

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERNESTO SALAZAR,
Appellant,
vs.
DANELL SALAZAR,
Respondent.

No. 72838

FILED

APR 17 2018

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

ORDER OF AFFIRMANCE

Ernesto Salazar appeals from a district court order setting child support. Second Judicial District Court, Family Court Division, Washoe County; David Humke, Judge.

Ernesto and respondent Danell Salazar appeared in front of a hearing master in 2016 for an adjustment to child support for the parties' two children. After calculating the parties' respective incomes, an amount was recommended to the district court. Ernesto objected to the findings of the master, and submitted new information regarding the parties' incomes. The district court assessed the new information relating to both Ernesto and Danell's incomes and modified the support obligation. While Ernesto had requested the modification be retroactively applied from the date of the filing of the notice of review and adjustment, in a supplemental filing, the district court declined to do so as Ernesto had not requested this relief in his original objection to the master's findings. The district court also issued a wage assignment as Ernesto did not make any payment for a full calendar month.

Following the district court's order, Ernesto filed a motion for reconsideration, asserting that Danell's income was improperly reported resulting in a higher support obligation calculation. Ernesto again

requested retroactive application of the support modification and challenged the wage assignment. In its order denying the motion for reconsideration, the district court found that Ernesto did not present any new law or fact to reconsider the denial of retroactive application and the imposition of a wage assignment. With regard to the support modification calculation, the district court held that while Ernesto had presented new information regarding Danell's income level, the parties both held new jobs that made accurate calculation of wages complicated and the court found that application of the new evidence was unnecessary "to prevent manifest injustice as acting upon the new evidence may provide an identical result."¹ This appeal followed.

Based on the record presented in this matter, we discern no abuse of discretion with regards to the district court's actions below. See *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (child support matters reviewed for an abuse of discretion). The court made specific findings related to the relative income of both parents, including what income calculations it used and why, pursuant to the support modification factors of NRS 125B.080(9).² Similarly, the court denied retroactive modification of the child support amount due to Ernesto's failure

¹The district court did grant an employment review hearing for the parties as a follow-up in six months from the order to allow for a more accurate calculation of the parties' incomes in their new positions.

²This statute was amended in 2017, removing the factors from the statute and placing guidelines on this issue under the auspices of the Administrator of the Division of Welfare and Supportive Services of the Department of Health and Human Services in Nevada. This has no effect on the disposition of this appeal, as the proceeding at issue occurred prior to this legislative action.

to originally seek retroactive application, and the court instituted the wage assignment where Ernesto failed to make a child support payment for a full calendar month. These are not clearly erroneous or arbitrary or capricious findings. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (factual findings reviewed for abuse of discretion); *Ramacciotti v. Ramacciotti*, 106 Nev. 529, 532, 795 P.2d 988, 990 (1990) (recognizing that a court has discretion to make a child support order retroactive to the time that modification is sought, as of the date of the court's order modifying the support, or as of any time in between the two extremes). As for Ernesto's allegations that Danell knowingly misled the court with the aid of the district attorney, this conflicts with the sworn affidavits of Danell and the court filings in the record and fails to establish an abuse of discretion on the part of the court. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (noting that the appellate court does not weigh conflicting evidence or assess witness credibility).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. David Humke, District Judge, Family Court Division
Ernesto Salazar
Washoe County District Attorney/Family Support Division
Washoe County District Attorney/Civil Division
Washoe District Court Clerk