

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MELISSA A. JACKS,
Appellant,
vs.
RONALD G. JACKS,
Respondent.

No. 69830

FILED

APR 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Melissa Jacks appeals from a district court order denying her post-decree motion in a family law matter. Eighth Judicial District Court, Family Court Division, Clark County; Denise L. Gentile, Judge.

Melissa filed a motion to modify child support, adjudicate omitted assets, award the federal child dependency exemption for both minor children to her, and related relief. After hearing arguments from counsel and reviewing the parties' documents in chambers, the district court issued an order denying Melissa's motion and requesting that the parties submit redacted attorney billing statements for a possible fees award. In a separate order, the court subsequently awarded Respondent Ronald ("Ron") Jacks attorney fees. Melissa filed a separate appeal from that order, which was dismissed by the Nevada Supreme Court.¹ On appeal, Melissa argues that the district court made several evidentiary, procedural, and substantive errors.²

¹*Jacks v. Jacks*, Docket No. 70133 (Order Dismissing Appeal, June 27, 2016).

²We do not recount the facts except as necessary to our disposition.

Melissa's evidentiary and procedural contentions

Melissa contends that the district court's failure to hold an evidentiary hearing or allow further oral argument deprived her of the opportunity to present her case regarding her requests to modify child support and divide the omitted assets.³ This court reviews a district court's factual findings for an abuse of discretion. See *Ellis v. Carucci*, 123 Nev. 145, 149, 152, 161 P.3d 239, 241-42, 244 (2007). However, that deferential review may be inappropriate where the parties to the proceeding were not given an opportunity to be heard. See *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (footnotes omitted) (quoting *Maiola v. State*, 120 Nev. 671, 675, 99 P.3d 227, 229 (2004)). We disagree.

Here, the record indicates that Melissa did not object, or request further oral argument or an evidentiary hearing, when the district court announced that it may decide the case without further hearings.⁴ "A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be

³Although Melissa does not explicitly claim that her due process rights were violated, this argument could be characterized as a procedural due process claim.

⁴Melissa's argument that the district court stated it would hold additional hearings is unpersuasive. Immediately after the portion of the record that Melissa cited in support of this contention, the district court stated that it may decide the case without additional hearings, which it had the authority to do. See EDCR 2.23(c) (stating the district court may consider a motion on its merits at any time with or without a hearing); EDCR 2.23(d) (stating when a judge decides a motion before the hearing date, the clerk "must enter an order upon the minutes of the court reflecting the action taken").

considered on appeal.” *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Although a constitutional issue may be raised for the first time on appeal, see *Levingston v. Washoe County*, 112 Nev. 479, 482-83, 916 P.2d 163, 166 (1996), which Melissa did not expressly do, an appellant’s failure to request an evidentiary hearing weighs against finding a violation of due process rights. See *Diversified Capital Corp. v. City of N. Las Vegas*, 95 Nev. 15, 19-21, 590 P.2d 146, 148-49 (1979).

Additionally, Melissa does not support her position with any legal authority in her opening brief and she supports it with only one marginally relevant case in her reply brief.⁵ This court need not consider allegations of error not 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). Therefore, because Melissa failed to preserve this issue below and failed to support her contention with citations to relevant legal authority, we reject her argument without going into a searching analysis of the potential due process implications caused by the lack of an evidentiary hearing or additional oral argument.⁶

⁵That case, *Cortez v. State*, 127 Nev. 505, 260 P.3d 184 (2011), discusses whether a court should hold an evidentiary hearing sua sponte in a criminal case when a motion to suppress evidence has been filed shortly before trial. See *id.* at 509, 260 P.3d at 187-88.

⁶Although Melissa’s reply brief may be asserting a claim on the merits regarding the omitted assets, the argument is framed as a procedural issue and is not cogently argued. Therefore we do not address it. See *Edwards* 122 Nev. at 330 n. 38, 130 P.3d at 1288 n. 38 (stating that an appellate court need not consider matters that are not

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Next, Melissa contends that the district court abused its discretion by ignoring evidence that she presented. This court does not reweigh conflicting evidence and will uphold the district court's factual findings if it did not abuse its discretion. *See Ellis*, 123 Nev. at 149, 152, 161 P.3d at 241-42, 244.

Here, the parties submitted conflicting sworn documents regarding the omitted assets and child support issues. The record reveals that the district court considered Melissa's pleadings because she alleged that Ron's gross monthly income had increased "in excess of 20%," Ron alleged it had only increased ten percent, and the court found it had increased by 20.5%. Additionally, Melissa's sworn Detailed Financial Disclosure Form indicates that she does not spend any of her monthly income on the children's unreimbursed medical expenses, thus supporting the district court's finding that Ron pays all of the children's uncovered medical expenses. Therefore, we conclude that Melissa's argument that the district court ignored her evidence is unpersuasive.⁷

...continued

cogently argued). Similarly, we do not address Melissa's demonstrative evidence argument because it is not supported by relevant legal authority and is not cogently argued. *See id.*

⁷Although no evidence was presented at the hearing, the district court may consider the affidavits and other sworn pleadings as evidence. *See* EDCR 2.21(c) ("Affidavits/declarations must contain only factual, evidentiary matter . . ."); EDCR 2.22(d) (providing that a motion for continuance must be supported "by affidavit or oral testimony"); *Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005) (emphasis added) ("[P]arties seeking attorney fees in family law cases must support their fee request with *affidavits or other evidence* that meets the factors in *Brunzell and Wright*.").

