

1
2
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IN THE SUPREME COURT OF THE STATE OF NEVADA

**Brenda L. Thompson a/k/a
Brenda L. Day,**

Appellant,

vs.

Joseph L. Smith,

Respondent.

Supreme Court Docket No. 52295
District Court Case No. 05D336215

FILED

MAY 05 2010

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An Appeal From an Order Reducing a Foreign Child
Support Obligation. Eighth Judicial District Court, Clark
County, Nevada; Lisa M. Kent, Judge.

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Table of Authorities i

I Introduction 1

II Argument 1

 A. It Was Joe, Not Brenda, Who Had the Burden to Show
 That a Change of Circumstances Warranted a
 Reduction of Child Support from \$10,339.00 to \$968.00
 per Month. 1

 B. Relocation to Nevada, in and of Itself, Does not Constitute a
 Change of Circumstances. 4

 C. It was Joe, Not Brenda, Who Had the Burden of Showing That
 a Modification of His Child Support Obligation was in Little
 Joe’s Best Interests. 5

 D. Rivero and *Fernandez* Have Retroactive Application to This
 Case. 6

 E. De Facto Alimony is an Unavoidable Byproduct of Child
 Support Involving Extraordinary High Income Earners. 7

 F. The Analysis of the Twelve Factors Set Forth in NRS
 125B.080(9) is Qualitative, not Quantitative. 10

 G. Failure to Cooperate in Discovery is No Basis for a Reduction
 in Child Support. 11

 H. This Court has Jurisdiction over this Appeal. 12

 I. Brenda’s Residency. 17

III Conclusion 17

Certificate of Compliance 19

Certificate of Mailing 20

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CASES

Barbagallo v. Barbagallo, 105 Nev. 546 (1989) 5

Branch v. Jackson, 629 Pa. Super. 417, 629 A.2d 170 (1993) 9

Chambers v. Sanderson, 107 Nev. 846, 822 P.2d 657 (1991) 10

County of Alameda v. Johnson, 28 Cal.App.4th 259, 33 Cal.Rptr. 2d 483 (1st
Dist. 1994) 9

Dagher v. Dagher, 103 Nev. 26, 731 P.2d 1329 (1987) 11

Fernandez v. Fernandez, 126 Nev. Adv. Op. No. 3, ___ P.2d ___ (2010) 2-7

Franklin v. State, 98 Nev. 266, 646 P.2d 543 (1982) 6

Friel v. Cessna Aircraft Co., 751 F.2d 1037 (9th Cir.1985) 6

Griffith v. Kentucky, 479 U.S. 314, 107 S.Ct. 708 (1987) 6

Harris v. Harris, 168 Vt. 13, 714 A.2d 626 (1998) 9

Herz v. Gabler-Herz, 107 Nev. 117, 808 P.2d 1 (1991) 10

Hughes v. Hughes, 311 N.J. Super. 15, 709 A.2d 261 (App.Div. 1998) 9

In re Adams, 156 N.H. 257, 932 A.2d 21 (2007) 5

In re Marriage of Cheriton, 92 Cal. App. 4th 269 (2001) 9

In re Marriage of Hubner, 205 Cal.App. 3d 660, 252 Cal.Rptr. 428 (2d Dist.
1988) 9

Jane Doe VI v. Richard Roe VI, 736 P.2d 448 (Haw. Ct. App. 1987) 7

Johnson v. Superior Court, 66 Cal. App. 4th 68, 71, 77 Cal. Rptr. 2d 624 (Cal.
App. 1998) 8

Lee v. GNLV Corp., 116 Nev. 424 (2000) 15, 16

Lewis v. Hicks, 108 Nev. 1107, 843 P.2d 828 (1992) 10

Love v. Love, 114 Nev. 572, 959 P.2d 523 (1998) 9, 10

Madera v. SIIS, 114 Nev. 253, 956 P.2d 117 (1998) 7

Marriage of Bush, 547 N.E.2d 590 (1989) 9

TABLE OF AUTHORITIES (CONT'D)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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23
24
25
26
27
28

Perkins v. Nev. Silver Mining Co., 10 Nev. 405 (1876) 16

Rivero v. Rivero, 125 Nev. Adv. Op. No. 34, 216 P.3d 213 (2009) 2-7

Rodriguez v. Rodriguez, 834 S.W.2d 369 (Tex. App. 1992) 7

Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993) 11

Valley Bank of Nevada v. Ginsburg, 110 Nev. 440 (1994) 15

STATUTES

NRAP 28 12

NRCP 54 15

NRS 125B.080 10

NRS 125B.145 3

NRS 130.611 2, 4

OTHER AUTHORITIES

Williams, Guidelines For Setting Levels of Child Support Orders, 21 Fam.
Law Quart. 281, 287 (1987) 7

1 **I INTRODUCTION**

2 Despite any showing of changed circumstances or that any reduction
3 would serve the child's best interest, the district court reduced Joe's child
4 support obligation from \$10,399.00 per month to \$968.00 per month. This
5 represented a reduction of 91%.

