

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY A. HANNA,
Appellant,
vs.
KATHRINE A. HANNA,
Respondent.

No. 41313

FILED

SEP 23 2009

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

ORDER AFFIRMING IN PART, REVERSING IN PART
AND REMANDING

This is an appeal from a final divorce decree. Third Judicial District Court, Churchill County; Robert E. Estes, Judge.

"This court reviews district court decisions concerning divorce proceedings for an abuse of discretion. Rulings supported by substantial evidence will not be disturbed on appeal."¹ Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment.²

Nevada imposes upon both parents the duty to provide child support.³ This court reviews a child support order for an abuse of discretion.⁴ Under NRS 125B.070(1)(b)(1),⁵ a formula has been

¹Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998) (citation omitted).

²See Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999).

³NRS 125B.020.

⁴Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996).

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. Here, the district court ordered appellant to pay \$405 per month in support. The decree does not set forth appellant's gross monthly income, nor does it expressly apply the statutory formula. The district court minutes reveal that the court determined that appellant earns approximate \$27,000 per year, or \$2250 per month, of which 18% is \$405, but the minutes do not explain on what evidence the district court relied. The record further shows that appellant filed in the district court a financial statement declaring his gross income as \$21,311 per year, or \$1776 per month, of which 18% is \$320. Additionally, appellant asserts that his income in prior years was substantially less. When a parent's gross monthly income is in dispute, the district court must determine the amount, and the court may order the parent to provide "financial information or other records, including income tax returns for the preceding 3 years."⁶ In this case, it is unclear how the district court determined appellant's gross monthly income and, thus, whether it properly applied the statutory formula.

In addition, any error made in determining the amount of monthly child support would also affect the amount of retroactive child

... continued

⁵In 2003, NRS 125B.070 was amended as to the statutory maximum child support obligation. Since this action arose in 2002, the former statute applies.

⁶NRS 125B.080(3).

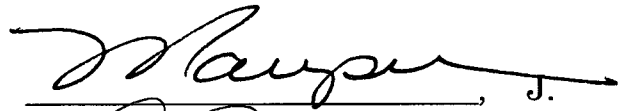
support calculated by the district court. Here, the district court determined that appellant owed retroactive child support of approximately \$29,160, calculated at \$405 per month for 72 months, or 6 years. Under NRS 125B.030, when no child support order has been entered and the parents are separated, the parent with physical custody of the child may recover from the other parent a reasonable portion of the cost of care and support for a period not longer than four years before the action for support was commenced. Thus, the district court abused its discretion when it ordered arrears beyond the four-year period in violation of NRS 125B.030.

Finally, appellant contends that the district court erred when it ordered him to pay medical expenses incurred on the child's behalf in the amount of \$3,250. Under NRS 125B.080(7), both parents equally bear healthcare expenses for a child, absent extraordinary circumstances. Here, the record indicates that respondent had paid \$2000 toward the child's medical expenses. The district court did not state in the decree, however, that extraordinary circumstances existed that warranted appellant paying an unequal amount toward the child's medical expenses. Thus, the district court erred when it ordered appellant responsible for more than 50% of the medical expenses without explaining why it reached this conclusion.

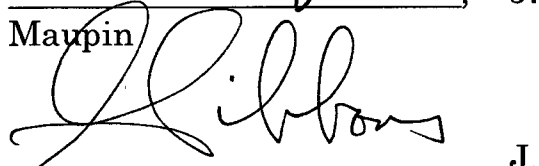
Accordingly, we affirm the divorce decree, and we reverse that portion of the decree concerning the child support obligation and arrears, and medical expenses, and remand this matter to the district court for either entry of written findings of fact to justify its decision regarding the amount of the child support award, not to apply retroactively beyond the

four-year period under NRS 125B.030, and to justify appellant's unequal portion of medical expenses, and/or to re-determine the amount of child support, retroactive support, and medical expenses.

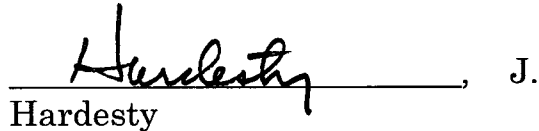
It is so ORDERED.⁷

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Robert E. Estes, District Judge
Jonathan H. King
Kathrine A. Hanna
Churchill County Clerk

⁷Appellant also contends that the equitable defenses of estoppel or waiver preclude respondent from recovering retroactive child support, when she absconded with the child for a seven-year period without informing appellant of her or the child's whereabouts. There is no indication in the record that appellant raised this issue with the district court; thus, the issue is waived on appeal. See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).