

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GRANT CARLETON DENNY ROGERS,
Appellant,
vs.
MARY JANELLE ROGERS,
Respondent.

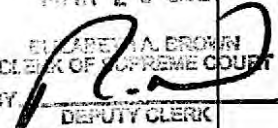
No. 76173-COA

GRANT CARLETON DENNY ROGERS,
Appellant,
vs.
MARY JANELLE ROGERS,
Respondent.

No. 76758-COA

FILED

MAR 26 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Grant Carleton Denny Rogers appeals from a district court's findings of fact, conclusions of law, and decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

Grant and Mary Rogers were married for seventeen years and had three children.¹ During the marriage, Grant worked as a police officer for the Las Vegas Metropolitan Police Department (LVMPD). Prior to the marriage, Mary dropped out of high school and worked a series of entry-level jobs. After the couple had their first child, Mary became a homemaker.

Mary eventually earned her GED at some point during the marriage. Meanwhile, Grant earned his associate's degree and received several promotions with the LVMPD. After Grant filed for divorce and moved out of the family home in 2017, Mary found an entry-level job at a

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

dental office where she worked part-time. While the divorce was pending, Grant was promoted to lieutenant, which increased his annual salary.

Although the parties stipulated, for the most part, to joint legal and joint physical child custody, the parties heavily disputed several financial issues, including the calculation of each party's gross monthly income, Mary's alimony award, Mary's entitlement to Grant's retirement funds, the child support calculation, the parenting time schedule, ownership of the marital home, equalization of the community estate, and an award of attorney fees.

The case proceeded to a two-day bench trial. The parties produced several exhibits, including each party's general financial disclosure form (GFDF), bank statements, tax forms, property valuation documents, among other evidence. Because Mary and Grant were the sole witnesses presented, the majority of the trial revolved around their testimony regarding their respective financial information, career and education levels, parenting experiences and abilities, and community property interests.

Near the end of the first day of trial, the district court reminded the parties of the pertinent issues in the case, the applicable law, and its role in deciding those issues. The district court then facilitated a settlement discussion off the record during a trial recess in an attempt to settle the case without proceeding to the second day of trial. However, the settlement efforts were unsuccessful, and the case proceeded to the second day of trial.

At the end of the trial, the district court entered its findings of fact, conclusions of law, and decree of divorce. Relying on the parties' GFDFs and pay stubs, the district court found that Mary's gross monthly income was approximately \$1,900 a month and Grant's gross monthly

income was \$12,371.84. The district court, among other things, (1) awarded Mary \$1,900 a month in alimony for five years, (2) awarded Mary \$2,904.80 a month in child support, (3) divided the community estate, awarding each party over \$90,000, (4) determined whether alimony was still appropriate in light of potential equalization following the community property award of \$90,000 to each party, and (5) established a parenting time schedule that maintained the parties' current custody schedule but also required Grant to pick the children up and drop the children off or set an exchange.

The district court also awarded Mary attorney fees. Mary filed her memorandum for attorney fees wherein she argued that she deserved an award because she prevailed on the majority of the issues and had to defend against Grant's many frivolous motions. She also argued that Grant's own conduct justified a fee award, namely that he was in contempt for failing to comply with the district court's temporary order, misrepresented his income, and hindered pre-trial settlement negotiations. In response, Grant argued that Mary was not the prevailing party, had enough money from her community property award to cover her attorney fees, and had hindered pre-trial settlement negotiations. Both parties attached exhibits and affidavits to their respective filings to show that the other side failed to participate in the settlement negotiations in good faith. The district court awarded Mary attorney fees, finding that Mary was indeed the prevailing party and that she successfully demonstrated Grant had misrepresented his income to her detriment.

On appeal, Grant challenges (1) the district court's calculation of each party's gross monthly incomes; (2) the court's award of alimony and child support to Mary; and (3) the court's award of attorney fees to Mary as the prevailing party.

Standard of Review

We review a district court's factual findings for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). Substantial evidence is evidence that a reasonable person may accept as adequate to sustain a judgment. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). When determining whether the district court abused its discretion, we will not reweigh conflicting evidence or reassess witness credibility. *Id.* at 152, 161 P.3d at 244. However, the district court's interpretation and construction of a statute presents a question of law that is reviewed de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014).

Calculation of Mary and Grant's respective gross monthly incomes

Grant first disputes the district court's calculation of his gross monthly income because the district court averaged his three pay stubs to calculate his income. Grant argues that the December pay stub reflected an increased amount representing a uniform allowance, which the district court should not have considered when calculating his income. We disagree.

