



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1989 | Issue 1

Article 76

1-1-1989

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Recommended Citation

The University of the Pacific, McGeorge School of Law, *Domestic Relations; child support-withholding of wages*, 1989 U. PAC. L. REV. (2019).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1989/iss1/76>

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Domestic Relations; child support—withholding of wages

NEV. REV. STAT. § 31A.020 (repealed); § 31A.— (new); §§ 31A.010, 31A.040, 31A.050, 31A.060, 31A.070, 31A.110, 31A.150, 31A.220, 31A.240, 31A.260, 125.450, 125B.150, 126.161, 130.041, 130.220 (amended).

AB 552 (Committee on Judiciary); 1989 STAT. Ch. 320

Existing law requires a court¹ to provide for appropriate child support before granting a divorce.² Prior law required that an order of child support include notice to the supporting parent that wages may be withheld for delinquent support payments.³ Chapter 320 requires that every child support order⁴ direct the withholding or assignment of wages and commissions of the parent responsible for payment of child support, unless the court finds good cause for postponing the withholding.⁵

Under existing law, the district attorney of the county in which the child or nonsupporting parent⁶ resides must take any legal action

1. 1989 Nev. Stat. ch. 320, secs. 3, 6, at ___ (amending NEV. REV. STAT. §§ 31A.010, 130.041) (defines court as the district court, or any judicial or administrative body established by any state or territory including the District of Columbia to aid in collecting child support obligations, and any other state court as defined by a similar reciprocal law).

2. See NEV. REV. STAT. § 125.450 (1987) (amended by 1989 Nev. Stat. ch. 320, sec. 1, at ___). The court must also make child support provisions before granting an annulment or separate maintenance. *Id.* The order for support must include provisions for medical care, education, and maintenance of the child. *Id.*

3. 1987 Nev. Stat. ch. 808, sec. 33, at 2250 (amended by 1989 Nev. Stat. ch. 320, sec. 1, at ___). See generally NEV. REV. STAT. §§ 31A.030-.240 (1987) (procedure for recovering payments for child support).

4. See 1989 Nev. Stat. ch. 320, sec. 1, at ___ (amending NEV. REV. STAT. § 125.450) (the provision also applies to any modification of a child support order).

5. *Id.* For postponement of withholding or assignment, the parties must show and the court must find good cause, or all of the parties must agree in writing to the postponement. *Id.* The order for withholding or assignment must be implemented according to the procedures for recovering child support payments. *Id.* The same provisions apply for orders issued under the Revised Uniform Reciprocal Enforcement of Support Act. *Id.* sec. 4, at ___ (amending NEV. REV. STAT. § 130.220). The same provisions also apply for orders or judgments determining whether there exists a parent and child relationship. *Id.* sec. 2, at ___ (amending NEV. REV. STAT. § 126.161). For orders regarding parent and child relationships, a court may also postpone withholding if it finds good cause pursuant to an expedited process. *Id.* See *id.* (defines expedited process as any judicial or administrative procedure designed to aid in the collection of a child support obligation). See also NEV. REV. STAT. § 126.021 (1987) (definition of parent and child relationship). See generally *id.* §§ 31A.010-.340 (1987) (procedure for recovering payment for child support); 130.010-.370 (1987) (provisions of the Revised Uniform Reciprocal Enforcement of Support Act).

6. See NEV. REV. STAT. § 126.021 (1987) (definition of nonsupporting parent).

necessary to enforce the payment of child support upon the request of the custodial parent.⁷ Chapter 320 requires the district attorney to inform a parent who applies for such assistance that unpaid support may be collected from any federal income tax refund due to the deserting or nonsupporting parent.⁸ If the applicant is not receiving public assistance, and the district attorney has a record of the child support order⁹ and has reason to believe that the unpaid child support is \$500 or more,¹⁰ then the district attorney must give the Welfare Division¹¹ any information the Welfare Division needs to proceed with collecting the tax refund.¹²

