IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHARON GRACE ATES WILSON,
Appellant,
vs.
KENNETH TROY WILSON,
Respondent.

No. 84981-COA

FILED
JAN 30 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Sharon Grace Ates Wilson appeals from a district court decree of divorce. Eighth Judicial District Court, Family Division, Clark County; Michele Mercer, Judge.

Sharon and respondent Kenneth Troy Wilson were married in 2004 and have five children in common. Sharon filed a complaint for divorce and requested joint legal custody of the children, joint physical custody of the four oldest children, and primary physical custody of the youngest child because that child has special medical and educational needs. Sharon also requested an order directing Kenneth to pay her attorney fees and costs related to this matter. Kenneth answered, opposed Sharon's requests, and requested that he be awarded primary physical custody of the children. Kenneth filed a financial disclosure form that revealed his average gross monthly income to be $7,810 and Sharon filed her financial disclosure form that revealed her average gross monthly income to be $1,560.

The parties subsequently reached an agreement concerning the majority of the outstanding issues, including the distribution of their community property. However, they did not reach an agreement concerning child custody and the payment of attorney fees.

The court subsequently conducted a trial and both parties testified. Sharon testified concerning her living situation and her attempts to find suitable housing for herself and her children. In addition, Sharon testified that her income as of that date was approximately $1,200 per month and that Kenneth earned approximately $8,100 per month. Kenneth also testified concerning his wishes for the custodial arrangement and explained that he ultimately wished for Sharon to have joint custody of the children so long as she attends counseling. Kenneth further contended that he could not afford to pay Sharon's attorney fees.

After the presentation of evidence, the parties presented arguments concerning their respective positions. Sharon requested the district court to order Kenneth to pay her attorney fees and specifically urged the court to consider the substantial disparity in the parties' income when it evaluated her request for fees. After the parties' arguments, the district court orally announced that it was going to deny Sharon's request for attorney fees but it made no mention of the parties' disparity in income.

The district court subsequently entered a written decree of divorce that adopted the parties' agreements as to the distribution of community property, awarded the parties joint legal custody of the children, awarded Kenneth temporary primary physical custody until Sharon obtains an appropriate residence, and ordered the parties to share joint physical custody of the children after Sharon establishes her new residence. The court also rejected Sharon's request for attorney fees. The court did not make findings concerning the disparity in the parties' income but instead found that each party should bear their own attorney fees because neither side was a prevailing party and they both participated in this matter in good faith. This appeal followed.

On appeal, Sharon argues that the district court abused its discretion in denying her request for attorney fees without considering the disparity in the parties' income.

An award or denial of attorney fees is reviewed for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). However, "deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted). The district court is authorized to award attorney fees in a divorce case. NRS 125.150(4). When weighing an award of attorney fees in a divorce proceeding, the court must consider the disparity in the parties' income pursuant to *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). *Miller*, 121 Nev. at 623-24, 119 P.3d at 730.

The district court's order does not comply with the well-established requirement that the court must consider the disparity in the parties' income in resolving a request for attorney fees in a family law action as mandated by *Wright*. *See Miller*, 121 Nev. at 623, 119 P.3d at 730. Indeed, in declining to award attorney fees, the district court did not even include a citation to *Wright* or *Miller*, and it failed to make any findings or otherwise demonstrate that it considered the disparity in the parties' incomes, despite Sharon raising this issue. *See Miller*, 121 Nev. at 623, 119 P.3d at 730. Further, the district court apparently relied solely on the prevailing party status of the parties and did not consider other authority. *Compare* NRS 18.010(2) (prevailing party) *with* NRS 125C.250 (attorney fees and costs in custody actions).

In responding to Sharon's argument, Kenneth asserts that the district court did not need to consider the disparity in the parties' income

because it did not award attorney fees to either party. However, the disparity in income is a factor that the district court must consider even when it declines a request for attorney fees. *See Wright*, 114 Nev. at 1370, 970 P.2d at 1073 (reversing a district court decision to deny attorney fees because the record was not clear that the court considered that factor when denying such a request).

Based on the foregoing analysis, we conclude the district court abused its discretion by denying Sharon's request for attorney fees without considering the disparity in the parties' income. *See Miller*, 121 Nev. at 622, 119 P.3d at 729; *see also In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) (reversing and remanding for further proceedings where the district court did not apply the correct legal standard, and it was unclear whether the court would have reached the same conclusion had it applied the correct standard); *Davis*, 131 Nev. at 450-51, 352 P.3d at 1142-43. We therefore reverse the district court's decision to reject Sharon's request for attorney fees and remand this matter for further proceedings consistent with this order.

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Michele Mercer, District Judge, Family Division
Cory Reade Dows & Shafer
Law Offices of Ernest A. Buche, Jr.
Eighth District Court Clerk