6 By focusing on Brenda's purported spending habits, Joe convinced the
7 district court to ignore his ability to pay child support beyond the statutory
8 presumption. Brenda acknowledges that she is not entitled to share in Joe's
9 income, but contrary to Joe's position, believes their child is. Brenda's
10 opposition to Joe's opportunistic motion to reduce his child support and this
11 appeal taken therefrom, are Brenda's good faith response to Joe's persistent
12 efforts to prevent his child from sharing in his uncommonly high standard of
13 living. Joe's Amended Answering Brief, as a whole, tacitly admits that the
14 district court did not consider Joe's income or Little Joe's best interests when
15 it entered its order reducing Joe's child support from \$10,399.00 to \$968.00 per
16 month. The district court's failure to make that consideration was a manifest
17 abuse of discretion, and, as will be discussed in greater detail, the court's
18 resulting order must be overturned.

19 **II ARGUMENT**

20 **A. IT WAS JOE, NOT BRENDA, WHO HAD THE BURDEN TO SHOW**
21 **THAT A CHANGE OF CIRCUMSTANCES WARRANTED A REDUCTION**
22 **OF CHILD SUPPORT FROM \$10,339.00 TO \$968.00 PER MONTH.**

23 Joe's fundamental argument is that once the district court took
24 jurisdiction to modify his existing child support order under the Uniform
25 Interstate Family Support Act ("UIFSA"), codified in Nevada at NRS 130 *et seq.*,
26 the district court could *start* "at ground zero" and establish an entirely new
27 support obligation based upon Nevada's statutory guidelines. In other words,
28 Joe argues that the district court, without regard to a change of circumstances

1 and Little Joe’s best interest, was free to reduce Joe’s support obligation to the
2 presumptive maximum and then determine whether deviation was warranted.
3 This is not the law.

4 When Nevada took jurisdiction of the California support order, it took
5 jurisdiction *to modify* the order, not to establish an *initial* order. Indeed, NRS
6 130.611(2), which Joe entirely ignores in his Answering Brief, states as follows:

7 Modification of a registered child-support order is subject to the same
8 requirements, procedures and defenses that apply to the modification of
9 an order issued by a tribunal of this State, and the order may be enforced
and satisfied in the same manner.

10 This court’s opinions in *Rivero v. Rivero*, 125 Nev. Adv. Op. No. 34, 216 P.3d 213
11 (2009), and *Fernandez v. Fernandez*, 126 Nev. Adv. Op. No. 3, ___ P.2d ___ (2010),
12 contain “requirements, procedures and defenses” that apply to the modification
13 of an order for child support. Joe’s suggestion that *Rivero* is “completely
14 inapplicable” to his attempt to modify a registered child support order is in
15 direct contravention of the law.

16 This court’s opinions in *Rivero* and *Fernandez* make clear that a change
17 of circumstances and the best interests of the child are prerequisites to the
18 modification of a child support order. To be sure, Joe cannot cavalierly discard
19 the requirements of *Rivero* and *Fernandez* just because Little Joe was
20 purportedly the product of a “tryst” (as Joe puts it),¹ nor should the law be
21 ignored because Joe does not like how he perceives Brenda to spend money.
22 According to Nevada law as refined by this court in *Rivero* and *Fernandez*, Joe

23
24
25 ¹ In the Amended Respondent’s Answering Brief at page 2, line 14, Joe
26 writes: “but their *tryst* produced one child: Joseph Smith, Jr.” (emphasis added).
27 This description of Little Joe’s conception dehumanizes the child, is offensive,
28 misleading, and, as a matter of law, does nothing to forward Joe’s position on
appeal. Further, the trial court record does not support this description of
Brenda and Joe’s relationship. In fact, the parties lived together at the time of
Little Joe’s birth. 10 JA 2023, Line 8 through 2024, Line 6.

1 had the burden, as a threshold matter, to establish that a change in
2 circumstances had occurred.

3 Joe suggests in his Answering Brief that the “the ‘changed circumstances’
4 requirement is inapplicable to a review of support more than three years after
5 the entry of the last prior order, under NRS 125B.145.”² In making this
6 argument, Joe entirely ignores this court’s unambiguous directives in *Rivero* and
7 *Fernandez*:

8 Under NRS 125B.145(1), the district court must review the support order
9 if three years have passed since its entry. The district court must then
10 consider the best interests of the child and determine whether it is
11 appropriate to modify the order. NRS 125B.145(2)(b). Modification is
12 appropriate if there has been a factual or legal change in circumstances
13 since the district court entered the support order. Upon a finding of such
14 a change, the district court can then modify the order consistent with NRS
15 125B.070 and 125B.080. *Id.* **Therefore, although a party need not show
changed circumstances for the district court to review a support order
after three years, changed circumstances are still required for the district
court to modify the order.**

16 *Rivero*, supra, at 27 (emphasis added). Addressing the requirement of changed
17 circumstances again in *Fernandez*, this court explicitly stated that *Rivero*
18 “forecloses the father’s contention that the mere passage of time entitles him to
19 modification without regard to changed circumstances.” *Fernandez*, supra, at 8.

