

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS A. GUADRON,
Appellant,
vs.
SAMANTHA A. HAYDEN,
Respondent.

No. 83612-COA

FILED

OCT 07 2022

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

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Carlos A. Guadron appeals from a district court order regarding child support. Eighth Judicial District Court, Family Court Division, Clark County; Amy Mastin, Judge.

Guadron and respondent, Samantha A. Hayden, have one child together, Delilah Guadron, who was born in 2002. In 2006, the district court ordered Guadron to pay child support to Hayden for Delilah's benefit. Sometime thereafter, Hayden and Delilah moved to Minnesota, and Guadron alleges that he had limited contact with Delilah until 2020. During this time, the district court heard and decided several motions to modify the support order, and on December 4, 2013, entered an order which set Guadron's support obligation at \$110 a month (including a \$10 arrears payment), and reduced approximately \$14,475.28 in arrears to judgment.

As relevant here, in 2020 Guadron filed a motion in district court seeking reimbursement of the child support payments he made to Hayden, to set aside his child support arrears, or, in the alternative, to waive statutory interest on the remaining arrears under NRS 125B.140(2) due to financial hardship. In his motion, Guadron alleged that he recently reestablished contact with Delilah, and learned that Delilah had not lived

with her mother since arriving in Minnesota, and that Delilah (who was 17 at the time of Guadron's motion) was currently living on her own with a minor child herself. In the alternative, in support of his argument that the district court should waive the statutory interest on the arrears owed, Guadron argued that he was currently unemployed due to the COVID-19 pandemic, and that he was the primary physical custodian of his other minor daughter.

In its subsequent order, the district court determined that because Delilah had turned 18, Guadron's ongoing support obligations had ceased. And although the court did not determine the amount of arrears Guadron owed at the hearing, the court directed Guadron to continue paying \$110 a month towards his arrears balance. Finally, the court summarily denied Guadron's motion with little explanation, stating that the "[c]ourt found no hardship." Guadron now appeals.

This court reviews a child support order for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996); *see also Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018) (stating that in child support matters, this court "will uphold the district court's determination if it is supported by substantial evidence" (quoting *Flynn*, 120 Nev. at 440, 92 P.3d at 1227)). Although we review "discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142-43 (2015).

On appeal, Guadron argues that the district court abused its discretion when it denied his request for reimbursement of previously paid

child support and declined to set aside the arrears. Guadron also argues that the district court abused its discretion when it denied his alternative request to waive statutory interest on the remaining arrears under NRS 125B.140(2). After this appeal was transferred to the court of appeals, Hayden was directed to file a response to Guadron's informal brief and, when she failed to do so, a subsequent order was entered noting her failure to file her response and that, if she failed to do so or to request an extension of time within 10 days of that order, her failure to comply with this court's orders would result in this matter being submitted for decision without consideration of her response. The time for responding to this court's order has passed, and as of this date, Hayden has failed to either file her response or communicate with this court regarding an extension. Accordingly, this court may treat Hayden's failure to respond as a confession of error under NRAP 31(d)(2).

Having reviewed Guadron's arguments in his informal brief and the record on appeal, we must affirm the portion of the district court's order denying Guadron's requests for reimbursement of child support and to set aside the arrears. Under NRS 125B.140(1)(a), child support stemming from a court order is "a judgment by operation of law on or after the date a payment is due." "Such a judgment may not be retroactively modified or adjusted and may be enforced in the same manner as other judgments of this State." *Id.* Moreover, "[a] parent who, at the time the child becomes emancipated, is delinquent in the payment of support for that child pursuant to an order of a court for support, shall continue to make the payments for the support as previously ordered until the arrearages are paid." NRS 125B.100. Thus, even though Hayden failed to provide a response to these arguments, Guadron cannot obtain reimbursement of the

child support he already paid, nor can he seek to set aside the child support arrears that have already accrued. *See Day v. Day*, 82 Nev. 317, 320-21, 417 P.2d 914, 916 (1966) (“Payments once accrued for . . . support of children become vested rights and cannot thereafter be modified or voided.”). We therefore necessarily conclude that the district court did not abuse its discretion in declining to do so.

Guadron also argues that the district court abused its discretion by not waiving statutory interest under NRS 125B.140(2) based on his assertion that he was suffering financial hardship. NRS 125B.140(2)(c) allows a district court to waive statutory interest on child support arrears if “the responsible parent would experience an undue hardship if required to pay such amounts.” This court reviews an award of interest under NRS 125B.140(2) for an abuse of discretion. *See Northrop v. State, Div. of Welfare & Supportive Services*, No. 64589, 2016 WL 3033750 (Nev. May 26, 2016) (Order of Reversal and Remand) (citing *M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 916, 193 P.3d 536, 546 (2008)).

Here, Guadron argues that the district court abused its discretion when it summarily denied his motion seeking waiver of the statutory interest rate where he presented evidence that he was currently unemployed and taking care of his other minor child, and where he submitted financial documents indicating that he had \$3,935 in monthly expenses with only \$1,876 in income from unemployment benefits.

Because Hayden has failed to file an answering brief in this matter, we elect to treat this failure as a confession of error with regard to this issue. *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); *Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009)

(treating a party's failure to respond to an argument as a concession that the argument is meritorious). Accordingly, we reverse the portion of the district court's order declining to waive statutory interest on the arrears, and remand for further proceedings regarding this issue. On remand, we direct the district court to calculate the remaining arrears and interest accrued after the judgment entered on December 4, 2013,¹ and to reconsider whether Guadron would experience undue hardship if required to pay interest.

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Because NRS 125B.140(2) "does not apply to the enforcement of a judgment for arrearages if the amount of the judgment has been determined by any court," the district court may only consider waiver of interest on the arrearages not reduced to judgment by the December 4, 2013, order.

²Insofar as Guadron raises 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.

cc: Hon. Amy Mastin, District Judge, Family Court Division
Carlos A. Guadron
Samantha A. Hayden
Clark County District Attorney
Eighth District Court Clerk