

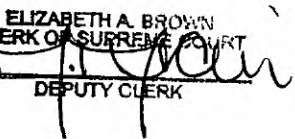
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONTE LAMONT LOFTON,
Appellant,
vs.
CARMEN VELASQUEZ LOFTON,
Respondent.

No. 86302-COA

FILED

MAY 09 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

*ORDER AFFIRMING IN PART
AND DISMISSING IN PART*

Donte Lamont Lofton appeals from district court orders denying a post-divorce decree motion to modify alimony and reducing arrearages to judgment. Eighth Judicial District Court, Family Division, Clark County; Nadin Cutter, Judge.

Donte and respondent Carmen Velasquez Lofton were married in 2012. Carmen filed a complaint for divorce in 2020, requested division of the marital community property, and sought an award of alimony. Donte filed an answer. Donte subsequently filed a financial disclosure form (FDF) in which he stated that he earns \$42.00 per hour and a monthly income of \$7,280. Carmen also filed a FDF in which she stated she earns \$18.29 per hour and a monthly income of \$2,773.98.

This matter proceeded to a trial and, following trial, the district court entered a written decree of divorce dividing the community property and awarding Carmen alimony in the amount of \$750 per month for a period of 36 months. On August 11, 2022, the court entered a separate order

adjudicating the parties' dispute concerning insurance policies and that order constituted the final order concerning the divorce matters.

In 2022, Donte filed a motion to modify alimony. Donte contended that his financial situation had changed as he had experienced periods of unemployment, his monthly mortgage payments increased, and he became financially responsible for his grandchild and his disabled adult son. Donte also contended he faced substantial expenses related to otherwise unrelated criminal court matters. In addition, Donte submitted his 2021 tax returns which stated his annual income that year was \$27,405 and he filed an updated FDF stating that he earned \$56,198 of gross income in 2022 as of October.

Carmen opposed the motion to modify alimony. Carmen contended that Donte's line of work involves brief periods of unemployment while awaiting a new project, that Donte was likely to be rehired soon, and that Donte had actually earned more in 2022 than he did in 2021. Carmen also contended that the additional issues Donte noted in his motion did not constitute changed circumstances warranting modification of the alimony award.

Donte filed a reply in support of his motion to modify alimony. Donte acknowledged that he had recently secured employment but stated that he was likely to again become unemployed when he finished work on his current project. Donte reiterated that he was unable to afford the \$750 monthly alimony payments and further explained that he faced large attorney bills because he had been charged with a criminal offense that carried a potential life sentence if he were to be convicted. In addition,

Donte filed an amended FDF stating that his hourly income had risen to \$50.68, his monthly income had risen to \$11,859.85, and he had an annual income of \$142,318.20 if he worked an entire year.

Carmen also filed a motion for an order to show cause as to why Donte should not be held in contempt for failing to pay the required monthly alimony. Donte opposed the motion and explained he had been unable to afford the alimony payments.

The district court subsequently conducted a hearing concerning the outstanding issues and the parties presented information to the court concerning Donte's alimony payments and his income. The court found that Donte's income increased substantially, as his income increased from \$27,000 in 2021 to an annual income of \$142,000. The court therefore found that Donte did not demonstrate that lowering his alimony payments was warranted. The court also directed the parties to ascertain the appropriate amount of alimony arrears owed by Donte. The court later entered a written order memorializing its ruling from the hearing.

Carmen subsequently filed a schedule of arrears and the district court thereafter entered an order awarding Carmen alimony arrears in the amount of \$6550 together with interest in the amount of \$413.95, and reduced that award to a judgment. This appeal followed.

Initially, Donte seeks reversal of the underlying decree of divorce, arguing that the district court erred by awarding Carmen alimony and attorney fees in the amount of \$750 in the decree. However, Donte did not timely appeal from the order adjudicating the parties' outstanding life insurance issues, which constituted the final judgment in the underlying

divorce matter. See NRAP 4(a)(1) (providing that a notice of appeal must be filed no later than 30 days after service of written notice of entry of the challenged judgment or order); *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (stating that “a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney’s fees and costs”). As a result, this court lacks jurisdiction to consider Donte’s challenges to the divorce decree, see *Healy v. Volkswagenwerk Aktiengesellschaft*, 103 Nev. 329, 331, 741 P.2d 432, 433 (1987) (stating an untimely notice of appeal fails to invoke this court’s jurisdiction), and we therefore dismiss this appeal with regard to Donte’s untimely challenges to the decree of divorce.

