IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFERSON TYLER,
Appellant,
vs.
LARA AREVALO TYLER N/K/A LARA AREVALO,
Respondent.

No. 87916-COA

ORDER OF REVERSAL AND REMAND

Jefferson Tyler appeals from a district court order modifying child support obligations. Second Judicial District Court, Family Division, Washoe County; Sandra A. Unsworth, Judge.

Jefferson and respondent Lara Arevalo are the parents of two young children. Lara filed for divorce on September 10, 2021, and Jefferson filed a counterclaim for divorce on October 4, 2021. Following the divorce filing, Jefferson relocated to Hawaii and obtained employment earning $45,000 per year. At some point, Jefferson quit his job and returned to Reno.

On January 26, 2023, during a status conference, the parties announced they had reached a stipulation resolving the child custody and support dispute. Pursuant to the stipulation, the parties agreed to share joint legal and physical custody. The parties further stipulated Lara's gross yearly income was $106,500 and her base child support obligation was $1,636. Additionally, the parties stipulated Jefferson was "capable of making $45,000 per year, and not withstanding his current income, he is

imputed $45,000 [in income] for child support purposes." After offsetting the parties' base support amounts, the parties stipulated that Lara would pay Jefferson $811 per month in child support.

On October 31, 2023, Jefferson filed a motion to modify child support and argued that, contrary to the parties' stipulation, he earned only $1,512 per month because he was employed part-time and his employer would not provide him additional work hours. Thus, Jefferson asserted that the support payments he received should be increased. Lara opposed the motion and argued a downward modification was warranted instead because her gross monthly income had decreased and was now $8,333. Lara further argued that Jefferson should obtain a new job, or a second job, because she was employed full-time. Jefferson filed a reply, which argued he had attempted to obtain full-time employment but had been unsuccessful. The parties then filed various sur-replies or responses, which generally alleged the other party misrepresented their income. Notably, Lara never requested the district court impute a specific salary to Jefferson based on the stipulation regarding Jefferson's income contained in the decree or any other basis and neither party addressed the NAC 425.125 factors regarding imputing income for child support.

On December 20, 2023, the district court entered an order granting the motion to modify child support and decreased Lara's monthly support obligation. After evaluating the factors identified in NAC 425.125(2)(a)-(e), the district court imputed to Jefferson a gross monthly income of $3,842.80. The district court reached this amount by noting that the parties had previously stipulated to impute a $45,000 annual income to Jefferson in the divorce decree and then calculating a new imputed income

figure based on Jefferson's gross monthly income when he lived in Hawaii, which appears to be the last time Jefferson was employed full-time. The $3,842.80 gross monthly income results in an annual income amount of $46,113.60. After reviewing Lara's paystubs, the district court concluded her gross monthly income was $9,027.78. And after offsetting the parties' resulting base support obligations, the district court reduced Lara's monthly support obligation from $811 to $800. Jefferson now appeals.

This court reviews child support orders for an abuse of discretion. *Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). A district court abuses its discretion when its findings are not supported by substantial evidence, *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018), which 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). A district court may impute income to a parent if the court determines the parent is underemployed or unemployed without good cause. NAC 425.125. Before imputing income, the court must consider the factors enumerated in NAC 425.125(2)(a)-(e).

On appeal, Jefferson argues substantial evidence does not support the district court's NAC 425.125(2)(a)-(e) findings. In contrast, Lara argues that Jefferson should obtain a full-time job to support his children and suggests that he is, in fact, willfully underemployed. Having considered the parties arguments and the record on appeal, we conclude the district court abused its discretion in imputing income to Jefferson and in making its resulting child support determination because the parties were not on notice that the district court was considering imputing income to

Jefferson and, thus, were not given an opportunity to present any argument or evidence related to that issue.

Notably, in opposing the motion to modify child support, Lara did not argue that the district court should impute income to Jefferson or that the stipulation to impute a $45,000 annual income to Jefferson incorporated in the divorce decree should be used to establish his income for support purposes. Further, Lara's amended opposition included a child support worksheet which accepted Jefferson's argument that his monthly support obligation should be set at the statutory minimum of $300. Despite the absence of any argument on these points, the district court sua sponte raised the issue of imputation in its order lowering Lara's child support and then went on to impute an income in excess of the $45,000 annual amount the parties had previously stipulated to.

Because Lara did not request that the district court impute income to Jefferson, and because the district court did not indicate it was considering imputing income or hold a hearing on Jefferson's motion to modify support, the parties did not have the opportunity to present arguments regarding this issue or present evidence related to whether imputation was warranted. In particular, while the district court made findings related to the NAC 425.125(2)(a)-(e) factors for determining whether income should be imputed, the parties did not have the opportunity to develop arguments on these points or present pertinent evidence related to the factors.[1] Accordingly, we reverse the district court's child support

[1]We note that it appears the only evidence submitted with the parties' motion practice that could have been relevant to the NAC 425.125 factors were screenshots from Indeed.com, which Jefferson alleged proved he was

determination and remand this matter for reconsideration of Jefferson's motion to modify child support and to allow the parties to make arguments and present evidence regarding the NAC 425.125(2)(a)-(e) factors and whether income should be imputed to Jefferson. *See Noble v. Noble*, 86 Nev. 459, 464-65, 470 P.2d 430, 433-34 (1970) (reversing a district court's child support decision because the record was unclear and remanding for it to make sufficient findings), *overruled on other grounds by Westgate v. Westgate*, 110 Nev. 1377, 887 P.2d 737 (1994).

Jefferson further argues the district court was biased against him such that, on remand, the case should be reassigned to a different judge. But Jefferson has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and its decisions did not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337-38 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for

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attempting to obtain new employment. The district court's order, however, did not address these screenshots.

disqualification"); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Thus, we conclude relief is unwarranted on this point.

Based on the foregoing analysis, we

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

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Sandra A. Unsworth, District Judge, Family Division
Jefferson Tyler
Lara Arevalo
Washoe District Court Clerk