IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEX B. GHIBAUDO,
Appellant/Cross-Respondent,
vs.
TARA KELLOGG-GHIBAUDO,
Respondent/Cross-Appellant.

No. 82248-COA

FILED

APR 21 2022

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

ORDER OF AFFIRMANCE

Alex G. Ghibaudo appeals and Tara Kellogg-Ghibaudo cross-appeals from a post-decree of divorce order. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Tara initiated the underlying divorce proceedings in 2015. After attending a settlement conference in 2016, the parties stipulated to terms of a legal separation and agreed to try to reconcile without a divorce. Before a decree of legal separation was entered, the parties were unable to reconcile, and Tara sought the entry of a decree of divorce incorporating the terms the parties agreed to at the settlement conference. Over Alex's objection, the district court entered a decree of divorce in February 2017, largely incorporating the terms from the settlement conference. As relevant here, pursuant to the terms of the decree, Alex was ordered to pay Tara family support—constituting child support and spousal support—in the amount of $2,500 per month or 50 percent of his gross monthly income, whichever was greater, for 15 years. The decree also provided that, upon Tara obtaining full-time employment, Alex's family support obligation would be calculated as 50 percent of the difference between the parties' gross monthly incomes, or $2,500, whichever was greater. The decree

further set forth that it was a stipulated decree of divorce incorporating the parties' prior agreements.

In 2019, Alex moved to modify spousal support, asserting that he did not agree to the terms entered into in the decree of divorce as he only agreed to those terms as part of a legal separation, that the district court violated his due process rights by failing to hold an evidentiary hearing before entering the divorce decree, and that the spousal support provision was void. He also argued that because the terms were incorporated into the decree, they were modifiable, and there had been a change in circumstances warranting modification. Finally, Alex asserted that Tara should be estopped from enforcing the spousal support provisions because she failed to comply with the terms by failing to obtain full-time employment, such that she breached the parties' agreement regarding spousal support. Tara opposed the motion to modify and counter-moved to enforce the decree.

The district court held an evidentiary hearing on the competing motions and entered an order granting Alex's motion and Tara's countermotion in part. In its order, the district court noted that it reviewed the recording of the parties' settlement conference and found that both parties acknowledged at the conference that they had the right to turn the terms of their stipulated legal separation into a divorce. Moreover, the court found that the decree of divorce was a final judgment, from which no appeal had been taken. The district court also found that, although the decree did not require Tara to obtain full-time employment, she was willfully underemployed to maximize her spousal support claim and that an income of $2,000 per month should be imputed to her. The district court then made findings regarding Alex's arrears and found that spousal support should be modified moving forward, noting that the parties agreed the terms should

be modified to award a flat amount to avoid future litigation regarding the parties' incomes. Thus, the court ordered Alex to pay $2,500 per month in spousal support for the remainder of the initial 15-year term. This appeal and cross-appeal followed.

On appeal, both parties challenge the district court's conclusions regarding spousal support. Alex asserts that the district court erred by relying on the decree of divorce, which he asserts is void as it did not properly incorporate the parties' stipulation and it violated his due process rights; that the court erred in failing to apply equitable estoppel to preclude Tara from enforcing the spousal support provision because she failed to comply with its terms; and that it erred by failing to analyze whether there was an "underlying rationale" for the spousal support award. In her cross-appeal, Tara asserts that the district court abused its discretion by modifying the spousal support provision that was based on a settlement agreement and that it abused its discretion in imputing income to her.

This court reviews the district court's decisions in divorce proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Similarly, this court reviews the district court's spousal support awards for an abuse of discretion. *Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010). And this court will not disturb a district court's decision that is supported by substantial evidence. *Williams*, 120 Nev. at 566, 97 P.3d at 1129. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.*

As an initial matter, we note that, "[g]enerally, when the district court approves and adopts the parties' agreement into the decree of divorce, the agreement merges into the decree unless both the decree and

the agreement contain a clear and direct expression that the agreement will survive the decree." *Mizrachi v. Mizrachi*, 132 Nev. 666, 675 n.9, 385 P.3d 982, 988 n.9 (Ct. App. 2016) (citing *Day v. Day*, 80 Nev. 386, 389-90, 395 P.2d 321, 322-23 (1964)). And when an agreement merges into a decree of divorce, it loses its character as an independent agreement and the parties' rights "rest solely upon the decree." *Day*, 80 Nev. at 389, 395 P.2d at 322.

