IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELVIA GUERRERO,
Appellant,
vs.
NICOLAS RIVERA,
Respondent.

No. 75172-COA

FILED

FEB 26 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying an objection to the hearing master's recommendations in a child support matter. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Appellant Elvia Guerrero, as the custodial parent of the parties' dependent child, applied for child support through the Clark County District Attorney, Family Support Division (DAFS), and filed a complaint in the district court for child custody, child support, four years of retroactive child support, and attorney fees. The district court deferred all matters involving child support to the DAFS case. Regarding the DAFS case, the hearing master held a telephonic hearing and issued a recommendation, finding an arrears period of June 1, 2016 through June 30, 2017. Although the hearing master further found an arrears period of thirteen months at a rate of $500.00 per month to be "fair and reasonable," the hearing master's recommendation stated that interest and penalties "are not included in this Order." The hearing master's recommendation clarified that "[i]n a subsequent Order, interest and penalties may be included as far back as State regulations allow." Thus, the hearing master's recommendation did not prescribe the amount in total arrearages Rivera owed. Neither party filed a written objection to the hearing master's recommendation, and thus,

pursuant to EDCR 1.40(e), the hearing master's recommendation was finalized as a judgment by the district court.

Subsequently, the hearing master held another telephonic hearing pursuant to the language set forth in the hearing master's recommendation, whereby Guerrero's attorney brought up the issue of daycare costs Guerrero incurred in 2013. The hearing master explained that at the last hearing she told Guerrero, who was not represented, that she would consider occasional daycare costs "going forward." However, the hearing master now indicated that she was "not gonna consider it because the arrears that I established last court date were based on discretionary amounts," and were "only starting June of 2016. It wasn't going back two or three years. And that's . . . really per [DAFS'] policies." The hearing master then entered her second recommendation, finding an arrears obligation period from June 1, 2016 through June 30, 2017, finding an amount in total arrearages Rivera owed, and denying Guerrero's request for retroactive consideration of daycare expenses.

Guerrero filed a written objection to the hearing master's recommendation in the district court. In addition to requesting an order of arrears from June 1, 2013 through June 30, 2017, Guerrero requested $2,500.00 in attorney fees and costs. Ultimately, the district court affirmed and adopted the hearing master's second recommendation as a judgment, and denied Guerrero's objection to the hearing master's recommendation. In particular, the district court determined that retroactive child support under NRS 125B.030 "is completely discretionary with the original tribunal," which "makes finding clear error impossible in this Objection process."

On appeal, Guerrero contends that the district court erred in denying her objection to the hearing master's recommendation. Although

Guerrero concedes that NRS 125B.030 affords the hearing master with some discretion, she contends that discretion is not unlimited.[1] Conversely, Rivera contends that Guerrero failed to timely object to the hearing master's first recommendation, and thus, the hearing master's determination of the arrears period is not clearly erroneous, as the hearing master previously decided the issue and a hearing master has complete discretion in determining retroactive child support under the statute. We agree with Guerrero.

> Relevant to this appeal, EDCR 1.40 provides:
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> (d) The master's report must be furnished to each party at the conclusion of the proceeding and the court will accept the master's findings of fact unless clearly erroneous.
>
> (e) Within 10 days after the conclusion of the proceeding and receipt of the report, either party may serve written objections thereto upon the other party. If no objection is filed, the report will be referred to the presiding judge and without further notice, judgment entered thereon.
>
> (f) If a written objection is filed pursuant to this rule, application to the court for action upon the report over the objection thereto must be by motion and upon notice as prescribed in Rule 2.20.

See also NRS 3.405(4) (stating the same).

The district court may only disregard the hearing master's recommendation when "the findings are based upon material errors in the

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[1]Although Guerrero also contends that she should be awarded attorney fees under NRS 125B.140(2)(c)(2), there is not a final judgment to enforce Rivera's child support obligation on appeal. Therefore, the issue of attorney fees is not appealable. *See* NRAP 3A(b)(1) (setting forth the appropriate judgments and orders of a district court a party may appeal from in a civil action).

proceedings or a mistake in law; or are unsupported by any substantial evidence; or are against the clear weight of the evidence." *Russell v. Thompson*, 96 Nev. 830, 834 n.2, 619 P.2d 537, 539 n.2 (1980). Of relevance in this appeal, "[s]ubstantial evidence is evidence that a reasonable person may accept as adequate to sustain a judgment." *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009) (internal quotation marks omitted).