20 Joe is forced to concede that the district court made no such findings, and
21 without a change of circumstances, Joe was simply not entitled to have the
22 district court examine the amount of the award. Because the district court
23 failed to make necessary foundational findings, it never should have reached the
24 step of applying (or deviating from) Nevada’s child support guidelines. As noted
25 in her opening brief, the district court erred by placing the burden on Brenda
26 ...

27 _____
28 ² Amended Respondent’s Answering Brief at page 16, line 22 –page 17, line 1.

1 to establish why the child support award *should not be* lowered, rather than
2 placing the burden with Joe to establish why the award *should be* lowered.

3 **B. RELOCATION TO NEVADA, IN AND OF ITSELF, DOES NOT**
4 **CONSTITUTE A CHANGE OF CIRCUMSTANCES.**

5 It is fair to point out that Joe’s gross *monthly* income had increased from
6 \$168,397.00 when California established his child support obligation in May 2001
7 [1 JA 28, 193, 234], to \$816,000.00, when he filed his Nevada Motion to Reduce
8 Child Support in April 2005. 1 JA 69. Given this enormous—\$647,603—increase
9 in his gross *monthly* income, Joe’s attempt to reduce his child support obligation
10 on a “factual” change of circumstances borders on the absurd.

11 Given the absurdity of arguing for a child support reduction when his
12 gross annual income had actually increased by \$7.7 million, Joe sought refuge
13 in suggesting to this court that a “legal” change of circumstances had taken
14 place. In other words, he argues that Brenda’s relocation to this state and the
15 invocation of Nevada law upon a sister state’s judgment constitutes a sufficient
16 change of circumstances to permit a modification of his child support obligation.

17 Joe’s position in this regard is foreclosed by NRS 130.611(2), *Rivero* and
18 *Fernandez*. His position is also fraught with public policy concerns, and this
19 court should take great care before adopting such a position as its own. There
20 is no question that Nevada’s “cap” on the presumptive child support formula
21 makes Nevada unique among the fifty states. Allowing the fact of a custodial
22 parent’s relocation to Nevada to serve alone as a legal change of circumstances
23 would make Nevada a haven where out-of-state obligors—who, by the fortuitous
24 movement of their obligees to Nevada—could count on an automatic windfall
25 reduction in their support obligations.

26 This court must remember that Brenda and Little Joe were the only
27 parties to this action that ever lived in Nevada. How could it be in this state’s
28 interest to reduce the child support payments its residents receive merely

1 because they have relocated to this state? From a public policy standpoint this
2 court should hold as a matter of law that relocation to this state does not, in and
3 of itself, constitute a change of circumstances sufficient for purposes of
4 modifying a sister state's child support order. *See In re Adams*, 156 N.H. 257,
5 260, 932 A.2d 21, 23 (2007), holding that the relocation of a party does not as a
6 matter of law require a modification of a decree for the support of children.

7 **C. IT WAS JOE, NOT BRENDA, WHO HAD THE BURDEN OF SHOWING**
8 **THAT A MODIFICATION OF HIS CHILD SUPPORT OBLIGATION WAS**
9 **IN LITTLE JOE'S BEST INTERESTS.**

10 Brenda recognizes the wisdom of this court's recent decision in *Fernandez*
11 holding that "neither our statutes nor public policy supports the argument that
12 more court-ordered child support is always better for the child than less."
13 *Fernandez, supra* at 13-14. Brenda also acknowledges that "the formula and
14 guideline statutes are not designed to produce the highest award possible but
15 rather a child support order that is adequate to the child's needs, fair to both
16 parents, and set at levels that can be met without impoverishing the obligor
17 parent or requiring that enforcement machinery be deployed." *Fernandez, supra*
18 at 14. Those things being noted, however, this court pointed out that "*what*
19 *really matters . . . is whether the children are being taken care of as well as*
20 *possible under the financial circumstances in which the two parents find*
21 *themselves."* *Fernandez, supra*, at 14, *citing Barbagallo v. Barbagallo*, 105 Nev.
22 546, 551 (1989). Accordingly, any modification of any child support order "must
23 be supported by factual findings that a change in support is in the child's best
24 interest." *Rivero* at 28, 216 P.3d at 229.

