

SUPREME COURT OF NEVADA

Wesley v. Foster

119 Nev. 110 (2003) · Decided March 21, 2003

SUMMARY

The Nevada Supreme Court held that, in shared-custody child-support cases, the Wright income offset must be calculated before applying the statutory presumptive maximum. The court reversed and remanded because the district court applied the cap before performing the offset.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam; Becker; Leavitt; Shearing
JURISDICTION	Nevada
DECIDED	March 21, 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Wesley appealed the district court's order modifying and resetting Foster's child-support obligation after the district court concluded that the statutory presumptive maximum should be applied before the Wright shared-custody offset.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review; it reviewed the district court's child-support calculation and determined that the court applied the governing legal formula in the wrong sequence.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Cassandra Wesley v. Anthony Foster

TOPICS

- child support
- statutory interpretation
- appellate procedure
- family law procedure

PRACTICE AREAS

- family law
- child support
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. In a shared-custody arrangement, should the Wright v. Osburn offset be calculated before or after applying the statutory presumptive maximum for child support under NRS 125B.070?
2. Whether the district court erred by applying the statutory cap before performing the Wright shared-custody offset.

HOLDINGS

1. In a shared-custody arrangement, the Wright offset must be applied before the statutory presumptive maximum under NRS 125B.070.
2. The district court erred by applying the statutory cap before performing the Wright offset.

KEY QUOTATIONS

“The Wright offset should take place before, not after, application of the cap.” (119 Nev. at 112-13)

“We hold that in shared custodial arrangements, the Wright offset should be applied prior to application of the statutory cap.” (119 Nev. at 114)

FACTUAL BACKGROUND

Cassandra Wesley and Anthony Foster had a child in 1995, and paternity and an initial child-support obligation were established. In a 2000 modification proceeding, Foster's gross monthly income was determined to be \$5,417 and Wesley's to be \$1,417. The hearing master applied the Wright shared-custody offset before the statutory presumptive maximum, but the district court reversed that sequence and reset Foster's support obligation.

PROCEDURAL HISTORY

After a three-year child-support review hearing, the hearing master calculated each parent's percentage obligation, applied the Wright offset, and then applied the statutory cap. Foster objected, and the district court agreed that the cap should precede the offset. Wesley appealed to the Nevada Supreme Court, which reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including calculation of the Wright offset before application of the statutory presumptive maximum.

CASES CITED

- Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998)
- Garrett v. Garrett, 111 Nev. 972, 976, 899 P.2d 1112, 1115 (1995)

- *Barbagallo v. Barbagallo*, 105 Nev. 546, 549, 779 P.2d 532, 535 (1989)

OPINION

PER CURIAM.

OPINION Per Curiam: In this appeal, we examine whether the statutory presumptive maximum for child support, as provided in NRS 125B.070,1 should be applied to the support obligation before, or after, application of the calculation set forth in *Wright v. Osburn*2 for shared custodial arrangements.

We conclude that the Wright calculation should be *112performed before application of the presumptive maximum support obligation. FACTS AND PROCEDURAL HISTORY In 1995, Cassandra Wesley and Anthony Foster had a child out of wedlock. Shortly thereafter, paternity was established and child support was set.

On November 15, 2000, Wesley requested a three-year review and modification of child support, pursuant to NRS 125B.145(l)(b); a hearing was conducted. Foster's gross monthly income was determined to be \$5,417. Wesley's gross monthly income was determined to be \$1,417.

The hearing master calculated the appropriate percentage of each parent's income, subtracted Wesley's obligation from Foster's, pursuant to Wright, and then applied the statutory presumptive maximum (the cap), as provided by NRS 125B.070(l)(b). Shortly thereafter, Foster filed an objection to the hearing master's recommendation and order, arguing that the child support court's decision was clearly erroneous because the cap should have been applied before performing the Wright calculation.

Following a hearing, the district court agreed with Foster's approach and reset his support obligation. Wesley appealed the district court's ruling, contending that in shared custody arrangements, the cap should be applied after the Wright calculations.

We now take this opportunity to clarify our ruling in Wright. DISCUSSION NRS 125B.020(1) provides that parents have a duty to support their children. NRS 125B.070(l)(b) provides a formula for calculating child support based on a percentage "of a parent's gross monthly income, but not more than \$500 per month per child... unless the court sets forth findings of fact as to the basis for a different amount pursuant to subsection 6 of NRS 125B.080." These two statutes, taken together, set forth an objective standard for establishing child support.3 In Wright, this court established a formula for determining which parent receives child support and the amount of support in situations where custody is shared equally.4 The district court must "[c]alculate the appropriate percentage of gross income for each *113parent; subtract the difference between the two and require the parent with the higher income to pay the parent with the lower income that difference."5 In Wright, we did not specifically address the question of when application of the

statutory presumptive maximum should occur.⁶ The Wright offset should take place before, not after, application of the cap.

This conclusion supports “the general philosophy of NRS 125B.070, which is to make sure adequate monthly support is paid to our children.’⁷ As we have previously stated, the fixed child-care expenses incurred by each parent are usually not appreciably diminished as a result of shared custody.⁸ “The sad reality that must be faced is that the desirable sharing of custody responsibilities by [another] custodian in joint custody situations has the inevitable result of increasing total child-related expenses.”⁹ Nonetheless, we must still attempt to maintain the comparable lifestyle of the child between the parents’ households.¹⁰ In this case, there is a disparity in the gross monthly income of the two parents.

Consistent with our holding in Wright, Wesley’s percentage of gross monthly income should first be subtracted from Foster’s percentage of gross monthly income.¹¹ Then, after this offset is made, the cap should be applied.¹² “Of course, the district court also has the option to adjust the amount of the award where special circumstances exist.”¹³ CONCLUSION We hold that in shared custodial arrangements, the Wright offset should be applied prior to application of the statutory cap.

The district court erred by applying the cap prior to performing the offset. Accordingly, we reverse the order of the district court and remand this case for further proceedings consistent with this opinion. The version of NRS 125B.070 that applies in this opinion is the statute in effect through June 30, 2002, providing a presumptive maximum of \$500 per month per child.

The new version of the statute, effective July 1, 2002, provides a different presumptive maximum amount to each income range, ranging from a presumptive maximum amount of \$500 to \$800. The new statute also requires that the income range and maximum amounts be adjusted on July 1 of each year based upon the increase or decrease in the Consumer Price Index. 114 Nev. 1367, 970 P.2d 1071 (1998).

See Wright, 114 Nev. at 1368, 970 P.2d at 1072. Id. at 1368-69, 970 P.2d at 1072. Id. at 1369, 970 P.2d at 1072. See id. In Wright, we applied the applicable percentage to each parent’s gross income and subtracted the lower obligation from the higher obligation.

The father’s obligation was \$1 over the presumptive maximum before subtracting the mother’s obligation. Garrett v. Garrett, 111 Nev. 972, 976, 899 P.2d 1112, 1115 (1995) (Rose, J., dissenting). Barbagallo v. Barbagallo, 105 Nev. 546, 549, 779 P.2d 532, 535 (1989). Id. See Wright, 114 Nev. at 1368, 970 P.2d at 1072. 18% of \$1,417.00 = \$255.06. 18% of \$5,417.00 = \$975.06.

Applying the offset, \$975.06 minus \$255.06 = \$720.00, Foster’s child support obligation prior to application of the cap. The version of NRS 125B.070 in effect at the time of the petition for modification provided a \$500 cap.

Therefore, Foster's obligation for support payments to Wesley is \$500 per month. Wright, 114 Nev. at 1369, 970 P.2d at 1072 (citing NRS 125B.080(9)).

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