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Domestic Relations; child support

NEV. REV. STAT. § 125B.060 (repealed); § 125B (new); §§ 125B.080, 126.141 (amended).

AB 3 (Sader); 1989 STAT. Ch. 405

Under existing law the district attorney,¹ upon the request of a custodial parent,² must take any legal action necessary to enforce an order of obligation for child support.³ Chapter 405 requires a court⁴ to order the obligor-parent⁵ to deposit assets with a trustee⁶ as security for future support payments when, in a proceeding where the order to pay the support for a minor child⁷ is made: (1) The person to whom the support is to be paid provides a declaration stating that the obligor-parent is in arrears by thirty or more days of payments;⁸ (2) the obligor-parent is given notice and an opportunity to be heard;⁹ and (3) the court finds that good cause exists.¹⁰ Before ordering the deposit of assets, the court must also find that: (1) There is reason to believe that the obligor-parent receives some source of employment

1. See NEV. REV. STAT. § 125B.150 1 (1987) (the district attorney of the county of residence of the child, or the parent delinquent in supporting the child).

2. See *id.* (or public agency providing assistance to the parent or child).

3. *Id.* The order may be made by a court of any state pursuant to an administrative proceeding which assists in the recovery of child support payments. *Id.* § 125B.140 1, 6 (1987). An order which requires payment for support becomes a judgment upon the payment due date and may be enforced in the same manner as other judgments imposed by the state. *Id.* § 125B.140 1 (1987).

4. See 1989 Nev. Stat. ch. 405, sec. 2, at 855 (enacting NEV. REV. STAT. § 125B.____) (including court appointed masters or referees).

5. See *id.* (defines obligor-parent as the parent whom the court has ordered to pay child support).

6. See *id.* sec. 3, at 855 (enacting NEV. REV. STAT. § 125B.____) (court designates the trustee and may choose the district attorney or any other county officer or person).

7. See *id.* sec. 2, at 855 (enacting NEV. REV. STAT. § 125B.____) (defines minor child as a person who is less than 18 years of age, less than 19 years of age and enrolled in high school, legally disabled, or not declared emancipated). See also NEV. REV. STAT. §§ 129.080-.140 (1987) (emancipation procedure).

8. 1989 Nev. Stat. ch. 405, sec. 3, at ____ (enacting NEV. REV. STAT. § 125B.). See *id.* (the declaration is to be signed under penalty of perjury).

9. *Id.* (or notice of motion or order to show cause).

10. *Id.* The court must also order the supporting parent to pay reasonable attorney's fees and costs to the person to whom the support is paid. *Id.* The court determines which of the obligor-parent's assets can be subject to an order to deposit assets and must first attach cash, then other assets in descending order of liquidity. *Id.* sec. 7, at 857 (enacting NEV. REV. STAT. § 125B.____). The assets cannot be exempt from execution and, when possible, must be at least equal to the amount of current arrearages and annual amount of support ordered. *Id.* Upon court approval, the obligor-parent may submit a performance bond secured by other assets or real property in lieu of depositing money or other assets. *Id.*

income, but does not receive a salary or commission that is subject to assignment;¹¹ (2) the support obligation cannot be met by assignment or withholding of salary or commission and the obligor-parent does not qualify for support reduction;¹² or (3) the obligor-parent's employment history makes assignment or withholding impracticable as a means for ensuring security.¹³

Chapter 405 allows the court to consider certain factors when deciding a motion to deposit assets¹⁴ including whether any arrearage of child support payments existed when the declaration by the person to whom support must be paid was filed.¹⁵ Other factors the court may consider include whether issuing the order would materially impair the obligor-parent's ability to gain income or would produce greater serious adverse effects on members of the obligor's immediate family¹⁶ than denying the order would have on the other parent,¹⁷ and whether any other emergency situation exists which disables the obligor-parent from making the support payment.¹⁸ During the pendency of proceedings to secure assets for child support, any party may move for, and the court may issue, *ex parte* orders to keep any person from encumbering, concealing or otherwise disposing of any real or personal property unless it is in the ordinary course of business or for necessities which are not deemed extraordinary expenditures.¹⁹

11. See NEV. REV. STAT. §§ 31A.250-.340 (1987) (procedure for determining whether the salary or commission is subject to assignment or withholding).

12. See *id.* § 125B.140 (1987) (a court may, upon motion of either party, modify the required support payments when changed circumstances are shown).

13. 1989 Nev. Stat. ch. 405, sec. 6, at 857 (enacting NEV. REV. STAT. § 125B.____). See *id.* (the existence of multiple, concurrent, or consecutive employers may give rise to employment history which makes assignment or withholding impracticable).

