

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN U. CRUZ-REYES,
Appellant,
vs.
YAN HONG LIU,
Respondent.

No. 80323-COA

FILED

APR 16 2021

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

ORDER OF REVERSAL AND REMAND

Juan U. Cruz-Reyes appeals from a district court order awarding attorney fees in a family matter. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

In the proceedings below, the district court found that Cruz-Reyes was in contempt of the parties' decree of divorce. Cruz-Reyes appealed the contempt order, but subsequently stipulated to dismissing that appeal after a settlement conference. *Cruz-Reyes v. Liu*, Docket No. 77742 (Order Dismissing Appeal, March 7, 2019). After the district court entered the contempt order, and before Cruz-Reyes filed his appeal in Docket No. 77742, respondent Yan Hong Liu moved for attorney fees related to the contempt proceedings. After a hearing, in January 2019, the district court granted the motion, concluding that fees were warranted, but the written order awarding fees was not filed until March 11, 2019. This appeal from the attorney fees order followed.

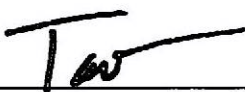
On appeal, Cruz-Reyes challenges the district court's award of attorney fees, asserting—among other things—that the fees award was improper because, at the supreme court settlement conference held as part of the appeal in Docket No. 77742, the parties agreed that he would dismiss

his appeal while Liu would forgo the award of attorney fees. Liu, however, has failed to file an answering brief on appeal.

Under the circumstances presented here, we exercise our discretion to treat Liu's failure to file an answering brief as a confession of error. See NRAP 31(d)(2) (providing that the appellate courts may treat a respondent's failure to file an answering brief as a confession of error); *Polk v. State*, 126 Nev. 180, 184-85, 233 P.3d 357, 359-60 (2010) (explaining that whether to treat the failure to file a response as a confession of error is discretionary). We therefore reverse the district court's order awarding Liu attorney fees and remand this matter for further proceedings in the district court to determine whether the parties entered into a settlement agreement whereby Liu agreed to forgo the fees award at issue here as Cruz-Reyes contends.

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹With regard to Cruz-Reyes' request for costs, NRAP 39 requires that any request for costs be made after the entry of judgment. Thus, we deny this request without prejudice to Cruz-Reyes' right to request an award of costs through the procedures outlined in that rule. Finally, in light of our resolution of this matter, we need not address Cruz-Reyes' remaining arguments on appeal.

cc: Hon. Linda Marquis, District Judge, Family Court Division
Guinness Law Firm
Yan Hong Liu
Eighth District Court Clerk