When one party disputes the gross monthly income of the other party, the district court "shall determine the amount and may direct either party to furnish financial information or other records." NRS 125B.080(3). At trial, Grant argued that the district court should not have used his December paystub to calculate his gross monthly income because it did not reflect his actual earnings over the course of the year and also because it included his annual uniform allowance. However, Grant gave inconsistent and contradictory testimony about his uniform allowance. For example, Grant testified that he received the clothing allowance once a year during

the summer rather than at the end of the year. He further testified that the uniform allowance is around \$1,000. But nothing on the December pay stub shows—or suggests—that the increased amount is due to a uniform or gun allowance.

Quite to the contrary, the evidence showed that Grant had recently been promoted in late 2017 to a lieutenant position, a promotion that came with a significant pay raise. Under these circumstances, the district court did not err in attempting to extrapolate Grant's estimated 2018 income by averaging only the most recent pay stubs that were available in the short time after his promotion. Consequently, we perceive no abuse of discretion in the district court's projected calculation of his gross bi-weekly income at the time. Nonetheless, the district court will likely have access today to new evidence that was not available during the trial, including figures for Grant's income for the entire year of 2018, from which the court should be able to engage in more accurate calculations based upon Grant's actual income for that year instead of having to rely upon rough estimates or incomplete projections. As this case must be remanded on other grounds as explained herein, the district court should consider updating its earlier calculations accordingly.

Grant next argues that the district court abused its discretion in calculating Mary's gross monthly income based on her working fewer than 40 hours per week. Grant also argues that the district court should not have relied on Mary's GFDF because it did not reflect Mary's \$1 per hour raise that she testified to at trial. However, Grant failed to support his argument with any evidence or cogent analysis demonstrating that Mary actually worked 40 hours each week. To the contrary, Mary testified that she typically works 30 to 32 hours a week, and although Grant argues

that this testimony should not be believed, he failed to present any evidence to the contrary. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.3 (2006) (holding that this court need not consider claims that are not cogently argued or supported by relevant authority). Absent any showing that Mary is willfully underemployed, Mary's "gross monthly income" must be calculated according to how much she actually earns, not based upon how much Grant believes that she could have earned by hypothesizing that she could have worked longer hours. *See* NRS 125B.070(1)(a).

Nonetheless, although the district court did not err in declining to calculate Mary's income using a 40-hour week, we conclude that the district court abused its discretion when it found that Mary's gross monthly income is approximately \$1,900. Instead, based upon the evidence in the record, the district court could have relied on either Mary's GFDF or her testimony to find that Mary's gross monthly income is either \$1,941.33 (based on an hourly wage of \$14 per hour as indicated in the GFDF) or \$2,080 (based upon an hourly wage of \$15 per hour as indicated in her verbal testimony), but there is no evidence in the record support a figure of \$1,900. Further, the district court failed to provide specific findings of fact or offer an explanation for its deviation from either the amount supported by the GFDF or the amount based on Mary's testimony. We conclude that this was error. *See* NRS 125B.080(6) (requiring district courts to provide specific findings of fact explaining why it deviated from the child support formula).

Mary's alimony award

"Alimony is financial support paid from one spouse to the other whenever justice and equity require it." *Rodriguez v. Rodriguez*, 116 Nev.

993, 999, 13 P.3d 415, 419 (2000); *see also* NRS 125.150(1)(a) (the alimony award must be “just and equitable”). In a divorce suit, the district court may award alimony for a specified period of time or in a lump sum. NRS 125.150(1)(a). When awarding alimony, district courts must consider: (1) “[t]he duration of the marriage”; (2) “[t]he income, earning capacity, age and health of each spouse”; (3) “[t]he standard of living during the marriage”; (4) the spouse’s career before the marriage; (5) any specialized training the spouses obtained during the marriage; and (6) “[t]he contribution of either spouse as homemaker.” NRS 125.150(9)(d)-(i). “After considering these factors, and any other relevant circumstance, the district court may award alimony under NRS 125.150(1)(a) to compensate a spouse for non-monetary contributions to the marriage and economic losses from the early termination of the marriage, such as lost income-earning potential or a decreased standard of living.” *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 71-72, 439 P.3d 397, 404 (2019).

Grant contends that the district court abused its discretion when making its factual findings relating to Mary’s alimony award. Grant argues that Mary has a higher earning potential than Grant because his career advancement is limited while Mary intended to earn a bachelor’s degree and had more future opportunities to earn additional income. Grant also argued that Mary did not need alimony because she received a significant community property equalization award.

The district court considered each of the factors provided in NRS 125.150(9) when awarding alimony to Mary, including Grant and Mary’s respective financial positions, ages, educations, training, and earning capacities. It further noted Grant and Mary’s standard of living during the 17-year marriage and Mary’s 11-year homemaker status. The

district court also found that Mary lacked professional experience and formal education. Thus, the district court did not abuse its discretion by rejecting Grant's argument and awarding Mary alimony because the district court correctly applied the factors provided in NRS 125.150(9). Further, the overall award is "just and equitable" in light of the substantial evidence in the record.

