent Kelly L. Higgins moved to modify the child support order, arguing both that her gross monthly income had decreased and that she now had physical custody of the children full time.

Rather than proceeding pro se or through a private attorney, Higgins filed the motion through the Douglas County District Attorney's Office, Child Support Division (the Division). Davis opposed the motion, primarily arguing that the Division lacked standing to file it insofar as Higgins was neither receiving, nor eligible for, public assistance and the

action was not one for enforcement of an existing order. Davis also opposed having the matter heard by a hearing master on similar grounds.

The hearing master considered the motion and opposition and, without specifically making findings as to Davis's objections, concluded that jurisdiction was proper. The hearing master further recommended modifying child support based on Higgins having primary physical custody, and the district court affirmed the hearing master's recommendation over Davis's objections. This appeal followed.

The Division's standing

On appeal, Davis argues that the district court erred in finding both that the Division had standing to file the motion and that the hearing master had jurisdiction to consider the motion because the children were not receiving public assistance, he had not violated the existing child support order, and the granting of the motion would not relieve the State of any financial obligation to Higgins or the children. He further contends that there must be some nexus between a motion filed by the Division and Nevada's child support enforcement program codified in NRS Chapter 425. In its response to Davis's appeal statement, the Division asserts that it had standing to file the motion to modify child support based on NRS 125B.150(1), without regard to NRS Chapter 425.[1]

NRS 125B.150(1) provides that a district attorney "shall take such action as is necessary to establish parentage of the child and locate and take legal action, including the establishment or adjustment of an obligation of support, against a person who has a duty to support the child when requested to do so by the parent." The language of NRS 125B.150(1) is

[1]The Division filed its response at the direction of this court.

mandatory, requiring action on the part of the Division upon a parent's request. *See* NRS 0.025(d) (providing that, except as otherwise provided or required by context, "'[s]hall' imposes a duty to act"). Moreover, nothing in NRS 125B.150 places any express restrictions on when a parent may request the assistance of the Division under that statute. *See generally* NRS 125B.150.

Although the Nevada Supreme Court previously concluded in *Hedlund v. Hedlund*, 111 Nev. 325, 326-27, 890 P.2d 790, 791 (1995), that NRS 125B.150(1) did not authorize a district attorney to move to modify a support payment when the obligor parent was current on his or her support obligation, the statute's language was different at that time. And the statute was amended after *Hedlund* was issued to remove references to nonsupporting parents and to add language authorizing a district attorney to seek a modification of a child support obligation. *See* 1995 Nev. Stat., ch. 633, § 1, at 2415. Importantly, the language regarding a district attorney's authority to seek a modification of support was added in direct response to *Hedlund*, so that there would "be no misunderstanding of the district attorneys' ability to provide these services." Hearing on A.B. 621 Before the Assembly Committee on the Judiciary, 68th Leg. (Nev., June 2, 1995) (Testimony of Myla Florence, Administrator, Nevada Department of Health and Human Services Welfare Division).

Further, following *Hedlund* and the amendment of NRS 125B.150(1), the Nevada Supreme Court expressly rejected the argument that a parent seeking the assistance of the Division must have received or be receiving public assistance on behalf of the child to be eligible to proceed under NRS 125B.150(1). *See Jefferson v. Goodwin*, 113 Nev. 431, 434, 934 P.2d 264, 266 (1997). And nothing in *Jefferson* requires that any particular

conditions be met for the Division to proceed under NRS 125B.150(1). *See generally Jefferson*, 113 Nev. 431, 934 P.2d 264.

Davis points to several statutes in NRS Chapter 425, which he contends support his argument that there must be a nexus between that chapter and the Division's motion under NRS 125B.150(1). But none of these provisions imposes any restrictions on when a parent may seek the assistance of the Division in moving to modify a support order under NRS 125B.150(1). *See* NRS 425.318 (defining "Program" in relation to NRS Chapter 425's child support enforcement program); NRS 425.350 (setting forth a parent's duty to support a child and discussing assignments of the right to receive child support payments when a parent receives public assistance); NRS 425.360 (providing that receipt of public assistance for a child creates a debt for support by the responsible parent and discussing the extent of that debt). As a result, we conclude that Davis's argument that the Division did not have standing to file the motion to modify lacks merit and we affirm that decision.

The hearing master's jurisdiction

Similarly, Davis argues that the hearing master lacked authority to consider the matter. But this argument is based on his contention that the Division did not have standing to file the motion. As we conclude that the Division had standing, we also conclude that the hearing master had jurisdiction to review the matter and make recommendations to the district court. *See* NRS 3.405(2) (providing that the district court "may appoint a master to hear all cases in a county to establish or enforce an obligation for the support of a child, or to modify or adjust an order for the support of a child pursuant to NRS 125B.145"); NRS 125B.145(1) (providing that an order for support must be reviewed for potential modification at least every

three years upon request by either the district attorney or the child's parent or legal guardian). Accordingly, we affirm the district court's order to the extent that it concluded that the motion to modify child support was properly filed by the Division and reviewed by the hearing master.

