

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAZIA H. KIRMANI,
Appellant,
vs.
MUZAFFAR H. KIRMANI,
Respondent.

No. 37135

FILED

AUG 21 2002

ORDER OF REVERSAL AND REMAND

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

This is an appeal from a district court order awarding joint legal and physical custody of a child to his parents, appellant Shazia Kirmani and respondent Muzaffar Kirmani.

Shazia argues on appeal that the district court abused its discretion by failing to conduct an evidentiary hearing before making its final child custody determination. We agree.

Although neither party nor the district court addressed NRS 125.480(5), this statutory provision provides that an evidentiary hearing is warranted when there are issues of domestic violence surrounding the parents in a child custody dispute.¹ Here, the record is replete with allegations of domestic violence between the parties. It appears that both Shazia and Muzaffar have been arrested at least once for committing acts of domestic violence. The record suggests that two charges of domestic violence are currently pending against Muzaffar. Given these incidents, as well as the numerous allegations in the record, we conclude that an evidentiary hearing and full application of NRS 125.480 is necessary before it may be determined what is truly in the child's best interest.

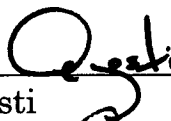
¹See Hayes v. Gallacher, 115 Nev. 1, 8, 972 P.2d 1138, 1142 (1999); McDermott v. McDermott, 113 Nev. 1134, 1137, 946 P.2d 177, 179 (1997).


Shazia also argues on appeal that the district court improperly refused to require Muzaffar to pay child support. We agree.

In Wright v. Osburn,² we established the method for a district court to use in determining the appropriate amount of child support when joint physical custody is awarded to parents. There, we also recognized that a district court may depart from this formula under NRS 125B.080(9). However, this statute requires that a district court may depart from this formula only upon making "specific findings of fact." Here, the district court did not make specific findings of fact with regard to the exact amount of Shazia's and Muzaffar's income to support its departure. Accordingly, we

ORDER this matter REVERSED AND REMANDED WITH INSTRUCTIONS to the district court to conduct a full evidentiary hearing and make specific findings of fact with regard to the child custody and child support issues.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

²114 Nev. 1367, 1368-69, 970 P.2d 1071, 1072 (1998).

cc: Hon. Steven E. Jones, District Judge, Family Court Division
Beckley, Singleton, Chtd./Las Vegas
Frances-Ann Fine
Clark County Clerk