IN THE SUPREME COURT OF THE STATE OF NEVADA

CORTAE MINOR,
Appellant,
vs.
LINZI WESCOTT,
Respondent.

No. 57162

FILED

OCT 06 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL IN PART AND AFFIRMING IN PART

This is a proper person appeal from a district court order in a child custody action. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

On appeal, appellant challenges several of the district court's determinations.[1] As directed, respondent has filed a proper person

[1]To the extent that appellant seeks to challenge the district court's denial of his NRCP 60(b) motion for relief pertaining to the reimbursement of medical insurance premiums, we lack jurisdiction to consider the challenge to that order because appellant failed to timely file a notice of appeal from the district court's March 4, 2011, order denying his request for NRCP 60(b) relief. See NRAP 4(a)(1); NRAP 26(c); Healy v. Volkswagenwerk, 103 Nev. 329, 331, 741 P.2d 432, 433 (1987) (noting that an untimely notice of appeal fails to vest jurisdiction in this court).

We note, however, that because appellant filed a notice of appeal challenging the calculation of medical insurance premiums, the district court lacked jurisdiction to modify its order regarding the same. See Foster v. Dingwall, 126 Nev. ___, 228 P.3d 453 (2010) (explaining when a district court has jurisdiction to enter an order resolving an NRCP 60(b) motion and the proper procedure to follow if the district court is inclined to grant any relief requested in such a motion while an appeal is pending in this court). Because the district court lacked jurisdiction to grant appellant's motion for NRCP 60(b) relief, that portion of the order is void.

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response to appellant's civil proper person appeal statement. Having reviewed the parties' appellate arguments and the record, we reach the following conclusions.

First, we lack jurisdiction over the portion of the district court's order concerning appellant's share of the child's monthly medical insurance premiums. The record shows that appellant stipulated to the amount of the monthly premium payments. As appellant is not an aggrieved party, we lack jurisdiction over this portion of the district court order, and we dismiss this portion of the appeal. See NRAP 3A(a); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (explaining that a party is aggrieved when the district court's order adversely and substantially affects a personal right or right of property); cf. Vinci v. Las Vegas Sands, 115 Nev. 243, 246, 984 P.2d 750, 752 (1999) (providing that when a party stipulates to the entry of an order, that party cannot later attack it as adversely affecting that party's rights).

Second, concerning the district court's calculation of appellant's child support arrears, we conclude that the district court did not abuse its discretion, as substantial evidence supports the district court's findings. Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (providing that this court reviews district court child support orders for an abuse of discretion); Gepford v. Gepford, 116 Nev. 1033, 1036, 13 P.3d 47, 49 (2000) (explaining that a district court's factual

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*. . . continued*

Thus, the district court must re-enter that portion of its order, following issuance of the remittitur in this appeal, to avoid any question as to the order's validity.

findings will be upheld if supported by substantial evidence in the record); see also Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004) (providing that this court defers to the district court on issues of witness credibility).

Third, regarding the district court's declaration that appellant is willfully underemployed, although the district court's order provides that this finding relates to the calculation of appellant's monthly child support obligation, the record demonstrates that this conclusion was not factored into the determination of appellant's child support obligation. Moreover, while the basis for this declaration is unclear from the record before us, because appellant failed to provide this court with a copy of the hearing transcript, wherein the district court addressed this issue, we presume that the testimony and evidence presented therein supports the district court's findings. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).[2]

Finally, with respect to the award of attorney fees and costs, appellant argues, in part, that he was not provided with a copy of respondent's memorandum of fees and costs; thus, he did not have an opportunity to oppose her request for fees and costs. We conclude, however, that appellant's argument lacks merit. The district court record demonstrates that appellant was served with a copy of respondent's memorandum. After having been served with a copy of respondent's memorandum, appellant failed to file any opposition. Because appellant failed to timely oppose respondent's request for attorney fees and costs, we

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[2]Although appellant filed a transcript request form, the transcript request was not served on a court reporter.

conclude that appellant is precluded from challenging on appeal the district court's order awarding attorney fees and costs. See Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) (stating that an argument made for the first time on appeal is waived); see also King v. Cartlidge, 121 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (providing that when a party fails to oppose a motion, the district court may construe the silence as the party's admission that the motion is meritorious and a consent to granting the motion); EDCR 2.20(e) (same).

Based on the above discussion, we

ORDER this appeal DISMISSED in part and AFFIRMED in part.[3]

Pickering, J.
Pickering

Rose, Sr.J.
Rose

Shearing, Sr.J.
Shearing

cc: Hon. Mathew Harter, District Judge, Family Court Division
Cortae Minor
Linzi Wescott
Eighth District Court Clerk

[3]The Honorable Robert E. Rose and the Honorable Miriam Shearing, Senior Justices, participated in the decision of this matter under a general order of assignment.