14. *Id.* sec. 5, at 856 (enacting NEV. REV. STAT. § 125B.____) (The same factors will be considered when the court decides a motion by the obligor-parent to stop the sale of assets that have been deposited. *Id.*

15. *Id.* If evidence of the existence of an arrearage is offered, a presumption arises that the nonpayment was willful and without good faith, and that the obligor-parent was able to pay. *Id.* The obligor-parent must then rebut that presumption. *Id.* If the arrearage is found to have existed when the declaration was filed, even if cured since, the court must order the obligor-parent to pay reasonable attorney's fees and costs to the person to whom the support payment is to be made. *Id.*

16. See *id.* (the immediate family members must be in residence with the obligor-parent).

17. *Id.*

18. *Id.* The obligor-parent may file a motion opposing the trustee's sale or use of the assets within 15 days after notice of the planned sale or use is served. *Id.* The court clerk must set the date for hearing the motion within 20 days after the trustee and person to be paid are served. *Id.* The obligor-parent must introduce the factors into evidence and the factors are to be considered along with other legal or equitable defenses. *Id.*

19. *Id.* sec. 8, at 858 (enacting NEV. REV. STAT. § 125B.____) (the property may be community or separate). If the *ex parte* order is made against a person who is a party to the action, the court must require the party to account for extraordinary expenditures. *Id.* The

Chapter 405 requires the designated trustee to use, sell, or otherwise gain income from the deposited assets to pay the amount of arrearage, administrative costs, attorney's fees, and any other current amount due²⁰ by order of the court if: (1) The obligor-parent fails to cure the default due when the trustee obtains the assets within the period of time given by the court order;²¹ (2) the obligor-parent defaults on payments due after the trustee receives the assets or fails to pay the arrearage stated in the declaration within 30 days after the trustee receives the assets; (3) the obligor-parent is served with proper notice of the trustee's intent to use or sell the assets;²² and (4) the obligor-parent has not filed a motion to stop the use or sale of the assets, or such motion has been denied.²³ The court may order the sale of any deposited asset that is not money or is not easily changeable into money, and the proceeds will be deposited with the designated trustee.²⁴ When the obligor-parent gives notice to the trustee for the return of the assets and has paid all arrearages and made timely

court must make the ex parte order returnable within 25 days after the date of the order and, at the hearing, must define extraordinary expenditure and indicate the property for which obligor-parent must cite extraordinary expenditures. *Id.* If the ex parte order does not state a date of expiration, the order will expire one year after its issuance or upon the deposit of assets, whichever occurs earlier. *Id.*

20. *See id.* sec. 3, at 855 (enacting NEV. REV. STAT. § 125B.____) (including amounts due for child care, support, education, and maintenance).

21. *Id.* (the trustee must also take such action if the obligor-parent fails to comply with a court approved payment plan).

22. *Id.* (notice must be served personally or by certified mail at least 25 days before the trustee takes action).

23. *Id.* The trustee must sell the assets pursuant to the rules governing the sale of property under execution. *Id.* *See* NEV. REV. STAT. §§ 21.130-21.260 (1987) (procedure for sale of property under execution). The trustee may deduct any actual administrative costs associated with the sale and five-percent of each payment made by the obligor-parent. 1989 Nev. Stat. ch. 405, sec. 3, at 859 (enacting NEV. REV. STAT. § 125B.____). The trustee must prepare a statement showing disbursements and receipts made if requested by the obligor-parent. *Id.* sec. 11, at 858 (enacting NEV. REV. STAT. § 125B.____). If the deduction does not fully compensate the trustee for costs incurred in the sale of assets or statement preparation, the court may charge the obligor-parent reasonable fees and costs at a hearing held within 20 days after the trustee serves the obligor-parent with notice. *Id.* sec. 12, at ____ (enacting NEV. REV. STAT. § 125B.____).

24. 1989 Nev. Stat. ch. 405, sec. 4, at 856 (enacting NEV. REV. STAT. § 125B.____). The court must serve the obligor-parent with notice of the sale and provide an opportunity to be heard at least 25 days before the anticipated sale. *Id.* *See* NEV. REV. STAT. §§ 21.130-.260 (1987) (procedure for sale of deposited assets). If a deposited asset is real property, the order must be certified and recorded with the county. 1989 Nev. Stat. ch. 405, sec. 4, at 856 (enacting NEV. REV. STAT. § 125B.____). The legal owner retains possession of the property until the property becomes subject to use or sale by the trustee, and the legal owner may not encumber or otherwise dispose of the property or realize profits from it without court approval. *Id.* If the deposited assets are personal property or fixtures, the trustee must file a financing statement. *Id.* If the asset is a registered vehicle, the trustee must give the department of motor vehicles the vehicle's certificate of ownership. *Id.*

support payments for the previous 12 months, the trustee must return the assets to the obligor-parent.²⁵

Existing law uses a formula to determine the amount of child support²⁶ required or to request a change in the amount of child support ordered.²⁷ Chapter 405 adds the provision that where the parties agree on the amount required, they must certify that the amount is compatible with the formula.²⁸ If the parties deviate from the formula, the court must find sufficient facts to justify the deviation.²⁹

Under existing law, the court may modify a child support order,

25. 1989 Nev. Stat. ch. 405, sec. 10, at 858 (enacting NEV. REV. STAT. § 125B.____). The designated trustee is not liable when acting in good faith and in accordance with Chapter 405. *Id.* sec. 9, at 858 (enacting NEV. REV. STAT. § 125B.____). When the requirements for return of the assets are met, the trustee must record a release of any real property, file a release for any personal property or fixtures and deliver to the obligor-parent the certificate of ownership of any registered vehicle. *Id.* sec. 10, at 858 (enacting NEV. REV. STAT. § 125B.____).