25 There is nothing in the district court's order that could be even remotely
26 construed as a factual finding that a change in Joe's support obligation was in
27 Little Joe's best interest. How could a 91% reduction in child support possibly
28 be in Little Joe's best interest when there has been no change of circumstances

1 or other showing that Joe was unable to pay it? The only real change of
2 circumstances here was a quantum increase in Joe's income, a fact that runs
3 headlong against his argument.

4 Joe cannot reasonably argue in light of his astronomical income, that
5 reducing child support from \$10,399.00 to \$968.00 per month adequately meets
6 Little Joe's needs. Neither can he argue that a child support obligation of
7 \$10,399.00 could not be met by him "without impoverishing" him "or requiring
8 that enforcement machinery be deployed." *Fernandez, supra* at 14. Indeed, Joe
9 stipulated that he "had the capacity to pay any reasonable amount of child
10 support that the court might order."³ By any standard, reducing Joe's support
11 from \$10,339.00 to \$968.00 was not "reasonable." The district court made no
12 finding how a reduction in child support would be in Little Joe's best interest.
13 This is another abuse of discretion warranting reversal of its decision.

14 **D. RIVERO AND FERNANDEZ HAVE RETROACTIVE APPLICATION TO**
15 **THIS CASE.**

16 Joe argues that this court's decision in *Rivero* "contains no statement that
17 it was intended to be applied retroactively."⁴ Joe's argument is simply wrong;
18 no such statement is necessary for the decision to have retroactive application.
19 Generally, a new rule is applicable to cases pending on direct review when the
20 rule is announced. *Franklin v. State*, 98 Nev. 266, 646 P.2d 543 (1982); *Griffith v.*
21 *Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 716 (1987). Having been on appeal
22 when this court issued its decision in *Rivero*, this is one such case.

23 Moreover, when a judicial ruling effects remedies or procedures and does
24 not otherwise alter substantive rights, it will be applied to pending cases. *Friel*
25 *v. Cessna Aircraft Co.*, 751 F.2d 1037, 1039 (9th Cir.1985) cited with approval in
26

27 ³ Amended Respondent's Answering Brief at page 8, lines 4 through 5.

28 ⁴ Amended Respondent's Answering Brief at page 16, lines 13 through 15.

1 *Madera v. SIIS*, 114 Nev. 253, 956 P.2d 117 (1998). Clearly, this court's rulings in
2 *Rivero* and *Fernandez* are judicial rulings which effect "remedies and
3 procedures" surrounding the modification of custody orders. Therefore, *Rivero*
4 and *Fernandez* should, without question, apply retroactively. In fact, *Rivero's*
5 retroactivity is implicit in this court's subsequent treatment of child support
6 issues in *Fernandez*.

7 **E. DE FACTO ALIMONY IS AN UNAVOIDABLE BYPRODUCT OF CHILD**
8 **SUPPORT INVOLVING EXTRAORDINARY HIGH INCOME EARNERS.**

9 Citing Texas law and a Hawaii case predating Nevada's 1987 child support
10 amendments, Joe argues that an award of child support above the guidelines
11 "solely because the obligor has a high income, would amount to *de facto*
12 alimony."⁵ Brenda does not deny the unavoidable tension that exists between
13 allowing a child to share in the non-custodial parent's standard of living while
14 at the same time preventing the custodial parent from doing so. The fact is,
15 however, that most expenses of child rearing are commingled with expenditures
16 that benefit the entire household. One cannot reasonably expect a court to
17 determine a child's proportionate share of a three-bedroom home, the child's
18 transportation to and from school, the child's food costs or other expenses.⁶
19 Further, neither Joe nor this court is in a position to second guess Brenda's
20 monthly expenditures. To artificially limit child support merely to ensure that
21 the custodial parent receives no incidental benefit from the payments would
22 violate the public policy of this state. As much as Joe complains about Brenda's

23 _____
24 ⁵ Amended Respondent's Answering Brief at page 19, lines 15 through 17,
25 where Joe cites *Rodriguez v. Rodriguez*, 834 S.W.2d 369 (Tex. App. 1992) and
26 *Jane Doe VI v. Richard Roe VI*, 736 P.2d 448 (Haw. Ct. App. 1987). Neither case
27 is applicable to Nevada's statutory paradigm and the Hawaii case does not deal
28 with statutory guidelines at all.

⁶ Williams, *Guidelines For Setting Levels of Child Support Orders*, 21 Fam.
Law Quart. 281, 287 (1987).

1 expenditures, he cannot deny that it is Brenda, not he, who has been the
2 custodial parent since Little Joe's birth. For his part, Joe had very little
3 involvement in Little Joe's life. 10 JA 2028, Line 6 through 10 JA 2029, Line 15;
4 10 JA 2030, Lines 5-14; 10 JA 2031-2034.