Modification of child support

Davis also contends that the modified support order had to be supported by factual findings that the modification was in the best interest of the children and was based on a consideration of the factors listed in NRS 125B.080(9). In its response, the Division argues that, because the support ordered was consistent with the statutory formula, no such findings were required. While the statutory formula for child support is presumed to meet a child's basic needs, *see* NRS 125B.080(5), any modification to an existing child support order "must be in the best interest of the child," and in making a modification, the court is required to consider the factors set forth in NRS 125B.070 and NRS 125B.080(9). *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009).

Thus, contrary to the Division's contention that no findings were required, the *Rivero* court held that any order modifying child support "must be supported by factual findings that a change in support is in the child's best interest." *See id.* at 433, 216 P.3d at 229. Moreover, to the extent that the Division argues there was no deviation from the statutory formula, this argument is not precisely accurate. Here, there does not appear to be any dispute that Higgins has physical custody of the children full time. But the existing stipulated custody order provides for joint physical custody with an equal timeshare and no child support by either party, and until that order is

modified, it is enforceable.[2] *See id.* at 429, 216 P.3d at 226-27 ("Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy.").

Here, the district court did not make any findings explaining why a modification of the existing support provision in the divorce decree was in the best interest of the children. *See id.* at 433, 216 P.3d at 229. Moreover, despite the fact that child support was modified to an amount that was inconsistent with the existing legally enforceable custody order, the district court did not make any factual findings supporting a deviation from the statutory formula. *See* NRS 125B.080(6), (9). In awarding support, the hearing master noted that it was undisputed that Higgins had been exercising sole physical custody and relied generally on NRS 125B.030, which provides that, "[w]here the parents of a child do not reside together, the physical custodian of the child may recover from the parent without physical custody a reasonable portion of the cost of care, support, education and maintenance provided by the physical custodian." The statute goes on to say that, "[i]n the absence of a court order for the support of a child, the parent who has physical custody may recover not more than 4 years' support furnished before the bringing of the action to establish an obligation for the support of the child."

As an initial matter, it is not clear whether this statute even applies to this case, as the divorce decree, which was still in effect when the motion was filed, provided for the parties to share joint physical custody of the children with no support to be paid by either party. Regardless,

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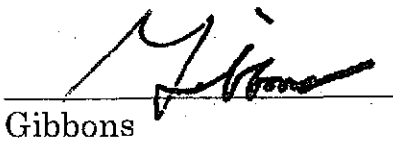
[2]Nothing in the record indicates that either party has ever moved to modify the existing custody order and formalize the de facto child custody arrangement that they have been exercising.

NRS 125B.030 addresses recovery of child care costs that have been paid by a parent with physical custody. It does not identify a method for calculating and ordering support prospectively or for modifying an existing support order. *See id.* Moreover, it must be read in harmony with other statutory provisions, such as NRS 125B.070 and NRS 125B.080(6), which set forth the method for calculating child support and require a court to explain its reasons for deviating from the statutory formula, respectively. *See Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 826-27, 192 P.3d 730, 734 (2008) ("Statutes are to be read in the context of the act and the subject matter as a whole . . . . Whenever possible, [a court] will interpret a statute in harmony with other rules and statutes.").

Thus, while we fully recognize the importance of a parent's obligation to support his or her child, *see* NRS 125B.020, and we express no opinion on how the support issue in this case should ultimately be resolved, we cannot conclude that NRS 125B.030 permits the modification made in the underlying proceedings. Specifically, in light of the divorce decree's provision that no child support payments were ordered, the court needed to make factual findings regarding whether modification of the required support was in the best interest of the children. *See Rivero*, 125 Nev. at 433, 216 P.3d at 229. And to order support based on a custody arrangement that conflicted with the enforceable custody provisions in the divorce decree, the court needed to make factual findings as to whether a deviation from the statutory formula was appropriate. *See* NRS 125B.080(6), (9). As a result, we conclude that the order modifying the support provision from the divorce decree was improper. Accordingly, we reverse the district court's order as to the modification of child support and the arrearages ordered based on the

modification, and we remand this matter to the district court for further proceedings consistent with this order and the child support statutes.

It is so ORDERED.



_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Nathan Tod Young, District Judge
Ryan Patrick Davis
Douglas County District Attorney/Minden
Douglas County Clerk