Here, we first recognize that although Guerrero failed to object to the June 26, 2017 hearing master's recommendation, this first recommendation by the hearing master was not a final judgment, and thus, Guerrero did not waive her objection to the hearing master's finding of an arrears period of thirteen months. Significantly, the hearing master's June 26, 2017 recommendation made clear that interest and penalties could be included in a subsequent order, and the hearing master did not set the amount Rivera owed in total arrearages, despite finding an arrears period and monthly rate. Indeed, the hearing master specified in her recommendation that the issue of past payments Rivera made would be continued until the next court date, and that arrears would be also addressed at that time. It was not until the hearing master's December 11, 2017 recommendation that the hearing master addressed the amount in total arrearages Rivera owed, including interest and penalties. Therefore, only the December 11, 2017 hearing master's recommendation disposed of the arrears issue. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426-27, 996 P.2d 416, 417-18 (2000) (noting that the finality of a judgment is determined by "looking to what the order or judgment actually *does*, not what it is called," and that a final judgment is "one that disposes issues presented in the case, determines the costs, and leaves nothing for future consideration of the court") (internal quotation marks omitted).

Next, in determining whether the hearing master's finding of an arrears period from June 1, 2016 through June 20, 2017 is supported by substantial evidence, and thus, not clearly erroneous, we now to turn to NRS 125B.030, which provides:

> Where the parents of a child do not reside together, the physical custodian of the child may recover from the parent without physical custody a reasonable portion of the cost of care, support, education and maintenance provided by the physical custodian. In the absence of a court order for the support of a child, the parent who has physical custody *may* recover not more than 4 years' support furnished before the bringing of the action to establish an obligation for the support of the child.

(Emphasis added);[2] *see also Ewing v. Fahey*, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970) (recognizing that the word 'may' is generally construed as permissive).

We conclude that although the hearing master has discretion in determining retroactive child support under NRS 125B.030, such a discretionary act must still be supported by substantial evidence. Here, the

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[2]For unknown reasons, the Nevada Supreme Court declined to address whether NRS 125B.030 applies to parents who were never married. *See Mason v. Cuisenaire*, 122 Nev. 43, 49, 128 P.3d 446, 450 (2006) (stating that "[a]lthough [NRS 125B.030] appears to apply to couples who have never been married, we reserve determination of that question for future consideration"). We need not address this issue at this time, as the parties did not fully brief the issue and did not raise it below. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that this court need not consider issues that are not cogently argued or supported by relevant authority); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (recognizing that "[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 considered on appeal").

transcript from the first telephonic hearing is not in the record on appeal, and the minutes from this hearing do not provide any explanation for finding an arrears period of thirteen months. Moreover, nothing in the record states that Guerrero requested retroactive child support for a period of thirteen months or less, despite Rivera's contention. Instead, it is apparent that Guerrero requested support she allegedly provided years prior to applying for child support with DAFS. It appears that the hearing master found an arrears period beginning on June 1, 2016 simply based on the period Guerrero applied for child support with DAFS. Therefore, a reasonable person would not accept the evidence as adequate to support the hearing master's finding of a thirteen-month arrears period. Without substantial evidence, the hearing master's finding is clearly erroneous. Accordingly, the district court erred in affirming and adopting the hearing master's second recommendation as a judgment, and thus, erred in denying Guerrero's objection to the hearing master's recommendation. Based on the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court with instructions to remand this matter to the hearing master for a new hearing to determine whether four years of retroactive child support is warranted, and supported by substantial evidence.

_____, A.C.J.
Douglas

_____, J.
Tao

I concur as to result.

_____, J.
Gibbons

cc: Hon. Mathew Harter, District Judge
Robert W. Lueck, Ltd.
Gallardo & Associates LLC
Eighth District Court Clerk