5 Whether Brenda concurrently benefits from the support order is
6 irrelevant. In cases more recent and relevant than those cited by Joe, courts
7 have recognized this as an inevitable, and not unjust, result when dealing with
8 extraordinarily high wage earners. For example, and particularly relevant here,
9 California courts have noted that:

10 It has long been the law that "[a] child, legitimate or illegitimate, is
11 entitled to be supported in a style and condition consonant with the
12 position in society of its parents. (*Kyne v. Kyne* (1945) 70 Cal.App.2d 80,
13 83 [160 P.2d 910].) "The father's duty of support for his children does
14 not end with the furnishing of mere necessities if he is able to afford
15 more." (*Bailey v. Superior Court* (1932) 215 Cal. 548, 555 [11 P.2d
16 865].) "A child's 'need' for more than the bare necessities . . . varies
17 with the parents' circumstances. [Citations.] "Accordingly, where the
18 supporting parent enjoys a lifestyle that far exceeds that of the custodial
19 parent, child support must to some degree reflect the more opulent
20 lifestyle even though this may, as a practical matter, produce a benefit for
21 the custodial parent."

22 *Johnson v. Superior Court*, 66 Cal. App. 4th 68, 71, 77 Cal. Rptr. 2d 624 (Cal. App.
23 1998). Where the supporting parent enjoys a lifestyle that far exceeds the
24 custodial parent's standard of living, child support must to some degree reflect
25 that more opulent lifestyle. This is so even when, as a practical matter, the child
26 support payments incidentally benefit others in the custodial parent's
27 household. As Brenda notes in her opening brief, a wealthy father's complaint
28 that "an order commensurate with his income and lifestyle will result in a
windfall to mother is a make-weight argument" and there "is no reason why the
child should be shortchanged by denying him support commensurate with his

1 father's income and lifestyle." *Branch v. Jackson*, 629 Pa. Super. 417, 629 A.2d
2 170, 172 (1993).⁷

3 Joe's assertion that this case exemplifies the setting of child support at a
4 level that effectively redistributes the estate of the non-custodial parent to the
5 primary custodian is hyperbolic. At \$10,339.00 per month, Joe's child support
6 obligation for Little Joe was a mere 2.5% of his gross monthly income. Under no
7 circumstances can this level of support be construed as a "redistribution" of
8 Joe's estate to Brenda. Joe's continued reliance upon *Marriage of Bush*, 547
9 N.E.2d 590, 596-597 (1989) for this proposition is misplaced. There, the facts
10 involved a situation where the father was ordered to pay 20% of his income and
11 both parents' individual incomes were more than sufficient to meet the child's
12 needs. The court's holding in *Bush* was clearly limited to such circumstances.
13 *Id.* at 596. By contrast, Brenda's income is meager compared to Joe's seven
14 figure salary.

15 Again, NRS 125B makes clear that a parent's child support obligation is
16 based on the relative income of the parents, not the historical expenditures of
17 the custodial parent. *See Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998), in
18 which this court found without merit the father's argument that the custodial
19 parent was "not paying her share of the child's expenses." Instead of focusing
20 on the mother's expenditures, this court, in *Love*, focused on the father's
21 financial circumstances in departing from the statutory child support formula.

22 Moreover, courts have noted with regard to high wage earners, that
23 defining a child's needs based upon historical expenses is erroneous, as the
24 child's needs must be measured by the parent's current station in life. *See In re*
25

26 ⁷ *See also County of Alameda v. Johnson*, 28 Cal.App.4th 259, 33 Cal.Rptr. 2d
27 483 (1st Dist. 1994), *citing In re Marriage of Hubner*, 205 Cal.App. 3d 660, 252
28 Cal.Rptr. 428 (2d Dist. 1988); *Harris v. Harris*, 168 Vt. 13, 714 A.2d 626 (1998);
Hughes v. Hughes, 311 N.J. Super. 15, 709 A.2d 261 (App.Div. 1998).

1 *Marriage of Cheriton*, 92 Cal. App. 4th 269, 293 (2001). Joe’s complaint that
2 Brenda gets to share in the benefits of Little Joe’s child support misses the point
3 entirely. It is no wonder that nowhere in his answering brief does Joe ever
4 attempt to address the public policy concerns articulated by this court in *Lewis*,
5 *Hertz*, *Chambers* and *Love*.⁸

6 **F. THE ANALYSIS OF THE TWELVE FACTORS SET FORTH IN NRS**
7 **125B.080(9) IS QUALITATIVE, NOT QUANTITATIVE.**

8 Joe argues that the district court concluded that Brenda made no showing
9 “under the relevant factors for deviating upward from the presumptive
10 maximum, where more factors were present for downward than upward
11 deviation.”⁹ If the district court did take this quantitative approach to the
12 statutory factors, then there is no question that the district abused its discretion.
13 If nothing else, this court’s decisions regarding NRS 125B.080(9) stand for the
14 principle that not all statutory factors are created equal and that the earning
15 capacity of the obligor is the most important factor of them all. Specifically, in
16 *Love v. Love*, 114 Nev. 572, 579, 959 P.2d 523 (1998), this court stated:

17 Greater weight . . . must be given to the standard of living and
18 circumstances of each parent, their earning capacities and the “relative
19 financial means of parents” than to any of the other factors.”

