

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN JAMES COX,
Appellant,
vs.
TERESA LYNN COX,
Respondent.

No. 41597

FILED

OCT 10 2003

[Signature]
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order modifying respondent's child support obligation.

Nevada imposes upon both parents the duty to provide child support.¹ This court reviews a child support order for abuse of discretion.² A court may deviate from the child support formula set forth in NRS 125B.070 only upon (1) making findings of fact as to the basis for the deviation, and (2) providing in those findings of fact the presumptive support amount under the statutory formula.³ In carrying out the statutory child support mandate, the district court has the power to make equitable adjustments of the child support obligation formula, and the court may adjust the amount of support based on a parent's responsibility for the support of others.⁴

¹NRS 125B.020.

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

³NRS 125B.080(6).

⁴Hoover v. Hoover, 106 Nev. 388, 389, 793 P.2d 1329, 1330 (1990); see also NRS 125B.080(9)(e).

Under NRS 125B.080(8), “[i]f a parent who has an obligation for support is willfully underemployed or unemployed to avoid an obligation for support of a child, that obligation must be based upon the parent’s true potential earning capacity.” “[W]here evidence of willful underemployment preponderates, a presumption will arise that such underemployment is for the purpose of avoiding support. Once this presumption arises, the burden of proving willful underemployment for reasons other than avoidance of a support obligation will shift to the supporting parent.”⁵

Here, the district court found that respondent had failed to overcome the presumption that she was willfully underemployed in order to avoid her support obligation to her older children. Still, the court determined that because respondent had an obligation to support her newborn child, a downward deviation from the statutory formula was in order.

Minor children have a right to support, and a deviation from a child support obligation may be warranted when the supporting parent is financially responsible for subsequent children. However, when the supporting parent is willfully underemployed, has failed to overcome the presumption that her underemployment is intended to avoid paying child support, and has failed to secure child support for her new child from the child’s biological father, the custodial parent is financially impacted. In essence, the district court’s order results in the child’s biological father having no financial responsibility for the child and appellant being financially impacted with respect to his support obligations. Accordingly,


⁵Minnear v. Minnear, 107 Nev. 495, 498, 814 P.2d 85, 86-87 (1991).

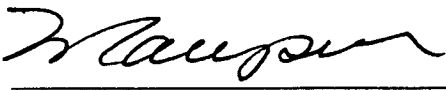
we conclude that the district court abused its discretion when it reduced respondent's child support obligation.

We therefore reverse the district court's March 19, 2003 order modifying the child support obligation and remand this matter to the district court to determine the child support obligation in light of this order.

It is so ORDERED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. J. Michael Memeo, District Judge
Kevin James Cox
Teresa Lynn Cox
Elko County Clerk