

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES RODRIGUEZ,
Appellant,
vs.
NICOLE EDDOWES,
Respondent.

No. 39273

CHARLES RODRIGUEZ,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
STEVEN E. JONES, DISTRICT JUDGE,
FAMILY COURT DIVISION,
Respondents,
and
NICOLE EDDOWES,
Real Party in Interest.

No. 39786

FILED

NOV 06 2003

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

ORDER OF AFFIRMANCE (DOCKET NO. 39273)
AND DISMISSING PETITION FOR
WRIT OF MANDAMUS (DOCKET NO. 39786)

Docket No. 39273 is a proper persona appeal from a final divorce decree. Docket No. 39786 is an original proper person petition for a writ of mandamus challenging a district court order that held petitioner in contempt for not paying child support and sentenced him to twenty days in jail or until he paid arrears, penalties and interest.

On February 1, 2002, the district court entered a final divorce decree. The district court adopted an earlier order awarding the parties joint legal child custody, with respondent/real party in interest Nicole Eddowes having primary physical custody and appellant/petitioner

Charles Rodriguez having visitation. The court also awarded Charles his maintenance business, as his sole and separate property. The court further ordered Rodriguez to pay (1) \$1,700 for expert fees incurred when Rodriguez subpoenaed and deposed an expert during the proceedings, (2) \$1,800 for the conversion of Eddowes' wedding ring, (3) \$57,331.25 for Eddowes' attorney fees, (4) \$3,675.88 for child support arrears, and (5) \$360 per month in child support based on Rodriguez's imputed gross monthly income of \$2,000 per month. This proper person appeal followed in Docket No. 39273.

First, as to the child custody arrangement, "[m]atters of custody and support of minor children rest in the sound discretion of the trial court."¹ In determining child custody, the sole consideration is the child's best interest.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 the child's best interest was served if the parties shared joint legal custody and if Eddowes had primary physical custody and Rodriguez had visitation.

The record reveals that the district court found that the parties had engaged in domestic violence, but the court found Rodriguez was the primary aggressor and that he had engaged in mental and verbal

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

²See NRS 125.480(1) (providing that the sole consideration in awarding child custody is the child's best interest); Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993); see also Wallace, 112 Nev. 1015, 922 P.2d 541 (noting that child custody matters, including visitation, are within the district court's discretion).

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

abuse since the beginning of the parties' relationship. The court concluded that it was in the child's best interest to be placed in Eddowes's primary physical custody.⁴ Moreover, the district court noted its concern that Rodriguez never expressed his desire to have a relationship with the child. Thus, the district court did not abuse its discretion in its child custody determination.

Next, with regard to child support and arrears, this court reviews a district court's child support order for an abuse of discretion.⁵ Under NRS 125B.070(1)(b)(1), 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 cap depending upon income. Here, the record establishes that even though Rodriguez was awarded the maintenance business as his sole and separate property, Rodriguez chose to stop working in order to represent himself in the divorce proceeding. The district court imputed Rodriguez's gross monthly income at \$2,000 per month. Eighteen-percent of \$2,000 is \$360, which complies with the statutory formula. In addition, the district court determined that Rodriguez's child support arrears were approximately \$3,675.88. We conclude that the district court did not abuse its discretion when it ordered Rodriguez to pay \$360 per month in child support and when it determined the child support arrears.

⁴Where either party has engaged in domestic violence, the district court must determine which party is the "primary physical aggressor." NRS 125.480(6). To determine the primary physical aggressor, the district court may consider prior acts of domestic violence by either party, the likelihood of future injury, and any other relevant factors. See NRS 125.480(6)(a)-(e).

⁵Wallace, 112 Nev. 1015, 922 P.2d 541.

With respect to the witness fee awarded by the court, such fees are allowable under NRS 18.005. Specifically, NRS 18.005(4) and (5) authorize the district court to award costs that include deposed and expert witnesses' costs. Here, Rodriguez subpoenaed Dr. Brian Sherameta, among others, to testify at a deposition. The district court ordered Rodriguez to be responsible for Dr. Sherameta's deposing witness costs⁶ and expert fees.⁷ Accordingly, the district court did not abuse its discretion when it awarded costs.

As for the wedding ring conversion, this court reviews district court decisions concerning divorce proceedings for an abuse of discretion.⁸ Rulings supported by substantial evidence will not be disturbed on appeal.⁹ Eddowes contended that prior to moving out of the marital residence, she stopped wearing her wedding ring and left the ring on a bedroom nightstand. According to Eddowes, the day she left the marriage she failed to retrieve the ring. Rodriguez contended that Eddowes lost the ring. The district court found that Eddowes offered un rebutted evidence establishing that Rodriguez converted the wedding ring and awarded Eddowes \$1,800 for the conversion of her wedding ring. Substantial evidence in the record supports the district court's decision.

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

⁶NRS 18.005(4).

⁷NRS 18.005(5).

⁸Williams v. Waldman, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992).

⁹Id.

award lies within the sound discretion of the district court and will not be overturned on appeal absent an abuse of discretion."¹⁰ Here, the district court noted that Rodriguez created additional costs to all parties with his frequent changes of attorneys and with his meritless motions. The court also expressed its concern that Eddowes not be responsible for fees in light of Rodriguez's conduct throughout the proceedings. We conclude that the district court did not abuse its discretion when it ordered Rodriguez responsible for Eddowes's attorney fees.

Accordingly, having concluded that the district court did not abuse its discretion concerning the divorce decree, we affirm the district court's order in Docket No. 39273.

In Docket No. 39786, the original proper person petition for a writ of mandamus challenges the district court order holding Rodriguez in contempt for not paying child support. Rodriguez seeks his immediate release from jail, Judge Jones' disqualification, and an order prohibiting the district court from further action pending resolution of his appeal. Rodriguez's petition appears moot, since he has completed his twenty-day contempt period, this court has denied his prior writ petition challenging the district court order that denied his motion to disqualify Judge Jones,¹¹ and the appeal is resolved. This court's duty is to decide actual

¹⁰Carrell 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).

¹¹Rodriguez v. District Court, Docket No. 39726 (Order Denying Petition, July 10, 2002).

controversies, not to give opinions on moot questions.¹² Accordingly, we dismiss this petition as moot.

It is so ORDERED.¹³

Becker, J.
Becker

Shearing, J.
Shearing

Gibbons, J.
Gibbons

cc: Hon. Steven E. Jones, District Judge, Family Court Division
Lyons & Ellsworth
Charles Rodriguez
Clark County Clerk

¹²See NCAA v. University of Nevada, 97 Nev. 56, 624 P.2d 10 (1981).

¹³We have considered all other contentions raised by Rodriguez, and conclude that they lack merit.

Although Rodriguez 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 note that Rodriguez's failure to pay the filing fee in Docket No. 39786, constitutes an additional basis for denying the writ petition. NRAP 21(e).