20 Given this court’s clear directive to give greater weight to the earning capacities
21 and “relative financial means of the parents,” the district court in this case was
22 required to give substantial weight to the fact that Joe has made between
23 \$400,000.00 [9 JA 1846 at item 8] and \$816,000.00 [1 JA 69] *per month* during the
24 pendency of these proceedings. Based upon these undisputed facts, no

25 _____
26 ⁸ *Lewis v. Hicks*, 108 Nev. 1107, 843 P.2d 828 (1992); *Herz v. Gabler-Herz*, 107
27 Nev. 117, 808 P.2d 1 (1991); *Chambers v. Sanderson*, 107 Nev. 846, 822 P.2d 657
(1991); *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998).

28 ⁹ Amended Respondent’s Answering Brief at page 12, lines 6 through 8.

1 reasonable judge could have concluded “that the record is devoid of specific
2 factors that would justify an upward deviation.” No reasonable judge would
3 have had trouble deviating upward from the statutory presumptive maximum in
4 this case. But for the district court here, it was a “difficult decision.” 12 JA 2497.

5 Even if more factors were present for downward than upward deviation
6 in this case, the district court still made an “open and obvious error of law”
7 when it failed to even acknowledge Joe’s extraordinarily high income. Because
8 no reasonable judge could have reached the conclusion the district court
9 reached in this case, the district court committed a manifest abuse of discretion.

10 **G. FAILURE TO COOPERATE IN DISCOVERY IS NO BASIS FOR A**
11 **REDUCTION IN CHILD SUPPORT.**

12 In his answering brief, Joe focuses on the “multiple discovery requests and
13 resulting motions, orders, and sanctions [that] were recounted by the trial court
14 in its Findings, Conclusions, and Orders filed October 9, 2008.”¹⁰ Such assertions
15 infer that the district court intended to punish Brenda for her pre-trial discovery
16 infractions.

17 It is a matter of conscience and common sense that a court cannot
18 penalize a child for the acts of his parents. A court may not reduce child support
19 to “punish” the custodial parent. *See, i.e., Sims v. Sims*, 109 Nev. 1146, 865 P.2d
20 328 (1993) (“[A] court may not use changes of custody as a sword to punish
21 parental misconduct; disobedience of court orders is punishable in other ways”);
22 *see also Dagher v. Dagher*, 103 Nev. 26, 731 P.2d 1329 (1987) holding that because
23 the welfare of the child should be of paramount importance in matters relating
24

25 ¹⁰ Amended Respondent’s Answering Brief at page 4, lines 17 through 19. As
26 will be discussed in further detail at section H below, the “Findings of Fact,
27 Conclusions of Law and Order,” filed October 9, 2008, is a fugitive document
28 entered after this appeal was taken. Further, undersigned counsel did not
represent Brenda at the time of trial and cannot comment on the nature of
Brenda’s alleged lack of cooperation.

1 to custody of children, custody may not be denied or changed as a means to
2 punish a parent. The same holds true for child support which is ultimately the
3 child's right. The child's best interests are intimately intertwined in a child
4 support award. A district court cannot reduce child support as a penalty for
5 failing to participate in discovery.

6 **H. THIS COURT HAS JURISDICTION OVER THIS APPEAL.**

7 The Nevada Rules of Appellate Procedure were revised in 2009 to require
8 that appellants provide a "jurisdictional statement" which includes (1) the basis
9 for the Supreme Court's appellate jurisdiction; (2) the filing dates establishing
10 the timeliness of the appeal; and (3) an assertion that the appeal is from a final
11 order or judgment, or information establishing the Supreme Court's jurisdiction
12 on some other basis. NRAP 28(a)(3). Brenda's counsel inadvertently overlooked
13 this new requirement when drafting her opening brief in this matter.

14 This court's jurisdiction is based upon Brenda's notice of appeal taken
15 from the district court's "Order From 07/18/08 Hearing," which reduced Joe's
16 child support obligation from \$10,339.00 to \$968.00 per month. 12 JA 2510. The
17 order was entered on August 6, 2008, and notice of entry of the same was served
18 on August 7, 2008. 12 JA 2516. Brenda's "Notice of Appeal" was filed on August
19 18, 2008, within 30 days of service of the notice of entry. 12 JA 2541. The district
20 court order entered on August 6, 2008, was a final order.