Further, accepting Melissa's argument would require this court to reweigh conflicting evidence in violation of its appellate function. See *Ellis*, 123 Nev. at 149, 152, 161 P.3d at 241-42, 244.

The district court did not abuse its discretion regarding child support

In addition to the evidentiary and procedural arguments discussed above, Melissa contends that the district court abused its discretion for a variety of reasons when it denied her motion to modify child support. We are unpersuaded by her arguments.

This court reviews a district court's decision regarding child support for an abuse of discretion. See *Wallace v. Wallace*, 112 Nev. 1015, 1019, 992 P.2d 541, 543 (1996). In order to modify child support, the district court must be able to find that the modification is in the child's best interest; an increase in the obligor's income alone is insufficient. See *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009) (emphasis added) ("[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."). Here, Melissa failed to demonstrate to the district court that an upward modification in child support would be in the children's best interest.⁸ Therefore, we conclude the district court

⁸Below, Melissa alleged only that Ron's gross monthly income had increased by more than 20%. This met the "change in circumstances" prong of *Rivero*. However, her affidavit and motion were silent as to how the increase in child support would benefit the children. Below, Melissa addressed the disparity in the parties' incomes only in context of her request for the dependency exemption, and not as part of her request to increase child support.

did not abuse its discretion in denying her motion to increase child support.⁹

The district court did not abuse its discretion regarding the federal child dependency exemption

Next, Melissa argues that the district court abused its discretion by allocating the federal child dependency exemption between the parties. This argument is without merit. The district court has broad discretion to allocate this exemption. *See Sertic v. Sertic*, 111 Nev. 1192, 1197, 901 P.2d 148, 151 (1995). Our review of the record indicates that the district court did not abuse its discretion in allocating the exemption between the parties.

This court lacks jurisdiction to decide Melissa's argument regarding redacted billing statements

Finally, Melissa, citing *Love v. Love*, 114 Nev. 572, 959 P.2d 523, (1998), argues that the district court erred by ordering the parties to submit redacted billing statements. We conclude that this court lacks jurisdiction to decide this claim, as this portion of the district court's

⁹We do not opine whether a modification request should be granted if Melissa subsequently files a motion that ties an increase in child support to Ron's increased gross monthly income and to the children's best interest. However, we caution the district court to adhere to the requirements of NRS 125B.080 should Melissa file that motion. Specifically, we note that the district court's order contained a hypothetical which would not have complied with the requirements of NRS 125B.080(6) and NRS 125B.080(9). Further, if, as Melissa contends, the district court's hypothetical allocated all unreimbursed medical expenses to her, that order would have violated NRS 125B.080(7) because there was no finding of extraordinary circumstances necessitating that allocation.


order is not appealable under NRAP 3A(b)(1) (permitting appeals from final judgments) or NRAP 3A(b)(8) (permitting appeals from special orders). The district court's order found only that attorney fees "may be warranted" and "ask[ed]" that the parties submit redacted statements. The fact that Melissa did not file an attorney's billing statement indicates that she may have not considered the court's request to be an order. "[A] final, appealable judgment is 'one that disposes of the issues presented in the case . . . and leaves nothing for the future consideration of the court.'" *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994) (quoting *Alper v. Posin*, 77 Nev. 328, 330, 363 P.2d 502, 503 (1961)). To be an appealable order under NRAP 3A(b)(8), the order must "affect[] the rights of some party to the action, growing out of the judgment previously entered." *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002). As the district court merely asked for the submission of redacted statements and left open the possibility of awarding attorney fees at a later time, it was not a final decision on the attorney fees issue and did not affect the parties' rights.

Nonetheless, we note the facts in this case are distinguishable from those in *Love*. Here, the redactions did not prevent Melissa from challenging Ron's billing statements because those statements noted a reduction in fees or did not include fees where redactions were made. Furthermore, Melissa's opposition to Ron's fee memorandum did not take issue with either the court's request for

redacted statements or the redactions themselves. Therefore, we are not persuaded by Melissa's argument.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹


_____, C.J.
Silver


_____, J.
Gibbons

cc: Hon. Denise L. Gentile, District Judge, Family Court Division
M. Nelson Segel, Settlement Judge
Accelerated Law Group
Standish Naimi Law Group
Eighth District Court Clerk

¹⁰We have considered the parties' other arguments and conclude that they either do not have merit or do not need to be addressed because of the manner in which this court has disposed of the other issues that were raised on appeal.

¹¹The Honorable Jerome Tao, Judge, did not participate in the decision in this matter.