IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRADLEY S. CARLSON,
Appellant,
vs.
TERESA M. CARLSON,
Respondent.

No. 85643-COA

ORDER OF AFFIRMANCE

Bradley S. Carlson appeals from an order enforcing a divorce decree and reducing unpaid college tuition expenses to judgment. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

Bradley and respondent Teresa M. Carlson were divorced in 2010 through a divorce decree entered based on the parties' marital settlement agreement (MSA), which was incorporated and adopted by the decree. The MSA expressly provided that it would be merged into and become part of the divorce decree. The parties have one child—Chad Logan Carlson. Chad, who was 7 years old at the time the parties divorced, is now 21. As relevant here, the MSA contained a provision regarding payment of Chad's college tuition costs (the tuition provision) which states as follows: "Husband and Wife agree to equally share tuition costs associated with their minor child's college attendance, should the child attend college."

In September 2021, Chad began attending Southern Utah University to pursue an Applied Science degree as part of the university's Aviation Professional Pilot Program. While there were seemingly no issues regarding payments for the first year of Chad's program, in May 2022, a dispute arose regarding the payment of certain expenses, including the

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costs associated with Chad's summer coursework and the costs for Chad's flight labs. When the parties were unable to resolve this dispute, Teresa filed a motion to enforce the MSA as incorporated into the divorce decree. As part of this motion, she sought reimbursement for Bradley's portion of the summer college expenses that she was forced to pay, and requested an order to show cause why Bradley should not be held in contempt for failing to comply with the MSA and pay his half of Chad's college expenses. Bradley opposed Teresa's motion, arguing he was unable to pay for the summer expenses, and that he would "continue to pay" half "of room and board and books as financial conditions allowed" but that he was not able to pay for flight program costs. As part of this filing, Bradley brought a countermotion to strike all language regarding "college tuition" from the agreement and decree, arguing the tuition provision was "non-specific to ceilings or usage and does not contemplate either party's personal financial situation." Teresa filed a reply in support of her requests and opposed Bradley's motion to strike.

The district court subsequently held a hearing on these issues and later entered an order resolving the issues pending before it. In particular, the court determined that there was no provision in the MSA making the agreement to split Chad's college tuition costs subject to either party's ability to pay. The court determined that the costs the parties agreed to split included the cost of Chad's flight lab. While the court noted Bradley's failure to file his financial disclosure form (FDF), it nonetheless found, based on Bradley's testimony at the hearing, that he had sufficient income to comply with the MSA. As a result, the court found that Bradley owed Teresa $8,709.75 for his share of "Chad's past tuition that Teresa paid," which it reduced to judgment. The court further held that, going

forward, "Bradley and Teresa must pay their half [of] Chad's college costs as they become due." Finally, the court denied Teresa's request for an order to show cause. This appeal followed.

The interpretation of an agreement-based divorce decree presents a question of law, *see Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003), and we review questions of law de novo, *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000). When interpreting an agreement, the court must avoid rewriting the terms to encompass more than what was intended by the parties. *See Harrison v. Harrison*, 132 Nev. 564, 570, 376 P.3d 173, 177 (2016) (explaining that the appellate court will not rewrite a contract to include terms not agreed to by the parties); *see also Reno Club, Inc. v. Young Inv. Co.*, 64 Nev. 312, 323, 182 P.2d 1011, 1016 (1947) ("This would be virtually creating a new contract for the parties, which they have not created or intended themselves, and which, under well settled rules of construction, the court has no power to do.").

On appeal, Bradley first challenges both the district court's determination that he has the ability to pay his share of the college tuition costs and the court's conclusion that the parties' ability to pay is not a factor under the MSA.

With regard to the district court's determination that Bradley has sufficient income to comply with the MSA's tuition provision, Bradley asserts that the challenged order misstates his net monthly income, which he argues actually reflects a $650.62 per month net loss. In addressing Bradley's income below, the district court noted that Bradley had failed to file his FDF. But the court nonetheless found that Bradley testified at the

hearing that his "net monthly income was $2,300" and that his "gross monthly income was $23,141."

While the district court based its findings regarding Bradley's income on the testimony he provided at the hearing, Bradley has failed to provide this court with a copy of the hearing transcript despite having requested a copy of that document. *See* NRAP 9(b)(1)(B) (requiring pro se litigants who request transcripts and have not been granted in forma pauperis status to file a copy of their completed transcripts with the court clerk).[1] Thus, we necessarily presume the missing transcript supports the district court's findings regarding Bradley's income and its resulting determination that Bradley had sufficient income to pay the tuition expenses required by the MSA.[2] *See Cuzze v. Univ. & Cmty. Coll. Sys. of*

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[1]We note the supreme court issued a notice to Bradley in which it instructed him that appellants who have not been granted in forma pauperis status and have requested a transcript "must file a copy of the transcript in this court" and cited specifically to NRAP 9(b)(1)(B).

[2]On appeal, Bradley asserts that the district court did not notify him that it did not have his FDF until the challenged order was filed. But in its order, the district court indicated that it "verified at the hearing that there was not an FDF on file for Bradley." Given the missing transcript noted above, we presume that document supports the district court's conclusion in this regard.

We note, however, that a copy of Bradley's FDF does appear in the record, as Teresa attached the copy Bradley served on her as an exhibit to her reply to the opposition to her motion to enforce the MSA. While the copy of the MSA in the record lists the $650.62 monthly net loss Bradley claims on appeal, rather than the $2,300 per month in net income that the court found Bradley testified to at the hearing, a review of the FDF—in which Bradley admits to paying out $9,838.87 per month in discretionary expenses—supports the district court's ultimate conclusion that Bradley had sufficient income to meet his obligations under the MSA.

Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that when an appellant "fails to include necessary documentation in the record, we necessarily presume that the missing document supports the district court's decision").

Under these circumstances, we cannot conclude that the district court abused its discretion in determining that Bradley had sufficient income to pay his half of Chad's college tuition costs in accordance with the MSA. *See Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (providing that the appellate courts review "district court decisions concerning divorce proceedings for an abuse of discretion"). Given our resolution of this issue, we need not address the district court's conclusion that the parties' ability to pay is not a factor under the MSA's tuition provision.

Bradley next argues that the challenged order "fundamentally change[d] the scope of the MSA" from requiring each party to pay 50 percent of "tuition" to requiring payment of 50 percent of "college costs." He maintains that "expanding the scope of the MSA tuition section" was not part of Teresa's request for relief below, and that the change "inserts even more ambiguity into the MSA tuition clause." In this regard, Bradley directs his argument at the district court's determination that "Bradley and Teresa shall pay their half [of] Chad's college costs as they become due," attempting to contrast this language with the tuition provision, which states that "Husband and Wife agree to equally share tuition costs associated with their minor child's college attendance, should the child attend college."

Below, Teresa argued in her motion to enforce the MSA that the parties understood "tuition," as used in the tuition provision, to include both

fees for tuition and related costs of attendance, including room and board. She further asserted that, because Chad received a scholarship that covers regular tuition, the parties later verbally agreed to split costs for room, board, and school fees, as well as splitting costs for the flight program. She contended that Bradley paid his share of these expenses, in line with the above noted understanding, including the fees for the flight program, for the first two semesters. In his opposition, Chad does not dispute paying his half of each of these items, although he suggests he only agreed to do so for the first year of the program. With regard to the MSA and the resulting divorce decree, Chad's opposition expresses the belief that "the terms of the divorce decree" required payment of half of tuition and room and board, but not the flight lab costs. However, in his countermotion to strike the tuition provision, Chad suggested that the language of the tuition provision was "non-specific to ceilings or usage."

Despite the apparent disagreement articulated in the parties' motion practice over what college expenses were encompassed by the terms of the tuition provision, at least as pertains to the flight lab costs, the district court, in resolving this issue, found that "[t]he parties do not disagree that the MSA obligated the parties to equally split all of the costs associated with Chad attending college, which would include the child's flight lab." To the extent that this finding was based on testimony or other information presented at the hearing, given Bradley's failure to provide a copy of the hearing transcript, we must presume that the missing transcript supports the district court's resolution of this issue. *Cuzze*, 123 Nev. at 603, 172 P.3d at 135. While Bradley asserts that the court's resulting determination that the parties were each required to pay half of Chad's college costs "inserts even more ambiguity into the MSA tuition clause," he

does not challenge or address the court's finding that there was no disagreement that Chad's college costs—including the flight lab—would be equally split between them.[3] Nor does he argue—as he did in his underlying motion practice—that the flight lab costs were not covered by the MSA. Thus, any arguments in this regard have been waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised in an appellant's opening brief are deemed waived). Under these circumstances, we discern no impropriety in the district court's resolution of these issues.

Bradley next argues that the district court failed to address his countermotion to strike the tuition provision from the parties' divorce decree. While the district court did not expressly resolve this request, it effectively denied Bradley's countermotion to the extent that it ordered that, "[m]oving forward, Bradley and Teresa must pay their half [of] Chad's college costs as they become due." Thus, Bradley's argument that the court failed to rule on his countermotion lacks merit. Because Bradley does not otherwise present any argument regarding his countermotion, any further challenges to the court's handling of this request have been waived. *See id.*

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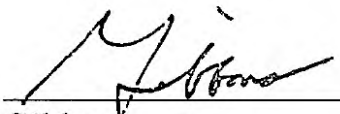
[3]While Bradley's informal brief does not address whether the flight lab costs constitute "tuition" as contemplated by the MSA tuition provision, in the facts section of his brief, Bradley notes that "[t]he MSA states specially 'tuition' and not room and board, yet [Bradley] has made those payments." But in his opposition to Teresa's motion, Bradley asserted that paying half of room and board, as well as tuition, was part of the MSA terms adopted by the divorce decree. Thus, Bradley cannot now change his position regarding the payment of room and board on appeal. *See Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) ("[P]arties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below." (internal quotation marks omitted)).

Thus, he has failed to demonstrate that the district court abused its discretion in effectively denying this request. *See Williams*, 120 Nev. at 566, 97 P.3d at 1130.

Finally, Bradley contends that the district court failed to explain how the virtual hearing would work, such that he ultimately was not able to fully present or explain his understanding of the MSA. But without the missing transcript from the hearing, this court lacks an adequate record to review this issue, and thus, we must conclude that the missing transcript supports the district court's resolution of this matter. *Cuzze*, 123 Nev. at 603, 172 P.3d at 135. Accordingly, Bradley's argument in this regard does not provide a basis for relief.

Based on the reasoning set forth above, we affirm the district court's order enforcing the divorce decree, reducing the $8,709.75 in tuition expenses that Teresa paid to judgment, and directing the parties to pay their half of Chad's college expenses as they become due.

It is so ORDERED.[4]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[4]Insofar as Bradley raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Vincent Ochoa, District Judge
Bradley S. Carlson
Teresa M. Carlson
Eighth District Court Clerk