21 Joe asserts that a *second* district court order, the "Findings of Fact,
22 Conclusions of Law and Order" that was entered on October 9, 2008 [RA JLS
23 00001], *after* Brenda had filed her notice of appeal on August 18, 2008, is the real
24 final order. Joe claims that the first order was "an interim order for the purpose
25 of stopping the ongoing garnishment of Joe's prior order for support."¹¹ The
26 facts and circumstances surrounding Joe's submission of two orders to the
27

28 ¹¹ Amended Respondent's Answering Brief at page 2, lines 3 through 4.

1 district court are addressed at length in Brenda’s “Opposition to Motion to
2 Dismiss,” filed with this court on November 2, 2009. For purposes of brevity,
3 such facts and circumstances will not be rehashed here.

4 Suffice it to say that, if Joe’s assertion were true, and if the first order was
5 truly meant to terminate the garnishment, the first order would have contained
6 at least some references to a garnishment. It does not. Curiously, however, the
7 second order does. In this regard, the second order states that “[t]he Alameda
8 County Child Support Office for enforcement of child support shall conform
9 their calculations and audit to this [o]rder and immediately modify the wage
10 garnishment in place with Joe’s employer” RA JLS 7, lines 5-8. If Joe’s
11 assertion were true, if the first order was truly “entered for the purpose of
12 terminating the ongoing garnishment,” then this reference to the garnishment
13 would have been, should have been, included in the first order, not the second.

14 Along these lines, another interesting difference between the two orders
15 is that where the first order provides that “Joe’s child support is hereby set at
16 the statutory maximum of \$968 per month” [12 AA JA2512, line 7], the second
17 order expands this provision to grant retroactive relief, adding that “[c]hild
18 support is set at the statutory presumptive maximum *as of the filing of the Motion*
19 *to Reduce Child Support on August 29, 2005, and now \$968 per month.*”¹² Given
20 these differences between the first and the second order, it appears that the
21 second order might have been drafted as an afterthought, seeking to obtain
22 additional relief not provided in the first order.

23 Joe also argues that the first order was entered “about 90 days before” the
24 second order, and that this appeal “could and should be dismissed on that basis
25 . . .

26
27 ¹² RA JLS 7, lines 3-4. [Emphasis added.] This additional retroactive relief
28 is significant to Joe because, if he prevails on this appeal, he will resume efforts
to collect from Brenda over \$450,000.00 in alleged “overpayments.”

1 alone.”¹³ Joe’s argument is disingenuous and invites a discussion as to how the
2 second was even entered. Legally, the district court had no authority to enter
3 the second order in that it had long been divested of jurisdiction by way of
4 Brenda’s appeal. As such, the second order is a fugitive document. After
5 jurisdiction over this matter is returned to the district court, this fugitive order
6 should be stricken from the record.

7 More important, the first order contained nothing in its body suggesting
8 that it was interlocutory. Indeed, the first order even contained the “findings of
9 fact,” stating in relevant part:

10 THE COURT HEREBY FINDS that:

11 * * *

12 4. The Court is locked into the evidence that was presented at
13 the evidentiary hearing in order to determine whether a deviation from the
14 statutory maximum would be appropriate.

15 5. There are not enough facts to support an upward deviation
16 of child support from the statutory maximum, pursuant to statute, and the
17 record is void of specific factors warranting an upward deviation.¹⁴

18 Joe has also argued that the first order “expressly contemplated a later,
19 final order, to include the findings and conclusions.”¹⁵ In support of this, Joe
20 cited language included in the first order stating that:

21 Attorney Willick to prepare Findings of Facts, Conclusions of Law and
22 Order/Judgment, in accordance with their requests made at closing
23 arguments at the evidentiary hearing, which includes fees.¹⁶

24 The inclusion of this language in the first order did not constitute a
25 reservation of jurisdiction by the district court to dispose of any further issues.

26 ¹³ Amended Respondent’s Answering Brief at page 1, lines 6 through 9.

27 ¹⁴ 12 JA2511.

28 ¹⁵ Joe’s Motion to Dismiss at filed with this court in October 2009, at page
one, lines 22 through 26.

¹⁶ Joe’s Motion to Dismiss at page one, lines 24-27.

1 Virtually the same language is contained in the second order. RA JLS 7, lines
2 11-13. So it is clear in both instances, that the language merely memorializes
3 statements made by the court in its final decision pronounced at the hearing of
4 July 18, 2008. This aside, Joe never asked the court at that hearing, to enter a
5 separate order terminating garnishment and separate findings of fact,
6 conclusions of law and judgment; and the court did not contemplate or provide
7 for such. In this regard, it should be noted that the court minutes from the
8 hearing of July 18, 2008 state at page 5 that “[Joe’s] counsel shall prepare
9 findings of fact, conclusions of law and written notice of entry of judgment *along*
10 *with* the order.” 12 JA 2666. [Emphasis added.]

