

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LOUIS HEJNY,
Appellant,
vs.
ALISA DENISE HEJNY,
Respondent.

No. 37952

FILED

APR 18 2003

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This appeal is taken from a final divorce decree. After eighteen years of marriage, Alisa Hejny filed for divorce from David Hejny in 1998. Four children were born of the marriage.¹ Prior to filing for divorce, Alisa and David had been separated on two distinct occasions, during which the children remained with David. After initial contention regarding physical custody of the children, the parties stipulated that David would have primary physical custody. Alisa moved for interim spousal support and attorney fees, and David counterclaimed for child support for their four children for the periods during which he and Alisa were separated. The district court did not rule on the motions. At the divorce hearing, the district court ruled from the bench that the interim spousal support and the retroactive child support offset each other. In the decree of divorce, the district court ordered Alisa to pay \$100.00 per child per month in child support, David to pay \$600.00 per month in alimony, and David to pay \$2,400.00 in attorney fees for Alisa.

David appealed from the decree. He contends that the district court abused its discretion by: (1) ordering Alisa to pay the minimum child support allowed without specific findings of fact to justify the court's

¹One child has since become emancipated.

deviation from the statutorily mandated percentage and without taking into account her share in his pension; (2) finding that the back child support due David and the temporary spousal support due Alisa offset each other; (3) ordering David to pay \$600.00 per month in spousal support; and (4) ordering David to pay attorney fees.

Under NRS 125B.070(1)(b)(3), non-custodial parents with three children are required to pay twenty-nine percent of their gross monthly income, up to \$500.00 per month per child, for child support. At a minimum, non-custodial parents are required to pay \$100.00 per month per child, unless the court makes a written finding that the non-custodial parent is unable to pay that amount under NRS 125B.080(4). Courts are given limited discretion to deviate from the formula in NRS 125B.070.² NRS 125B.080(6) provides that:

6. If the amount of the awarded support for a child is greater or less than the amount which would be established under the applicable formula, the court shall:

(a) Set forth findings of fact as to the basis for the deviation from the formula; and

(b) Provide in the findings of fact the amount of support that would have been established under the applicable formula.

Any child support award that deviates from the statutory formula must be based on the factors in NRS 125B.080(9)³ and must include specific

²Anastassatos v. Anastassatos, 112 Nev. 317, 320, 913 P.2d 652, 654 (1996); Westgate v. Westgate, 110 Nev. 1377, 1379, 887 P.2d 737, 738 (1994).

³Wallace v. Wallace, 112 Nev. 1015, 1020, 922 P.2d 541, 544 (1996); Khaldy v. Khaldy, 111 Nev. 374, 376, 892 P.2d 584, 585 (1995).

written findings of fact justifying the award, as well as the presumptive amount reflected by the applicable formula.⁴

The district court's order failed to include the presumptive amount reflected by the statutory formula as required by NRS 125B.080(6)(b). Nor did the court set forth any specific findings of fact to justify a deviation from the statutory formula as required by NRS 125B.080(6)(a). The district court has no discretion to omit the presumptive child support amount from its order or to deviate from the statutory formula without setting forth specific findings of fact.⁵ David contends, and Alisa concedes, that the district court erred by omitting these items from its order.

The record reflects that the basis for the district court's order may have been established. Alisa's deposition testimony indicated that she made \$15,559.00 in the year 2000. At the time of trial, her income was represented to be \$8.50 per hour, and she was only working twenty-five to thirty hours per week. If we were to take as fact that she works thirty hours per week at \$8.50 per hour, her gross monthly income would be \$1,020.00. Twenty-nine percent of \$1,020.00 is \$295.80, which is remarkably similar to the minimum amount of \$100.00 per child per month, or \$300.00 monthly, which Alisa was ordered to pay. However, the district court should set forth the presumptive amount of child support


⁴Wallace, 112 Nev. at 1020-21, 922 P.2d at 544; Anastassatos, 112 Nev. at 320, 913 P.2d at 654; Jackson v. Jackson, 111 Nev. 1551, 1553, 907 P.2d 990, 992 (1995); Barbagallo v. Barbagallo, 105 Nev. 546, 552, 779 P.2d 532, 536 (1989).


⁵NRS 125B.070; NRS 125B.080; Wallace, 112 Nev. at 1021, 922 P.2d at 544; Anastassatos, 112 Nev. at 320, 913 P.2d at 654; Jackson, 111 Nev. at 1553, 907 P.2d at 992 (1995); Barbagallo, 105 Nev. at 552, 779 P.2d at 536.

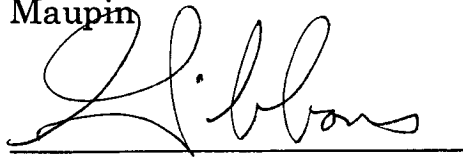
and any other necessary findings of facts. Accordingly, we reverse that portion of the order that pertains to Alisa's \$300.00 child support obligation and remand this case to the district court for compliance with NRS 125.080(6)(b) and to make any other findings of fact that are necessary.

We have considered David's other assignments of error and, after reviewing the record, conclude that the district court did not abuse its discretion, as substantial evidence supports the district court's decision.⁶ Accordingly, we affirm those portions of the district court's judgment.

It is so ORDERED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Archie E. Blake, District Judge
Jeffrey Friedman
James F. Sloan
Churchill County Clerk

⁶Wolff v. Wolff, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996) (stating that this court will not interfere with the district court's disposition of community property and spousal support absent an abuse of discretion).