

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM ORLO FILLMORE,  
Appellant,  
vs.  
BELINDA KAYE FILLMORE,  
Respondent.

No. 40052

FILED

NOV 12 2002

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a final divorce decree. This court reviews divorce proceedings for abuse of discretion, and will uphold a district court's rulings supported by substantial evidence.<sup>1</sup> Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment.<sup>2</sup>

First, "[m]atters of custody and support of minor children rest in the sound discretion of the trial court."<sup>3</sup> Additionally, in determining the custody of a minor child, the sole consideration is the child's best interest.<sup>4</sup> "It is presumed that a trial court has properly exercised its discretion in determining a child's best interest."<sup>5</sup> Here, the district court

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<sup>1</sup>See Kerley v. Kerley, 111 Nev. 462, 893 P.2d 358 (1995), on reh't, 112 Nev. 36, 910 P.2d 279 (1996).

<sup>2</sup>See Schmanski v. Schmanski, 115 Nev. 247, 984 P.2d 752 (1999).

<sup>3</sup>Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

<sup>4</sup>See NRS 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).

<sup>5</sup>Wallace, 112 Nev. at 1019, 922 P.2d at 543.

determined that because appellant is incarcerated, it is in the child's best interest for respondent to have sole legal and physical custody of the child. The district court denied appellant visitation with the child because of his incarceration, and informed appellant that upon his release from prison he may move the district court to modify the visitation arrangement. Thus, 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. NRS 125B.070(1)(b)(1) provides 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> Here, the district court divided certain personal possessions, and ordered the

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<sup>6</sup>NRS 125B.080(4).

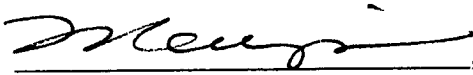
<sup>7</sup>NRS 125.150(1)(b).

<sup>8</sup>See 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); see also Sertic v. Sertic, 111 Nev. 1192, 1197-98, 901 P.2d 148, 151 (1995) (recognizing that circumstances may warrant the district court to retain jurisdiction over a pension for the purpose of later distribution).

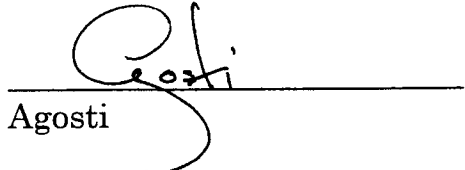
parties to immediately inform it of the discovery of any additional assets or debts for the purpose of distribution. Moreover, the court expressly retained jurisdiction over the pension. We conclude that the record supports the district court's order concerning the division of community property and debt.

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.

  
\_\_\_\_\_, C. J.  
Maupin

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Agosti

cc: Hon. J. Michael Memeo, District Judge  
Brian D. Green, Esq.  
William Orlo Fillmore  
Elko County Clerk