

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF WELFARE AND SUPPORTIVE SERVICES
1470 College Parkway Carson City, NV, 89706
Telephone (775) 684-0500 • Fax (775) 684-0614 <http://dwss.nv.gov>
CHILD SUPPORT GUIDELINES COMMITTEE
Chairperson Kimberly Surratt

Public Comment Submitted for Consideration

Subject: Limitation on Imputation of Income

Please consider strict limitation on imputation of income. Unfortunately, in shared parenting cases, children are suffering and they are denied their needs or the burden is shifted upon the public or other caring citizens. Because courts are imputing income to the low earner, it results in lower child support than is reasonable.

There are cases where the low earner, who was providing full time care for a young child is expected to place that child in daycare and go earn little more than the daycare expense. This occurs because the judge is free to use a combination of NRS statute allowing imputation of income (meant for a high earner), and apply case law (Wright vs Osburn), to impute to a stay at home caregiver (low earner). Judges commonly impute on a 40 hour week to the low earner without regard for how the child will be cared for, transition to fulltime daycare, or accommodation for child care during shift work when daycare facilities are closed. I have attached an actual judgment as an example of how wrong judges are allowed to wander under existing statute and case law. In the attached case the judge imputed income to the fulltime caregiver who was not employed prior to the divorce, did not impute to the primary earner who lost employment during the divorce, and then used adjustment factors to further reduce child support to zero. Please make a calculation which prevents this kind of abuse.

High earners are aware of this tendency and as a result, insist on higher custody percentage for monetary reasons only.

We suggest including some language to strictly limit when imputation is allowed. The following are some ideas:

1. Imputation to the low earner shall not be allowed if, the low earner has been providing primary care to a child, and that child has never had scheduled care by non-family members, and that child is under 5 years of age.
2. Imputation to the low earner shall not be allowed if the child is below 5 years of age, and the imputation results in lower child support.

Bryce White
503 East Robinson St. Carson City, NV 89701 email walnuts9999@yahoo.com

Other Nevada citizens supporting this concept:
Name Address

Limitation on Imputation of Income

Other Nevada citizens supporting this concept **continued:**

Name Address

MAUREEN WHITE 503 E ROBINSON ST. CC, NV
89701
Jennifer Stephens 503 E Robinson St Carson City NV
89701
Veronica Lamp 2634 Waterford Pl C.C. NV
89703
Shannon Colan 3255 Berkenfield Dr. C.C. NV 89701
Jeanne Tigh 3665 Sandstone Dr. Wellington NV 89444
Lexi Bennett 2123 G. St. Sparks, NV 89431
Robert B. Perkins 2497 MERRIT DR., CARSON CITY, NV 89
Nanette F. Perkins 2497 Meritt Dr, Carson City NV 89701 775-7
626
Mary K Sellers 1418 Marlette Cir Gardnerville NV 89460
meagan maxwell 605 E. ROBINSON ST. Apt. B Carson City, NV 89701
M. Coy 2420 Woodcrest Ln, Carson City, NV 89701

Ann M SanFilippo - Conger 2420 Woodcrest Lane Carson City, NV
89701
April Tomasco 3839 Sweetland, Carson City, NV 89701
John Tomasco 3839 Sweetland, Carson City, NV 89701
JEREMY KLUCK 525 TRAVIS CARSON CITY NV 89701
Lori KRASOEC 4 EDIZA Circle CARSON City, NV 89706
Cheryl Finch PO Box 2328 Carson City, NV 89702

CASE # 16-DI-0194

NOV 23
2016

1 applied to jobs with a higher rate of pay but has not received
2 job offers. [REDACTED] is capable of earning, and is earning,
3 approximately \$18 per hour through self-employment. Self employment
4 gives [REDACTED] the flexibility to spend significant time with [REDACTED]
5 without the need for daycare.

6 [REDACTED] is not willfully underemployed nor has he chosen an
7 income source intentionally designed to shirk his obligation of
8 supporting [REDACTED]. Accordingly, the Court does not impute income
9 of \$80,000 to [REDACTED] monthly support obligation is \$540
10 (\$3,000 x 0.18). NRS 125B.070.