Under prior law, withholding of income could not proceed until the parent paying the support became delinquent by thirty days.¹³ Under Chapter 320, when a child support order directs the withholding of wages and commissions, the procedure for withholding must begin immediately if the enforcing authority¹⁴ has the case on file.¹⁵ If the child support order does not direct the withholding because withholding has been postponed, then the procedure for withholding must begin when the parent responsible for paying the support falls thirty days delinquent.¹⁶

Under existing law, upon application by the person to whom support is to be paid, stating that the responsible parent is thirty

7. *Id.* § 125B.150 (1987) (amended by 1989 Nev. Stat. ch. 320, sec. 1.5, at ____). The district attorney also must take action upon the request of a public agency providing assistance to the child. *Id.*

8. 1989 Nev. Stat. ch. 320, sec. 1.5, at ____ (amending NEV. REV. STAT. § 125B.150).

9. *See id.* (record of the child support order must include a copy of the order and any modifications specifying date of issuance and amount of support, or a copy of a payment record or affidavit signed by the custodial parent stating the amount owed). The district attorney must also have record of the custodial parent's current address. *Id.*

10. *See id.* (the district attorney must form a belief from the records possessed).

11. *See* NEV. REV. STAT. § 31A.010 (1987) (defines Welfare Division as a division of the Department of Human Resources).

12. 1989 Nev. Stat. ch. 320, sec. 1.5, at ____ (amending NEV. REV. STAT. § 125B.150). The district attorney must verify that the documents are accurate before submitting the documents and information to the Welfare Division. *Id.* The district attorney must verify the amount of unpaid child support claimed and the name and social security number of the nonsupporting parent. *Id.* Chapter 320 authorizes the Welfare Division to implement regulations needed to carry out these provisions. *Id.*

13. 1987 Nev. Stat. ch. 808, sec. 15, at 2243 (repealed by 1989 Nev. Stat. ch. 320, sec. 16, at ____).

14. *See* NEV. REV. STAT. § 31A.010 (1987) (amended by 1989 Nev. Stat. ch. 320, sec. 6, at ____) (defines enforcing authority as the Welfare Division or the district attorney).

15. 1989 Nev. Stat. ch. 320, sec. 5, at ____ (enacting NEV. REV. STAT. § 31A.____). If the enforcing authority does not have the case on file it must begin the procedure when the parent to whom support is to be paid notifies the enforcing authority of the order in writing. *Id.*

16. *Id.* The postponement must be due to the agreement of all parties, in writing, or because the court has found good cause. *Id.*

days delinquent, the court must order the responsible parent to make an assignment of wages.¹⁷ Under Chapter 320, whenever a child support order directs the withholding of wages and commissions, the enforcing authority may start the procedure for assignment immediately.¹⁸

Chapter 320 requires the enforcing authority to notify the delinquent parent of the withholding of income when the child support order does not require immediate withholding.¹⁹ The notice must inform the delinquent parent that income is to be withheld in an amount sufficient to pay current support and any arrearages.²⁰ The notice must also state that the parent responsible for paying support may contest the withholding.²¹

Existing law allows a parent responsible for paying support to contest withholding of wages on the grounds that the court which issued the order lacked personal jurisdiction, that there was a mistake of fact as to the amount of arrearages, or that the order of support was fraudulently obtained.²² Under existing law, at a hearing in which the responsible parent contests the withholding of income, the court must make its decision on whether the court which issued the order lacked personal jurisdiction or whether the order was obtained by fraud, and make appropriate orders.²³ Chapter 320 limits the application of these provisions to cases where the parent contests a

17. NEV. REV. STAT. § 31A.260 (1987) (amended by 1989 Nev. Stat. ch. 320, sec. 15, at ____). See *id.* § 31A.250 (1987) (the court may order the parent required to pay the support to assign wages to the parent to whom support is to be paid).

18. 1989 Nev. Stat. ch. 320, sec. 15, at ____ (amending NEV. REV. STAT. § 31A.260).

