

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK O'DELL BRYANT,
Appellant,
vs.
STEPHANIE KAYE CANNON,
Respondent.

No. 39931

FILED

APR 09 2002

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

ORDER AFFIRMING IN PART AND VACATING IN PART

This is a proper person appeal from a district court order concerning child custody, visitation, and child support.

After their divorce, the parties shared joint legal and physical custody of their children. In late 2001 respondent moved the district court for primary physical custody of the children. Appellant, proceeding in proper person, opposed respondent's motion. A hearing was conducted on September 25, 2001. On October 17, 2001, the district court entered an order that awarded respondent primary physical custody and awarded appellant supervised visitation. Moreover, appellant was ordered to pay child support in the amount of \$827.70 per month.

In May 2002, appellant, through counsel, moved the district court to restore the joint custody arrangement that was established in the divorce decree. Respondent opposed the motion. A hearing was held on appellant's motion on May 14, 2002.

On June 13, 2002, the district court entered a written order that denied appellant's motion to restore the joint custody arrangement set forth in the divorce decree. Nevertheless, the district court determined that appellant was entitled to reasonable and liberal visitation, provided that he continues to receive counseling, that he refrain from mentioning any matters to the children concerning court proceedings, and that he not

coerce the children in any way with respect to custody. Moreover, the district court reexamined the child support obligation and concluded that because of the distance between the parties and the cost of travel for visitation, appellant was only required to pay \$200 per month per child, for a total of \$800, instead of the \$827.70 he was ordered to pay in the May 2002 order. The district court recognized that this amount was a downward deviation from the statutory formula.¹ This proper person appeal followed.

"Matters of custody and support of minor children rest in the sound discretion of the trial court."² Additionally, "[i]t is presumed that a trial court has properly exercised its discretion in determining a child's best interest."³ This court will not disturb the district court's judgment absent a clear abuse of discretion.⁴ Here, the district court concluded that it was in the children's best interest for respondent to retain primary physical custody. Moreover, the district court awarded appellant reasonable and liberal visitation. Accordingly, we conclude that the district court did not abuse its discretion when it denied appellant's motion to reinstate the child custody arrangement set forth in the divorce decree and when it awarded appellant reasonable and liberal visitation.

As for the issue concerning child support, a noncustodial parent's monthly child support obligation for four children is set at 31% of

¹See NRS 125B.070(1)(b).

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

³Id.

⁴Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993).

the parent's gross monthly income subject to a maximum depending on income.⁵ A court may deviate from the statutory formula only upon making findings of fact as to the basis for the deviation, and providing in those findings of fact the presumptive support amount under the statutory formula.⁶ Here, the district court concluded that appellant's child support obligation under the statute was \$942.48, and the court deviated downward from the statutory formula based on appellant's costs of transportation to facilitate visitation.⁷ Thus, we conclude that the district court did not abuse its discretion in ordering appellant to pay \$800 per month in child support.

Finally, in the June order the district court specifically provided that, "In the event [appellant] relocates nearer to Moapa valley [sic], or if [appellant] contests this Order by motion, appeal, or otherwise, child support shall again be increased to the statutory amount." This provision violates NRS 125B.080, which requires the district court to determine the amount of child support based on the statutory formula and the statute's listed factors. Additionally, this provision could potentially deprive appellant of a property interest without any procedural due process protections.⁸

⁵NRS 125B.070(1)(b)(4).


⁶NRS 125B.080(6).

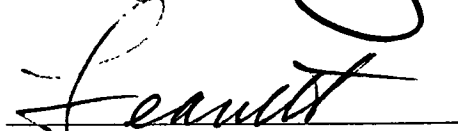
⁷See NRS 125B.080(9)(i).

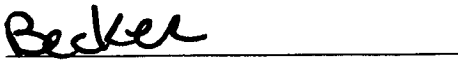
⁸See John E. Nowak & Ronald D. Rotunda, Constitutional Law § 13.1, at 510 (5th ed. 1995). See also Matthews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

Therefore, we vacate that portion of the district court order's providing that appellant's child support obligation will be increased if he "contests [the] order by motion, appeal or otherwise."

It is so ORDERED.⁹


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Robert E. Gaston, District Judge, Family Court Division
Hutchison & Steffen, Ltd.
Mark O'Dell Bryant
Clark County Clerk

⁹Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from appellant.

In light of this order, we deny as moot appellant's request for a stay pending appeal.