

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANGELO DRAKE,
Appellant,
vs.
GINGER MARIA DRAKE, N/K/A
GINGER MARIA WASHINGTON,
Respondent.

No. 39189

FILED

APR 15 2002

JANE TTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from the parties' divorce decree. First, "[m]atters of custody and support of minor children rest in the sound discretion of the trial court."¹ Additionally, in determining the custody of a minor child, the sole consideration is the best interest of the child.² "It is presumed that a trial court has properly exercised its discretion in determining a child's best interest."³

Here, the district court determined that it was in the child's best interest for respondent to be the sole legal and physical custodian of the child while appellant is incarcerated. The court awarded appellant limited visitation with the child, and informed appellant that upon his release from prison, he may move the district court to modify the

¹Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

²NRS 125.480(1) (providing that the sole consideration in awarding custody of a child is the best interest of the child); Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993) (stating that in determining the custody of minor children, the sole consideration of the court is the best interest of the children).

³Wallace, 112 Nev. at 1019, 922 P.2d at 543.

visitation and/or custody arrangement. We conclude that the district court did not abuse its discretion regarding child custody and visitation.

Second, the district court ordered appellant to pay \$100 per month in child support until he is released from prison, at which point he must pay 18% of his gross monthly income in child support. Under NRS 125B.070(1)(b)(1), a formula has been established providing that a noncustodial parent's monthly child support obligation for one child is set at 18% of the parent's gross monthly income subject to a maximum of \$500 per child. The statutory minimum award of child support is \$100 per month per child.⁴ We conclude that the district court did not abuse its discretion as to the issue of child support.

Third, in granting a divorce, the district court is required, as much as practicable, to make an equal distribution of community property.⁵ This court has previously noted that it will not interfere with the disposition of the community property of the parties, unless it appears from the entire record that the district court abused its discretion.⁶ Here, the district court ordered that each party would be responsible for his or her student loans, the court awarded respondent the car and its debt, and the court ordered appellant to pay the Visa bill and an outstanding tax debt. We conclude that the record supports the district court's order concerning the division of community property and debt.

⁴NRS 125B.080(4).

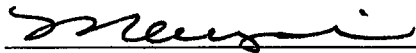
⁵NRS 125.150(1)(b).


⁶See Heim v. Heim, 104 Nev. 605, 607, 763 P.2d 678, 679 (1988), superseded on other grounds as stated by Rodriguez v. Rodriguez, 116 Nev. 993, 13 P.3d 415 (2000).

Finally, "[u]nder NRS 125.150(3), a district court may, in a divorce action, award reasonable attorney's fees to either party. Such an award lies within the sound discretion of the district court and will not be overturned on appeal absent an abuse of discretion."⁷ We conclude that the district court did not abuse its discretion in ordering appellant to pay respondent's attorney fees.

Having reviewed the record on appeal, we conclude that the district court did not abuse its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, C.J.
Maupin


_____, J.
Agosti


_____, J.
Leavitt

⁷Carrell v. Carrell, 108 Nev. 670, 671-72, 836 P.2d 1243, 1244 (1992); see also Sprenger v. Sprenger, 110 Nev. 855, 878 P.2d 284 (1994) (concluding that an award of attorney fees in divorce proceedings lies within the sound discretion of the district court).

⁸We deny appellant's February 27, 2002 request for leave to file proper person opening and reply briefs. Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him. We also deny appellant's March 29, 2002 request for transcripts.

cc: Hon. Charles M. McGee, District Judge, Family Court Division
Arnold Brock Jr.
Michael Angelo Drake
Washoe District Court Clerk