19. *Id.* sec. 7, at ____ (amending NEV. REV. STAT. § 31A.040).

20. *Id.* Notice must be sent by certified mail to the responsible parent's last known address. *Id.* The notice must inform the responsible parent that the withholding applies to any current or future employer and that notice will be sent to the employer 15 days after notice is mailed to the responsible parent. *Id.* Chapter 320 requires that notice of the withholding be mailed to the responsible parent's employer by certified mail, return receipt requested, 15 days after such notice is sent to the responsible parent. *Id.* sec. 10, at ____ (amending NEV. REV. STAT. § 31A.070). If the responsible parent contests the withholding, then notice must be sent to the employer upon an order of the court. *Id.* If the initial order of support directs the withholding of wages, without postponement, notice must be mailed to the employer as soon as the order is entered. *Id.*

21. *Id.* sec. 7, at ____ (amending NEV. REV. STAT. § 31A.040). The notice must also inform the responsible parent of the grounds and procedures required for contesting the withholding. *Id.*

22. NEV. REV. STAT. § 31A.050 (1987) (amended by 1989 Nev. Stat. ch. 320, sec. 8, at ____). The responsible parent must contest by requesting a hearing within 15 days after the notice of withholding is mailed. *Id.* Upon the request of the responsible parent, the enforcing authority must apply for a hearing before the court, unless the authority decides that a withholding is not necessary. *Id.*

23. See *id.* § 31A.060 (1987) (amended by 1989 Nev. Stat. ch. 320, sec. 9, at ____) (governs the court's determination of withholding and assessment of costs and attorney's fees).

withholding imposed after a child support order was issued that did not require withholding because of a postponement.²⁴

Chapter 320 permits an enforcing authority to withhold income as governed by this act in connection with a spousal support order if the authority is also collecting child support from the same person.²⁵ Chapter 320 also allows withholding, in connection with an order issued under this act, from the responsible parent's pension, annuity, or unemployment compensation.²⁶ Orders issued pursuant to this act are subject to the existing provisions governing enforcement of child support orders issued in another county or jurisdiction.²⁷

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24. 1989 Nev. Stat. ch. 320, secs. 8, 9, at ___ (amending NEV. REV. STAT. §§ 31A.050, 31A.060).

25. *Id.* sec. 11, at ___ (amending NEV. REV. STAT. § 31A.110).

26. *Id.* sec. 12, at ___ (amending NEV. REV. STAT. § 31A.150). Support may also be withheld from money due the responsible parent in the form of disability benefits, retirement contributions, or money due to some other person because of the responsible parent's death. *Id.*

27. *Id.* sec. 13, at ___ (amending NEV. REV. STAT. § 31A.220). Chapter 320 authorizes county clerks to collect and disburse withholdings pursuant to orders issued under this act. *Id.* sec. 14, at ___ (amending NEV. REV. STAT. § 31A.240).

Domestic Relations; community property

NEV. REV. STAT. § 422.2933 (repealed); §§ 123.220, 123.259 (amended).

AB 270 (Kissam); 1989 STAT. Ch. 170

Under existing law, upon petition of a spouse or guardian¹ of a spouse, a court can divide the community property² and obligations of a husband and wife into separate property³ when doing so would be in the best interest of both spouses.⁴ Chapter 170 requires that

1. See NEV. REV. STAT. § 159.017 (1987) (definition of guardian).

2. See *id.* § 123.220 (1987) (amended by 1989 Nev. Stat. ch. 170, sec. 1, at ___) (community property defined).

3. See *id.* 123.130 (1987) (separate property defined). See also NEV. CONST. art. IV, § 31 (rights of husband and wife).

4. NEV. REV. STAT. § 123.259 (amended by 1989 Nev. Stat. ch. 170, sec. 2, at ___). See generally 1987 PAC. L.J. REV. NEV. LEGIS. 84 (regarding changes in community property law).