Next, Donte argues the district court abused its discretion by denying his motion to modify alimony. Donte asserts the court erred by finding his annual income was \$142,000. Donte further contends that he and his attorney explained to the court that he typically is not employed for the entire year, he provides for his disabled adult son and his elderly mother, and he has additional mortgage expenses, but he asserts the court did not appropriately consider those issues when it denied his request to modify the alimony award.

“This court reviews district court decisions concerning divorce proceedings, such as spousal support, for an abuse of discretion.” *Davitian-Kostanian v. Kostanian*, 139 Nev., Adv. Op. 27, 534 P.3d 700, 705 (2023) (internal quotation marks omitted). “Furthermore, this court will not disturb the district court’s rulings if they are supported by substantial

evidence, which is that which a sensible person may accept as adequate to sustain a judgment.” *Id.* (internal quotation marks omitted). “The spouse who is ordered to pay the alimony may, upon changed circumstances, file a motion to modify the order,” NRS 125.150(11)(b), and the district court may modify its order for a party to make periodic alimony payments pursuant to a divorce decree upon a finding of changed circumstances, NRS 125.150(8). To that end, the district court may “analyze any factors the court considers relevant, including changes to the income of the spouse who is ordered to pay alimony.” *Davitian-Kostanian*, 139 Nev., Adv. Op. 27, 534 P.3d at 705.

Here, Donte filed his 2021 tax returns and FDFs, which show that his income rose substantially during 2022 and those documents were before the district court in resolving his motion to modify. Donte challenges the district court’s factual findings it made concerning his income based on those documents, but this court will not second guess a district court’s resolution of factual issues involving conflicting evidence so long as its decision is supported by substantial evidence. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007). Moreover, Donte’s claims concern evidence and arguments presented at the hearing on the motion to modify alimony and the district court’s findings based on the evidence and arguments. However, while Donte filed a transcript request form, Donte did not provide this court with a copy of the hearing transcript or otherwise act to ensure this court received a copy of the transcript. *See* NRAP 9(b)(1)(B) (requiring pro se litigants who request transcripts and have not

been granted in forma pauperis status to file a copy of their completed transcript with the clerk of court).¹

Because Donte did not provide this court with the transcript of the relevant hearing, we necessarily presume that the transcript supports the district court's findings, and thus, we conclude substantial evidence supports the district court's findings regarding Donte's income and its ultimate decision on his request to modify his alimony payments. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[] the district court's decision"). Indeed, without a copy of the hearing transcript, we are unable to meaningfully review Donte's challenges to the district court's conclusions that were based upon its findings regarding the evidence and arguments presented at that hearing. Therefore, we conclude Donte failed to demonstrate that the district court abused its discretion by denying Donte's motion to modify alimony. *See Davitian-Kostanian*, 139 Nev., Adv. Op. 27, 534 P.3d at 705.

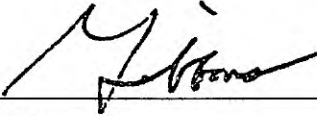
Finally, to the extent that Donte purports to challenge the district court's order reducing Carmen's alimony arrears to judgment, he does not present any arguments concerning the district court's decision on

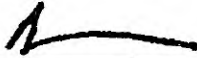
¹We note the supreme court issued a notice to Donte in which it instructed him that appellants who have not been granted in forma pauperis status and have requested a transcript "must file a copy of the transcript in this court" and cited specifically to NRAP 9(b)(1)(B).

this issue, and he has therefore waived any challenge to that decision as a result. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

Accordingly, for the reasons set forth above, we conclude that Donte is not entitled to relief, and we therefore affirm the district court's denial of Donte's motion to modify alimony and its order reducing the alimony arrears to judgment.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Nadin Cutter, District Judge, Family Division
Donte Lamont Lofton
Law Office of Shelley Lubritz, PLLC
Eighth District Court Clerk