11 Finally, this court has observed that “a final judgment” is one that
12 “disposes of all the issues presented in the case, and leaves nothing for the
13 future consideration of the court, except for post-judgment issues such as
14 attorney’s fees and costs.” *Lee v. GNLV Corp.*, 116 Nev. 424, 426 (2000). A
15 “judgment,” as the term is used in the Nevada Rules of Civil Procedure, includes
16 “any order from which an appeal lies.” NRCP 54(a). Accordingly, this court has
17 customarily adopted the view that “the finality of a district court’s order
18 depends not so much on its label as an “order” or “judgment,” but on what the
19 “order” or “judgment” substantively accomplishes. *Id.*

20 In *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 445 (1994), this court
21 reiterated that it “determines the finality of an order or judgment by looking to
22 what the order or judgment actually does, not what it is called.” This court thus
23 found labels to be inconclusive when determining finality; instead, this court
24 recognized that it “has consistently determined the finality of an order or
25 judgment by what it substantively accomplished.” *Lee, supra* at 426. Whether
26 the district court’s decision is titled as a “judgment,” or an “order,” or even as
27 “findings of fact and conclusions of law,” the title is not dispositive in
28 ...

1 determining whether it may be appealed. “[W]hat is dispositive is whether the
2 decision is final.” *Id.* at 426.

3 In his motion to dismiss this appeal, Joe cited *Perkins v. Nev. Silver Mining*
4 *Co.*, 10 Nev. 405 (1876), for the proposition that “an order is considered
5 interlocutory and unappealable when cause is retained for further action.”¹⁷
6 But even *Perkins* goes on to note that:

7 If the record discloses that the decision of the court finally disposed of the
8 action, and nothing further was to be done by it to complete that
9 disposition, that surely was a final judgment from which an appeal would
lie.

10 *Id.* at 411-412. Nothing in the present case was retained for further action. The
11 record in the present case establishes that the first order finally disposed of the
12 action. The district court did not reserve jurisdiction in the first order to
13 address or adjudicate any additional issues. As of July 18, 2008—when the
14 district court issued its final order in open court—the district court had finally
15 resolved all the issues between the parties related to Joe’s motion to modify his
16 child support obligation. No further proceedings were scheduled, and there
17 were no return dates on calendar.

18 It was clear at the hearing of July 18, 2008, that there was nothing left to
19 be disposed of by the court between the parties, and it is clear that the district
20 court did not provide for the entry of two separate orders. And were this not
21 enough, Joe subsequently filed a motion for entry of the second order,
22 whereupon the district court issued a Minute Order on October 8, 2008,
23 summarily denying the motion.¹⁸ In doing so, the district court confirmed the
24 finality of the first order. In sum, the first order, the “Order From 7/18/08
25

26 ¹⁷ Joe’s Motion to Dismiss at page 2, lines 13-14.

27 ¹⁸ See Court Minutes dated October 8, 2008, attached as Exhibit “8” to
28 Brenda’s Opposition to Motion to Dismissal Appeal.

1 Hearing," entered August 6, 2008, is the final order and this appeal was properly
2 taken from that Final Order.

3 **I. BRENDA'S RESIDENCY.**

4 Joe continues to raise issues regarding Brenda's residency even though
5 it has nothing to do with this appeal. The California court determined it had
6 jurisdiction when it set child support at \$10,339.00 per month. California's
7 order was never vacated or set aside. For its own part, this court has
8 determined that Nevada has jurisdiction for purposes of modifying California's
9 child support order.

10 That being said, there is no question now, that neither party lives in
11 Nevada. Upon information, both parties now live in Arizona. As such, once this
12 appeal is decided, Nevada will no longer have jurisdiction over Little Joe's child
13 support. Brenda respectfully reminds this court that the only issue before this
14 court is whether it was in Little Joe's best interest to have his child support
15 reduced from \$10,339.00 to \$968.00, and whether, in doing so, the district court
16 complied with applicable law.

17 **III CONCLUSION**

18 The district court's order, entered August 6, 2008, contains absolutely no
19 finding of a change in circumstances, nor does it reflect that the district court
20 ever considered Little Joe's best interest when reducing his father's child
21 support obligation by more than 91%. The district court failed entirely to
22 consider any statutory factors when it reduced Joe's child support. The district
23 court's reduction of Joe's monthly child support from \$10,339.00 to \$968.00 was

24 ...

25 ...

26 ...

27 ...

28 ...

1 a manifest abuse of discretion. Brenda therefore requests that this court reverse
2 the district court's decision and remand this case with instructions that the
3 district court reinstate Joe's child support obligation to the \$10,399.00
4 established in California.

5 **RESPECTFULLY SUBMITTED** this 3 day of May, 2010.

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