11 [REDACTED] has education, training and/or experience enabling her
12 to work in different capacities, one of which is a CNA. [REDACTED]
13 is currently working as a CNA one day a week for a total of 7.5
14 hours earning \$13.25 per hour.

15 [REDACTED] claims that [REDACTED] is willfully underemployed for the
16 purpose of avoiding her child support obligation. [REDACTED] chooses
17 to work only 7.5 hours per week even though she is capable of
18 working full-time and despite the fact that [REDACTED] has [REDACTED] in
19 his care 40% of the time. [REDACTED] is also living with her parents.

20 The Court finds that [REDACTED] is capable of working full-time
21 as a CNA and has a true earning capacity of \$2,296 per month
22 ($\$13.25 \times 40 = \530 ; $\$530 \times 52 = \$27,560$; $\$27,560 \div 12 = \$2,296$).
23 In that [REDACTED] chooses to work only 7.5 hours a week even though
24 he is capable of working full time and [REDACTED] has [REDACTED] 40% of
25 the time, [REDACTED] is willfully underemployed.

26 This finding raises a presumption that intention in
27

28

-11-

1 willfully underemployed is to frustrate her obligation of
2 Minnear, 107 Nev. at 498. [REDACTED] has the burden of
3 a contrary intent. Id.
4 plan, post-divorce, is to continue living with her
5 with hopes of getting a place of her own prior to finishing
6 er education. [REDACTED] would like to enroll in college full-time.
7 has stated no intention of working more than 7.5 hours a
8 anytime in the near future. It appears to be
9 [REDACTED] should partially fund
10 iving expenses through alimony and child support.
11 osition is indicative of an intention to shirk her obligation to
12 upport [REDACTED], an obligation she has "an equivalent duty" to
13 NRS 125C.001. Child support is designed to meet the
14 basic needs, not the needs of the parent. See, NRS
15 125B.080(5).
16 [REDACTED] has failed to rebut the presumption raised by her
17 illful underemployment. Accordingly, obligation for
18 child support must be based upon her true earning capacity of \$2,296
19 month. NRS 125B.080(8). obligation for support is
20 \$413.28 ($\$2,296 \times 0.18$).
21 monthly obligation of support less monthly
22 bligation of support yields child support payments of \$126.72 a onth
23 ($\$540.00 - \413.28). It is presumed that this amount will eet the basic
24 needs of the child. NRS 125B.080(5). However, the
25 law provides statutory factors that a court "shall" consider when
26 etermining whether an adjustment is appropriate. NRS 125B.080(9).

27

28

1 he Court has considered all such factors and finds that a deviation
2 is warranted.

3 During the marriage the parties set up a college savings account
4 for [REDACTED]. Following separation, [REDACTED] continued to contribute \$122 per
5 month to the account. At the end of trial,

6 [REDACTED] agreed to continue paying \$120 per month to the account and
7 [REDACTED] will do the same. Agreement 2. Since this obligation is
8 entirely for the benefit of [REDACTED] and was agreed to by [REDACTED],
9 the Court finds it appropriate to adjust child support downward by
10 \$120.00. NRS 125B.080(9)(k). After factoring in this deviation, the
11 amount of child support is reduced to \$6.72 a month (\$126.72 -
12 \$120.00).

13 The Court has determined that two other statutory factors are
14 applicable and support a further reduction of child support to zero

15 First, the relative incomes of the parties, or earning
16 capacity in the case of [REDACTED] are fairly close (\$2,500-\$3,000
17 month for [REDACTED] as compared to \$2,296 for [REDACTED]). NRS
18 125B.080(9)(1). A second consideration, although lesser, is that he

19 Court learned for the first time during testimony that she has been
20 receiving public assistance in the form of food stamps. NRS 125B.080(9)

21 (g). did not declare public assistance in her financial declaration
22 wherein she listed monthly personal food expenses of \$700-\$800 and food
23 expenses for [REDACTED] of The Court has not been provided with the amount

24 of
25 assistance received by [REDACTED]. [REDACTED] testified, however, that
26 he expects this assistance to terminate once proceeds are received

27
28