We next consider whether the district court should have determined whether Mary's equalization award of \$91,925.02 alleviated her need for alimony. In *Shydler*, because "property and alimony awards differ in purpose and effect," the court held "the district court was wrong in finding that [the spouse's] pre-divorce support and post-divorce property equalizing payments obviated the need for any post-divorce spousal support." *Shydler v. Shydler*, 114 Nev. 192, 198, 954 P.2d 37, 40 (1998). However, in *Kogod*, the court found that a community property award may "obviate any basis for awarding alimony" when the award allows him or her to earn passive income from interest and dividends that would easily cover the spouse's living expenses. 135 Nev. at 71-72, 439 P.3d at 404. Here, unlike the unique factual scenario in *Kogod*, Mary's equalization award will not obviate Mary's need for alimony because there is no indication in the record that she would be receiving passive income from the award so as to cover her monthly living expenses. Accordingly, the district court did not abuse its discretion when declining to find that Mary could adequately support herself and her children with the \$91,925.02 community property award.²

²In his briefing and during oral argument, Grant contends that, after considering the alimony award, Mary's monthly income is actually higher than his. But this calculation is only true if we take into account the award of child support, which is for the benefit of the children and not Mary.

Should alimony be considered income when calculating child support under NRS 125B.070(1)(a)

Grant next presents this court with an issue of first impression: whether the definition of “gross monthly income” includes an award of alimony when determining the amount of child support. Grant contends that the district court should have included Mary’s \$1,900 monthly alimony award when calculating her “gross monthly income.” We agree.

Though child support findings are reviewed for an abuse of discretion, this court reviews questions of statutory interpretation de novo. *Valdez v. Aguilar*, 132 Nev. 388, 390, 373 P.3d 84, 85 (2016). When statutory language “is plain and unambiguous, such that it is capable of only one meaning, this court does not construe that statute otherwise.” *MGM Mirage v. Nev. Ins. Guar. Ass’n*, 125 Nev. 223, 228-29, 209 P.3d 766, 769 (2009). If the statute “is susceptible to differing reasonable interpretations, [it] should be construed consistently with what reason and public policy would indicate the Legislature intended.” *Star Ins. Co. v. Neighbors*, 122 Nev. 773, 776, 138 P.3d 507, 510 (2006) (internal quotation marks omitted). Additionally, “statutory interpretation should not render any part of a statute meaningless.” *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007). Words in a statute are to be given their plain and ordinary meaning unless it is clear that the Legislature intended them to be used differently. *State v. State, Emps. Assoc.*, 102 Nev. 287, 289, 720 P.2d 697, 698 (1986).

Deleting the child support award from the calculation reveals that, after taking alimony into account, in actuality Mary earns less than Grant does each month, meaning that their incomes are actually closely equalized, which may be a consideration when awarding alimony. See NRS 125.150(1)(a), (9).

To calculate each parent's child support obligation, the district court must first calculate each party's gross monthly income. "Gross monthly income" is defined as:

the total amount of income received each month from *any source* of a person who is not self-employed or the gross income from any source of a self-employed person, after deduction of all legitimate business expenses, but without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension or for any other personal expense.

NRS 125B.070(1)(a) (emphasis added). NRS Chapter 31A defines "income" as it pertains to wage garnishment for child support obligations. NRS 31A.016 defines "income" as follows:

"Income" includes, but is not limited to:

1. Wages, salaries, bonuses and commissions;
2. Any money from which support may be withheld pursuant to NRS 31A.150 or 31A.330;
3. Any other money due as a pension, unemployment compensation, a benefit because of disability or retirement, or as a return of contributions and interest; and
4. Any compensation of an independent contractor.

NRS 125B.070 does not specifically address whether an alimony award should be considered when calculating a party's "gross monthly income" in assessing child support. But the statute does state that courts should include income from "any source." NRS 31A.016 similarly uses the word "any" repeatedly. In ordinary usage, the word "any" is one of broad meaning that suggests the Legislature intended both statutes to encompass all revenue regardless of its origin. Thus, "any source" includes income earned from a job, as well as distributions received from trusts, bonds, or stock investments. Read most naturally, the language of NRS

125B.070 is broad enough to include alimony, and no other words or phrases anywhere else in the statute evidences an intention to exclude alimony when calculating income for child support purposes.

This interpretation is further supported by the legislative history behind NRS 125B.070(1)(a). The statute was originally enacted in 1987, and when first enacted it stated that alimony calculations were based only upon “wages” earned by a “wage-earning employee.” That wording specifically excluded income earned from such things as passive investments (and likely alimony payments as well). But in 2003, the statute was revised to add the following language:

“Gross monthly income” means the total amount of income *received each month* from any source of a [wage-earning employee] *person who is not self-employed* or the gross income from any source of a self-employed person, after deduction of all legitimate business expenses, but without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension or for any other personal expenses.³

A.B. 37, 71st Leg. (Nev. 2003). This amendment eliminated the distinction between wages and other potential sources of income, and broadened the statute to encompass all income regardless of origin.

