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### Miller v. Miller, 134 Nev. Adv. Op. 16 (Mar. 15, 2018)

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FAMILY LAW: CHILD SUPPORT

**Summary**

When the parents share joint physical custody of one minor child but one of the parents has primary physical custody of the other minor child, the district court must use additional steps in order to properly utilize the statutory child support formula. Further, the courts must make specific findings of fact if they deviate from the standard statutory formula.

**Background**

Appellant, Leslie Miller, and respondent, Brett Miller, are the parents of two minor children. The parties participated in mediation during their divorce in 2015. Through this process, the parties were able to agree on nearly all of the terms of the divorce, including child custody. However, they were not able to reach an agreement regarding child support. The parties agreed to share joint physical custody of one of the minor children, but Leslie was to have primary physical custody of the other minor child.

Due to this custody arrangement, the district court ruled that Brett had a child support obligation in the amount of \$345.00 a month. Leslie filed a motion for reconsideration in response to that ruling. Leslie argued that there was no governing authority on how to calculate child support in their situation, and that the \$345.00 amount fell below the state statutory guidelines. Leslie sought clarification as to how the district court arrived at that amount.

The district court denied Leslie’s motion asserting that the \$345.00 amount was in the best interests of the children. The district court supported this amount stating that it used the percentages permitted under the statute for one child and for two children. The district court then reviewed the comparative incomes, deviation factors, and totality of the circumstances to arrive at the final amount of child support. Leslie appealed.

**Discussion**

Leslie argued that the district court did not provide findings of fact in order to explain the deviations of the statutory guidelines. Further, she argued that the amount of child support is unreasonable based on the custody arrangements and respective incomes. Brett countered that the district court could not abuse its discretion as there is no statute that directly guides child support in this atypical custody situation. “The parties, the district court, and amicus curiae, the State Bar of Nevada Family Law Section (FLS), have asked this court to determine the appropriate formula for the calculation of child support in his type of situation.”

*Nevada’s child support framework*

Parents of a child have the obligation to provide support for that child. That responsibility is the baseline for calculating child support. Nevada has a statutory formula for determining child support which assigns a percentage based upon the number of minor children. This percentage

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ranges from 18 percent for one child, 25 percent for two children, 29 percent for three children, and so on. That percentage represents the amount of the parent's gross monthly income that they owe for the support of their child or children.

This amount is without regard to the custody arrangement in place. The amount of the obligation is determined first. Then, the custody arrangement governs the final amount of the child support obligation.

The concept of this obligation of support is rooted in the historical, traditional custody arrangement where one parent is the custodial parent and the other the non-custodial parent. The statute currently in place did not contemplate a custody arrangement such as the one here. Despite this, the concept of the obligation of support is still broad enough to apply it to other types of custody arrangements.

The courts have regularly applied the formula in various custody situations. Where one parent has primary physical custody, the application is clear with the other parent paying the appropriate percentage of their gross monthly income. Another common application is when the parents share physical custody of the child. In this situation, the parent who has the higher income pays a child support obligation equal to the difference between the parents' statutory child support obligations. These amounts are subject to the maximum amount due per child per month.

The courts still retain some discretion to change the amount of child support due based upon the consideration of the factors listed in the statute. Any variance, however, must be supported by a findings of fact explaining the deviation for the statutory guidelines.

#### *The district court's, parties', and FLS's interpretations of NRS 125B.070*

The case at hand, wherein one party has primary physical custody of one child and both parties share physical custody of the other child, makes the use of the formula and guidelines difficult. The parties', the district court, and FSL all determined different amounts as the child support obligations which ranged from \$345 to \$832.19 per month.

The district court awarded \$345.00 a month in child support to be paid by Brett because it used the statutory percentages of 18 percent for one child and 25 percent for two children to calculate the amount. The court then looked to the parties' comparative incomes and applied the deviation factors.

The district court erred in considering the statutory 18 percent as the parties have two children. The district court should have calculated the baseline of child support using the 25 percent prescribed by the statute. Further, their findings of fact did not include which deviation factors the court applied in order to articulate how the final child support obligation was determined.

Alternatively, FLS calculated a different amount for the child support obligation. FLS urged that the court look at the custody arrangement involving each child when determining the amount of the child support obligation. Here, FLS calculated Leslie's obligation based on 18 percent as she would only have a support obligation for the child that she shares custody with Brett. Brett, on the other hand, would have his obligation based on 25 percent as he does not have primary custody of either child. The difference of these two amounts would be amount awarded for child support.

However, the FLS calculation is also problematic. The text of the statute requires that the calculation begin by determining each parent's support obligation, regardless of their custodial arrangement. FLS based the first step in its calculation on the custodial arrangement. Further, it is not proper to offset awards when one parent has primary physical custody of a child.

Lastly, the parties themselves also begin their attempts at calculating the obligations of support based on one child. This is in opposition to the plain text of the statute.

*Application of Nevada's child support framework to the Millers' custody arrangement*

The text of the statute requires that the calculation begin by determining each parent's support obligation, regardless of their custodial arrangement. Here, each parties' obligation is 25% as there are two minor children. Based on their gross monthly income, Leslie's support obligation is \$996.67 and Brett's support obligation is \$1,076.24. Next, because there are two children, those amounts are halved to determine the support obligation per child. Once the obligations are halved, Leslie's obligation per child is \$498.34 and Brett's obligation per child is \$538.12.

Because the parties share custody of one child, the obligations for that child would offset each other. The court must take Brett's obligation for such child and subtract it by Leslie's obligation for such child. The resulting amount is Brett's obligation for that child in the amount of \$39.78. Regarding the second child, as Leslie has primary physical custody of that child, Brett is responsible for the entirety of his obligation in the amount of \$538.12. Accordingly, Brett's total child support obligation for both children would be \$577.90

The next step is to verify whether or not this amount falls within the presumptive maximum amount, which it does. Finally, the court has discretion to deviate from this amount based upon the application of the factors.

**Conclusion**

To determine the child support obligations in a custody arrangement where the parents share joint physical custody of one minor child, but one parent has primary physical custody of the other minor child, the court must first use the mandated percentages in order to determine the base child support obligation of each parent. Then, the court must divide that amount by the number of children to determine the amount of the child support obligation per child. These obligations will offset for any children under shared custody. That offset must then be added to the remaining obligation for any child where custody is not shared. Once this amount is determined, the court may evaluate if the amount falls within the presumptive maximum amount and if there should be any deviation from the amount under the factors. If there are any deviations, the court must make account for those specifically in the findings of fact. Here, the Court reversed the district court's award of \$345 for child support and remanded with the above instructions.