Here, the decree of divorce does not provide that the parties' agreement arising out of the settlement conference will survive the decree and it indicates that the terms are a full and final agreement between the parties and that all prior agreements between the parties are incorporated into the decree of divorce. The decree goes on to conclude that the terms of the decree of divorce may only be modified by written agreement between the parties or an order of the court. Based on these conclusions, the parties' settlement agreement was merged into the decree of divorce and the parties' rights pursuant to those terms arise solely from the decree. *See id.* Thus, both Alex's and Tara's arguments that the terms of the settlement agreement were not merged or that the spousal support provision should be interpreted solely as a contract are without merit.

As to Alex's assertion that the district court improperly relied on the decree of divorce in considering his motion to modify spousal support and that the decree is void, we disagree. As the district court noted, the decree of divorce was a final judgment. *See* NRS 125.130(1) (providing that a decree of divorce or judgment entered pursuant to this chapter is a final decree). And because Alex failed to timely appeal from the decree of divorce, he cannot now challenge the validity of that final order. *See* NRAP 3A(b)(1), (7) (allowing appeals from final judgments and orders finally establishing child custody); NRAP 4(a)(1) (providing that a party must file a notice of

appeal within 30 days of service of the notice of entry of order); *Verner v. Jouflas*, 95 Nev. 69, 70-71, 589 P.2d 1025, 1026 (1979) (concluding that a party who fails to appeal from an appealable order waives any right to challenge the order in later proceedings); *see also Dakota Payphone, LLC v. Alcaraz*, 121 Cal. Rptr. 3d 435, 447 (Ct. App. 2011) (noting that "[a] party who fails to take a timely appeal from a decision or order from which an appeal might previously have been taken cannot obtain review of it on appeal from a subsequent judgment or order" (internal quotation marks omitted)). Thus, we discern no error in the district court's conclusion that the decree of divorce constituted a valid, final order. Similarly, Alex's assertion that the district court abused its discretion in failing to make findings as to the "underlying rationale" for the spousal support award is without merit as any challenge to the award of spousal support should have been raised in an appeal from the decree of divorce. *See Verner*, 95 Nev. at 70-71, 589 P.2d at 1026.

Next, Alex contends that the district court erred when it failed to apply equitable estoppel to preclude Tara from enforcing the spousal support terms because she failed to obtain full-time employment as required by the parties' stipulated agreement. But as the district court found, the decree of divorce did not require Tara to obtain full-time employment; rather, it only provided how the family support obligation would be calculated should she obtain the same. Thus, we discern no abuse of discretion in the district court's declining to apply equitable estoppel or in its enforcement of the decree of divorce. *See Byrd v. Byrd*, 137 Nev., Adv. Op. 60, 501 P.3d 458, 462 (Ct. App. 2021) (explaining that the district court has inherent authority to interpret and enforce its decrees); *see also In re Harrison Living Tr.*, 121 Nev. 217, 222, 112 P.3d 1058, 1061 (2005)

(explaining that the appellate courts review a district court's decision to apply equitable estoppel for an abuse of discretion).

In her cross-appeal, Tara asserts that the district court abused its discretion by modifying the spousal support provision because it was based on a settlement agreement. As discussed above, the parties' agreement was merged into the decree such that their rights stem from the decree as a final order. *See Day*, 80 Nev. at 389-90, 395 P.2d at 322-23. And the district court may modify a spousal support award upon a change in circumstances.[1] NRS 125.150(8). Thus, we cannot conclude that the district court abused of discretion in reevaluating the spousal support provision and modifying the same. *See Schwartz*, 126 Nev. at 90, 225 P.3d at 1275; *Williams*, 120 Nev. at 566, 97 P.3d at 1129.

Similarly, as to Tara's assertion that the district court abused its discretion in imputing income to her, contrary to her assertions, the record demonstrates that the district court considered her evidence and her arguments before making its determination. And this court will not reweigh witness credibility or the weight of the evidence on appeal. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116

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[1]Contrary to Tara's argument that there were no changed circumstances warranting modification, the decree of divorce indicates that Alex's gross monthly income was $6,666 per month, but at the time the district court modified the spousal support award, his gross monthly income was approximately $12,000 per month. *See* NRS 125.150(12) (providing that a 20 percent change in gross monthly income constitutes a change in circumstances requiring review for modification). Moreover, the record indicates that Tara conceded modification of the spousal support provision was required and requested that the court order a flat amount of support, rather than a percentage that fluctuated with Alex's income.

Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). Thus, we likewise discern no abuse of discretion in the district court's imputing income to Tara when making its spousal support determination. *See Schwartz*, 126 Nev. at 90, 225 P.3d at 1275; *Williams*, 120 Nev. at 566, 97 P.3d at 1129.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Israel Kunin, Settlement Judge
Alex B. Ghibaudo, PC.
JK Nelson Law LLC
Eighth District Court Clerk

[2]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.