We therefore conclude that NRS 125B.070(1)(a) must be broadly interpreted to include income received from monthly alimony awards. Any other interpretation would conflict with the ordinary meaning of the term “any.” Consequently, district courts must determine whether and how much alimony to award in the current divorce and include the

³The italicized text was added and the bracketed portion was removed.

alimony in the receiving party's income when calculating the parties' child support obligations. Accordingly, we direct the district court to include Mary's alimony award when calculating her gross monthly income.

A related question is whether the alimony award must also be subtracted from the income of the party obliged to pay child support before calculating the amount of support. The plain language of NRS 125B.070(1)(a) states that income is based upon the party's "gross," rather than net, income. In ordinary usage, "gross" refers to income received before any deductions for such things as taxes, fees, or other expenses no matter how necessary those expenses may be.

Accordingly, the plain language indicates that while alimony must be considered in assessing the income of the receiving party, it should not be subtracted from the income of the party obliged to pay it when calculating the amount of child support due. Both conclusions are required by the plain meaning of the unambiguous statutory text, but we also note that they are consistent with regulations recently issued on October 30, 2019 (which became effective February 1, 2020) by the Committee to Review Child Support Guidelines through the State Division of Welfare and Supportive Services, established pursuant to A.B. 278 of the 2017 Legislative session. Dep't of Health & Human Servs., Div. of Welfare & Supportive Servs., NAC 425 (2019). As of February 1, 2020, these regulations were codified as Section 425 of the Nevada Administrative Code. See LCB File No. R183-18 (effective Feb. 1, 2020). In resolving the meaning of statutes, courts may consider regulations issued by state executive branch agencies with expertise in the subject matter. See *State, Div. of Ins. v. State Farm Mut. Auto Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000) (courts give considerable deference to executive branch

agency interpretations of statutes). Section 4(m) of the new regulations specifically defines “gross income” to include “alimony,” but does not specify that alimony payments are to be deducted from the gross income of the obligor. Thus, although we are not bound by the interpretation of the Division of Welfare and Supportive Services, it is notable that our interpretation of the statutes is consistent with that of the agency charged with issuing regulations enforcing the statute.

Parenting time

Grant contends that by ordering him to pick up and drop off the children for each parenting exchange, the district court deviated from the general family law default of ordering the receiving parent to pick up the child from the custodial parent. Grant argues that the district court should have equally divided transportation costs and responsibilities between him and Mary. We disagree.

Although the district court may entertain certain trends in family law, the district court has broad discretion to consider the parties’ situations and preferences when it makes transportation findings. See *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (finding that the district court has sound discretion over child custody matters, including parenting time). When determining child custody, district courts may enter an “order for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest.” NRS 125C.0045(1)(a); see also *Toth v. Toth*, 80 Nev. 33, 36-37, 389 P.2d 73, 75 (1964) (considering the children’s best interest when determining whether the district court abused its discretion when establishing parenting time).

We conclude that the district court’s decision to require a rotating timeshare is supported by substantial evidence. The district court

considered Grant and Mary's work schedules, personal circumstances, and the children's school and day care schedules. The district court ordered Grant to pick up the parties' infant son from Mary's house on Wednesday mornings, and pick up the older children after school on Wednesday, which means that Mary was responsible for taking the older children to school on Wednesday morning. The district court also ordered Grant to return all three children to Mary on Sunday mornings. Moreover, according to the holiday schedule, the district court ordered both parties to equally share the responsibility of transporting the children during that time. Though the district court tasked Grant with the majority of the transportation responsibilities, we conclude that this decision is supported by substantial evidence, and in the best interests of the children. Consequently, the district court did not abuse its discretion.


Mary's attorney fee award

Because the district court's order is being reversed and this matter must be remanded for the district court to re-calculate Grant's child support obligations, we need not address the district court's award of attorney fees. *W. Techs., Inc. v. All-Am. Golf Ctr., Inc.*, 122 Nev. 869, 876, 139 P.3d 858, 862 (2006) (awards of fees and costs may be reconsidered on remand without reaching a decision on their merits). However, we note that the district court awarded fees pursuant to NRS 18.010(2), but that statute generally only applies to money judgments, not to awards for equitable or injunctive relief. *See Las Vegas Metro. Police Dep't v. Anderson*, 134 Nev. 799, 802-04, 435 P.3d 672, 675-77 (2018). On remand, if the district court deems an award of attorney fees to be appropriate, the court should consider the statutory provisions of NRS 125.150 and NRS 125C.250.

In conclusion, we

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marquis, District Judge, Family Court Division
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