IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DZIEDZIC,
Appellant,
vs.
AMY DZIEDZIC N/K/A AMY HANLEY,
Respondent.

No. 68272

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Appellant Michael Dziedzic appeals from a district court order modifying child custody, adjudicating child support arrearages, and awarding attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Sandra L. Pomrenze, Judge.

Appellant Michael Dziedzic previously had primary physical custody of the parties' three children. In the order before us, the district court modified the custody arrangement to give Dziedzic and respondent Amy Hanley joint physical custody. As an initial matter, regardless of the parties' previous custody arrangement being based on a stipulation, the district court had the authority to modify that arrangement on a showing that there had been a substantial change in circumstances and that modification was in the children's best interest.[1] *See* NRS 125.510(1)(b)

[1]To the extent that Dziedzic argues the district court failed to consider Hanley's "litigious nature," he has not demonstrated that the number of her filings in this case was relevant to the modification standard, i.e., whether there was a change in circumstances and whether modification was in the best interest of the children. Thus, this argument does not provide a basis for reversing the modification decision.

(2014) (providing that a court may modify or vacate a child custody order at any time) (repealed 2015)[2]; *Ellis v. Carucci*, 123 Nev. 145, 150-52 161 P.3d 239, 242-43 (2007) (setting forth the test for considering whether a change in custody is warranted). Moreover, the district court did not abuse its discretion by concluding that Hanley had demonstrated a substantial change in circumstances based on her rebutting Dziedzic's allegations of drug abuse and Dziedzic's failure to coparent and failure to acknowledge their son's autism.[3]

With regard to the district court's consideration of the best interest factors, the parties each presented evidence against the other, and it was within the district court's discretion to weigh that evidence and decide what would be in the best interest of the children. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241 (recognizing "the district court's broad discretionary powers to determine child custody matters" and providing that the district court's custody decisions will not be disturbed "absent a clear abuse of discretion"). While Michael disagrees with the weight the court afforded to various pieces of evidence, he has not demonstrated that

---

[2]Although NRS 125.510(1)(b) was repealed in October 2015, it was replaced by NRS 125C.0045(1)(b), which includes substantially the same language permitting a custody order to be modified at any time.

[3]Other than to say that the district court's explanation was inadequate and that his best interest arguments also apply to the changed circumstances findings, Dziedzic does not argue that the circumstances identified by the district court were insufficient to constitute a substantial change in circumstances for the purpose of a custody modification. Thus, we do not address that issue further in this order. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not address issues not supported by authority or cogent arguments).

the district court abused its discretion in deciding to modify custody. *See id.*

And contrary to Michael's characterization of the district court's decision as penalizing him, nothing in the record demonstrates that the court ordered joint physical custody as a punishment. Instead, the record and the district court's order show that the court weighed the relevant factors and found that joint physical custody would be in the children's best interest.[4] As a result, we affirm the portion of the district court's order awarding the parties joint physical custody.

Dziedzic's next arguments relate to the court's adjudication of child support arrearages. At the initial hearing, Hanley was awarded temporary primary physical custody and Dziedzic was ordered to pay child support consistent with that arrangement. On appeal, Dziedzic does not dispute that he failed to pay support for a number of months, but instead,

---

[4]To the extent that Dziedzic argues the court improperly considered evidence predating the divorce decree, the only citation to authority he provides on this point is to *McMonigle v. McMonigle*, 110 Nev. 1407, 887 P.2d 742 (1994), *overruled on other grounds by Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004), which precludes the consideration of evidence that predates an existing custody decree in considering whether there has been a substantial change in circumstances. But here, the court did not find a substantial change in circumstances based on the pre-decree evidence. Instead, the court considered that evidence only in its discussion of the best interest factors. And Dziedzic has not presented any authority that precludes the consideration of such evidence in a best interest analysis. Regardless, the district court's order demonstrates that the two pieces of evidence Dziedzic discusses in this regard were relatively minor points in the district court's custody analysis. Thus, even if he is correct that the court should not have considered them, he has not shown that the consideration of this evidence had any effect on his substantial rights. *See* NRCP 61 (requiring the court at all stages of the proceedings to disregard errors that do not affect a party's substantial rights).

argues that the district court could not award pre-decree arrearages because, in an order entered before the modification order, the court had found such arrearages were subsumed by the divorce decree. Insofar as the court previously found it could not adjudicate pre-decree arrearages, that ruling was in error as those arrearages were incurred and accrued and could not retroactively be voided. *See Khaldy v. Khaldy*, 111 Nev. 374, 377, 892 P.2d 584, 586 (1995) ("Nevada case law clearly prohibits retroactive modification of a support order. Payments once accrued for either alimony or support of children become vested rights and cannot thereafter be modified or voided.") (internal quotation mark omitted). Thus, the district court correctly reversed its previous statement and adjudicated both parties' arrearages. *See id.*

As to the amount of arrearages, Dziedzic asserts that the district court improperly imposed arrearages based on Hanley having primary physical custody when, in reality, the parties had joint physical custody. Dziedzic has not demonstrated, however, that the parties' timeshare during those times actually amounted to a joint physical custody arrangement. Regardless, the court adjudicated the arrearages based on the orders that were in place at the relevant times. And as noted above, once the payments accrued under those orders, they could not be modified or voided. *See id.* Thus, Dziedzic has not demonstrated that the district court improperly calculated the arrearages in this regard.

Nevertheless, the record supports Dziedzic's argument that the district court erred by finding that he failed to make support payments for September, October, and November 2012. In particular, Hanley's own schedule of arrearages showed that Dziedzic made the full child support payment in each of these months. Thus, we affirm the district court's

decision to adjudicate arrearages, but we reverse the amount of arrearages imposed and remand this matter to the district court to reduce Dziedzic's arrearages by $8,076.

Finally, with regard to attorney fees, Dziedzic first argues that the district court abused its discretion in awarding attorney fees to Hanley as the prevailing party because the district court improperly adjudicated pre-decree arrearages and modified custody. But, as discussed herein, Dziedzic has not demonstrated that the court's decisions on these points were improper, and thus, this argument does not demonstrate that the attorney fees award was improper.

Dziedzic's remaining argument is that the district court abused its discretion by awarding fees because the amount awarded would create an undue hardship for him. *See* NRS 125B.140(2)(c) (providing that a court shall award attorney fees in a proceeding to adjudicate arrearages "unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts"). But the district court's order does not indicate that the attorney fees were awarded under NRS 125B.140(2)(c), and regardless, Dziedzic did not raise the undue hardship argument below. As a result, we conclude that he waived this argument, and we do not address it further in this appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."). And we therefore affirm the award of attorney fees.

Thus, as discussed herein, we affirm the district court's decisions to modify custody, adjudicate arrearages, and award attorney fees, but we reverse the district court's order as to the amount of

arrearages and remand this matter to the district court to reduce the amount of arrearages owed as set forth in this order.

It is so ORDERED.[5]

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
Woodrum Law LLC
Amy Dziedzic
Eighth District Court Clerk

[5]To the extent that any arguments made in Dziedzic's brief on appeal are not specifically addressed in this order, we have considered those arguments and conclude that they lack merit.