26. See NEV. REV. STAT. § 125B.070 (1987) (the obligor-parent's obligation of support is defined as 18% of the parent's gross monthly income for one child; 25% for two children; 29% for three children; 31% for four children; and an additional two percent for each additional child, limited to a maximum of \$500 per month per child).

27. *Id.* § 125B.080 1 (1987) (amended by 1989 Nev. Stat. ch. 405, sec. 14, at 859). If the parties disagree regarding the amount of gross monthly income, the court must determine the amount and may require either party to provide certain financial information. *Id.* § 125B.080 3. In any case, \$100 is the minimum amount of support which a court may award unless the court makes a finding that the obligor cannot pay that amount. *Id.* § 125B.080 4. The presumption that the basic needs of a child are met by this formula may be rebutted with a showing that the needs of a certain child cannot be met by application of the formula. *Id.* § 125B.080 5. The court must state findings of fact regarding the basis for any difference between the amount awarded and the amount determined by the formula. *Id.* § 125B.080 6. Unless there are extraordinary circumstances, both parents are equally liable for the health care expenses which are not reimbursed. *Id.* § 125B.080 7. An obligation is based upon the parent's potential earning capacity when that parent is purposefully unemployed or underemployed in order to avoid paying the obligation. *Id.* § 125B.080 8. When the court makes a modification in the amount of child support, it must consider the cost of health and child care, the child's special educational needs, the child's age, the parents' responsibility to support others, the value of services provided by either parent, public assistance received for the child, the mother's pregnancy and confinement expenses, the cost of transportation for visitation, the period of time the child spends with each parent and the relative income of both parents. *Id.* § 125B.080 9. Prior law required a court to use given considerations in determining the amount of child support to be paid when establishing or enforcing an order. 1985 Nev. Stat. ch. 463, sec. 27, at 1431 (repealed by 1989 Nev. Stat. ch. 405, sec. 16, at 861). The considerations included the medical and educational needs of the child, the parents' standard of living, the parents' relative incomes and earning abilities, the child's earning ability, the parents' responsibility for support of others, the value of the custodial parent's services, public aid paid for the child, expenses of the mother's pregnancy and confinement, and the adopted formula of the Welfare Division of the Department of Human Resources. *Id.* Under Chapter 405, the court is no longer mandated to use these considerations. 1989 Nev. Stat. ch. 405, sec. 16, at 861 (repealing NEV. REV. STAT. § 125B.060).

28. 1989 Nev. Stat. ch. 405, sec. 14, at 859 (amending NEV. REV. STAT. § 125B.080).

29. *Id.* The stipulated facts must be in accordance with the factors considered for modification of awards and any false information which gives rise to an improper amount, provides grounds for a motion to modify the obligation of support. *Id.*

upon a motion of either party, if changed circumstances³⁰ are shown.³¹ Chapter 405 requires the court, upon the request of the child's parent,³² to review a child support order every three years to decide whether the order should be modified.³³

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30. See *Ormachea V. Ormachea*, 67 Nev. 273, 300-301, 217 P.2d 355, 369 (1950) (a husband may request that the court modify his obligation when circumstances have so changed that the obligation has become burdensome or impossible for him to pay).

31. NEV. REV. STAT. § 125B.140 2 (1987). The court need not have expressly retained jurisdiction over the modification. *Id.*

32. See 1989 Nev. Stat. ch. 405, sec. 13, at 859 (enacting NEV. REV. STAT. § 125B.____) (the request may also be made by the child's legal guardian or the district attorney or department of human resources). See generally Williams, *Guidelines for Setting Levels of Child Support Orders*, 21 FAMILY L. Q. 281, 320 (Fall 1987). The procedure for modification has traditionally required a petition to the court for a change, and routine review has been resisted because of cost and workload increases. *Id.*

33. 1989 Nev. Stat. ch. 405, sec. 13, at 859 (enacting NEV. REV. STAT. § 125B.____). If the court finds that a modification is necessary it must use the formula to determine the new amount and issue an order to modify the prior order. *Id.* A child support order issued by a court or an expedited process must be reviewed every three years. *Id.* See NEV. REV. STAT. § 125B.140 6 (1987) (defines expedited process as used in regard to enforcement of child support obligations). See also *Atkins v. Atkins*, 50 Nev. 333, 337, 259 P. 288, 289 (1927) (courts have been given broad discretion in determining child support and custody in order to protect the best interests of the child). See generally Williams, *supra* note 33 at 284 (child support orders generally become inadequate because of inflation and lack of routine updating procedures).