IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MUHAMMED SHAKIR HAMAWI,
Appellant,
vs.
MARIJHA LEE HAMAWI,
Respondent.

No. 69731

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order denying a motion to modify child support and awarding attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

After appellant, who is self-employed, filed a financial disclosure form showing he earned $5000 per month, the district court set his child support obligation at $1250 per month based on the statutory formula for two minor children. *See* NRS 125B.070 (providing the formula for calculating child support obligations). Thereafter, appellant filed a motion seeking to reduce his child support obligation, arguing that he incorrectly filled out his monthly income on the financial disclosure form. He further argued that his actual income was $2516 per month and he supported this argument with a document from a certified public accountant and updated financial disclosures. Ultimately, the district court entered an order imputing an income of $4000 per month to appellant and setting his child support obligation at $1000 per month. Appellant did not appeal that decision.

Rather than appeal, appellant filed another motion seeking to modify the new support obligation approximately one month after the

court orally ordered the $1000-per-month support obligation.[1] Attached to that motion were appellant's 2013 and 2014 tax returns, eight months' worth of profit and loss statements for his business prepared by his accountant, and background information regarding the skills and qualifications of his accountant. Appellant argued that this evidence demonstrated that his average monthly income for the preceding eight months was $800 and that he made significantly less in prior years than previously stated in his financial disclosures.

Based on these facts, appellant argued that his circumstances had changed in that he earned significantly less than previously thought and therefore he was entitled to a downward modification of his child support obligation. *See* NRS 125B.145(4) (providing that a court must review a child support obligation when there has been a 20 percent or more change to a parent's monthly income). The district court denied the request without a hearing, finding that there were no changed circumstances warranting review of the prior support obligation and further finding that appellant was attempting to relitigate the issues that led to the $1000-per-month obligation for support. The district court also awarded respondent $2000 in attorney fees. This appeal followed.

On appeal, appellant first argues that this court should construe his most recent motion to modify child support as an NRCP 60(b) motion for relief from the order setting his support obligation at $1000 per month. Specifically, appellant argues that the tax returns and information he provided from his accountant constituted newly discovered evidence that was not available to him at the time of the prior hearing. *See* NRCP 60(b)(2) (allowing a court to relieve a party from a prior

[1]The written order on this decision was not entered until two months later.

judgment based on "newly discovered evidence which by due diligence could not have been discovered" within the time to move for a new trial). Even if we were to assume that appellant's motion to modify was actually an NRCP 60(b) motion, we conclude that the district court did not abuse its discretion in denying the motion. *See Ford v. Branch Banking & Tr. Co.*, 131 Nev. ___, ___, 353 P.3d 1200, 1202 (2015) (providing the standard of review for orders granting or denying motions for NRCP 60(b) relief). While appellant did provide additional evidence in support of the motion at issue here, that evidence was neither newly discovered nor previously unavailable to appellant as the tax returns and business profit and loss sheets were all based on information available to appellant prior to the entry of the $1000-per-month support obligation.[2] Accordingly, this argument does not provide a basis to reverse the district court's order.

We further conclude that, if we were to review the district court's order as one denying a motion to modify child support rather than one denying NRCP 60(b) relief, there was no abuse of discretion in that decision. *See Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004) (reviewing decisions regarding child support for an abuse of discretion). In order for a district court to modify a support order, the court must find a change in circumstances since the last support order was entered. *See* NRS 125B.145(4); *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009) ("[T]he district court only has authority to modify a child support

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[2]To the extent appellant's argument can be read to assert that NRCP 60(b) relief was also appropriate based on mistake or excusable neglect, *see* NRCP 60(b)(1), we decline to consider that argument as it was neither cogently argued nor supported by relevant legal authority. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that appellate courts need not address issues that are not supported by cogent argument or relevant legal authority).

order upon finding that there has been a change in circumstances since the entry of the [prior] order . . . ."). Here, although appellant couches his arguments regarding the mistakes in his financial disclosure forms as a change in circumstances, in reality, appellant is admitting that he provided the court with inaccurate information regarding his income. But providing inaccurate information is not the same as a change in circumstances and we therefore cannot conclude that the district court abused its discretion in finding that there were no changed circumstances that supported modification of appellant's child support obligation.[3] *See Rivero*, 125 Nev. at 431, 216 P.3d at 228; *Flynn*, 120 Nev. at 440, 92 P.3d at 1227. Accordingly, we affirm the district court's denial of appellant's motion to modify his child support obligation.[4]

Appellant's final argument is that the district court abused its discretion in awarding respondent attorney fees. We agree. In the

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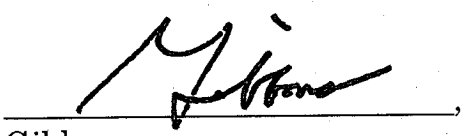
[3]Because the district court concluded that there was no change in circumstances, it did not need to address the best interest factors as argued by appellant. *See Rivero*, 125 Nev. at 432, 216 P.3d at 228 (providing that a district court has authority to modify a support order when there has been a change in circumstances since the previous order was entered); *see also* NRS 125B.145(2)(b) (providing that when the court has authority to modify a support order, then it must consider the best interests of the child).

[4]While we affirm the district court's order denying modification, nothing in this decision bars appellant from seeking to modify his support obligation in the future based on changed circumstances since the support order fixing appellant's support obligation at $1000 per month was entered, as demonstrated by a sufficient loss of income, if he can provide adequate documentation showing the change in income. *See* NRS 125B.145(4) (providing when a court may modify a child support obligation based on a parent's change in income); *Rivero*, 125 Nev. at 431, 216 P.3d at 228.

challenged order, the district court did not identify a basis for its award of attorney fees, address the reasonableness factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), or address any disparity in the parties' income. *See Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005) (providing that, when awarding attorney fees, there must be a rule or statute that authorizes the award, the district court must consider the *Brunzell* factors, and, in family cases, the court must consider any income disparity). Accordingly, the court abused its discretion in making the award, *see id.* at 622, 119 P.3d at 729 (reviewing attorney fees awards for an abuse of discretion), and we therefore reverse the award of attorney fees and remand this matter to the district court for further proceedings on this issue in light of this order.[5]

It is so ORDERED.[6]

_____, C.J.
Silver



_____, J.
Gibbons

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[5]Because appellant did not appeal the prior child support order, which imputed income of $4000 per month to him, his arguments that this imputation was erroneous are not properly before us on appeal and we decline to address them. We further conclude that appellant's arguments regarding due process lack merit as he presented his arguments to the district court before it entered its order. *See Gonzales-Alpizar v. Griffith*, 130 Nev. ___, ___, 317 P.3d 820, 827 (2014) (providing that procedural due process requires reasonable notice and an opportunity to be heard); *see also* EDCR 2.23(c) (allowing a judge to deny a motion without oral argument).

[6]The Honorable Jerome Tao, Judge, voluntarily recused himself from participation in the decision of this matter.

cc: Hon. Jennifer Elliott, District Judge, Family Court Division
M. Nelson Segel, Settlement Judge
Cutter Law Firm, Chtd.
Brennan Law Firm
Eighth District Court Clerk