IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM O. FOX,
Appellant,
vs.
JULIANN MARIE MANZELLA, F/K/A JULIANN MARIE FOX,
Respondent.

No. 68999

ORDER AFFIRMING IN PART AND REVERSING AND REMANDING IN PART

This is an appeal from a district court order declining to modify child custody and child support. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

In support of his request to modify child custody in the underlying action, appellant William O. Fox filed a number of documentary exhibits, which the district court struck, stating only that they exceeded the acceptable number of pages under the court rules. The court did not, however, identify any court rule setting a page limit for documentary exhibits; respondent Juliann Marie Manzella does not identify such a rule on appeal; and our review of the Nevada Rules of Civil Procedure, the District Court Rules, and the Eighth District Court Rules has not revealed any rule setting a page limit for documentary exhibits. To the contrary, as pointed out by Fox, EDCR 2.27(b) specifically contemplates exhibits in excess of 100 pages.

Rather than identifying a rule limiting the length of exhibits, Manzella argues on appeal that, under NRCP 15, Fox's amendment of his motion to add the exhibits was improper because he filed them after she

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had filed an opposition. But Manzella's reliance on NRCP 15 is misplaced, as that rule applies to pleadings, rather than motions, *see* NRCP 7(a) (identifying the only allowable pleadings in a civil action), and nothing in the record indicates the district court struck the exhibits under NRCP 15.

Citing Chapter 48 of the Nevada Revised Statutes generally, Manzella's only other assertion as to the exhibits is that they needed to be admitted into evidence in order for the district court to consider them and that some of the documents included hearsay or evidence that was inadmissible for some other unidentified reason. But EDCR 2.27 permits a party to file exhibits in the district court, and Manzella has not cited any specific authority or made any cogent argument to show that Fox was required to do something more than he did in order to have the exhibits considered. Moreover, she does not identify any specific item in the exhibits to argue that it could not be considered by the district court.[1] As a result, we decline to address this assertion further. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that the appellate court need not consider claims that are not cogently argued or supported by relevant authority).

Thus, as no proper basis for excluding the exhibits has been identified, we conclude that the court abused its discretion in striking the exhibits. *See Citizens For Honest & Responsible Gov't v. Sec'y of State*, 116 Nev. 939, 952-53, 11 P.3d 121, 130 (2000) (reviewing a district court's decision to exclude exhibits for an abuse of discretion). And because the court did not consider the improperly excluded exhibits in deciding

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[1]Nothing in this order precludes Manzella from raising specific objections to Fox's evidence at an appropriate time.

whether Fox had demonstrated a prima facie case for modification to warrant an evidentiary hearing under *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993), we reverse the district court's order summarily denying Fox's motion for a change of custody and remand this matter to the district court for consideration of the exhibits.

With regard to child support, Fox argues that the district court should have reviewed his motion to modify child support based on changed circumstances because he was no longer on active duty in the military and his income had changed. But these circumstances changed before the district court entered its initial November 1, 2012, order, which found Fox to be willfully unemployed and thus declined to modify his support obligation. In order to demonstrate that a modification of child support was warranted, Fox was required to show, among other things, that a change in circumstances had occurred since the entry of the November 1, 2012, order, such as by showing a change in his earning capacity, but Fox has not provided any such arguments either below or on appeal. *See Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 215, 228 (2009) ("[T]he district court only has authority to modify a child support order upon finding that there has been a change in circumstances since the entry of the order and the modification is in the best interest of the child."). As a result, Fox has not demonstrated a basis for modifying the existing child support order. *See* NRS 125B.145(4) (providing the district court with discretion to modify a child support order at any time based on changed circumstances); *Rivero*, 125 Nev. at 431, 216 P.3d at 228.

Finally, Fox argues that the district court improperly deferred the child support issues to the hearing master because the "master is only handling arrearage disputes and enforcement matters, not modification."

In his reply brief, Fox further states that the hearing master informed him that it could not modify the child support because the support order was entered by the Washington district court. In support of these arguments, Fox points to hearing minutes and a master's recommendation from January 2013, but these documents do not support Fox's assertions. In particular, the master's recommendation, which was deemed approved by the district court after no objections were filed, provides that, because the parties all live in Nevada, the master "has jurisdiction to address all aspects of support," which would include modification. *See* NRS 425.382(2)(b)(1) (permitting a master to modify an order for child support).

Moreover, the hearing master did not state that it would not handle modification requests, but instead, stated that it was required to conform its orders to the district court's order denying modification based on the court's finding of willful unemployment. Indeed, the district court's finding is binding on the hearing master because it is the law of the case. *See Recontrust Co. v. Zhang*, 130 Nev. ___, ___, 317 P.3d 814, 818 (2014) ("The law-of-the-case doctrine 'refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases.'" (quoting *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995)). But it likewise would not be revisited by the district court under the same doctrine. *See id.*

Instead, as discussed above, Fox would need to show that the circumstances have changed to have his child support obligation modified, *see* NRS 125B.145(4); *Rivero*, 125 Nev. at 431, 216 P.3d at 228, and nothing prevents him from presenting any changed circumstances to the hearing master. *See* NRS 425.382(2)(b)(1). As a result, we affirm the

portion of the district court's order referring the child support matters to the hearing master.[2] *See id.*

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Rena G. Hughes, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Yvette Chevalier
Robinson Law Group
Eighth District Court Clerk

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[2]If the court determines on remand that a modification of child custody is warranted, then Fox's child support obligation should be revisited as well. *See Bluestein v. Bluestein*, 131 Nev. ___, ___ n.1, 345 P.3d 1044, 1046 n.1 (2015) ("The physical custody arrangement governs the child support award."). Additionally, Fox argues the district court improperly declined to review his child support obligation under NRS 125B.145(1)(b), which makes a review mandatory when three years have passed since the last review. Under the record before us, it is unclear when a review pursuant to NRS 125B.145(1)(b) was most recently conducted, and thus, whether a three-year review is required. As a result, whether a three-year review is required should be determined on remand.