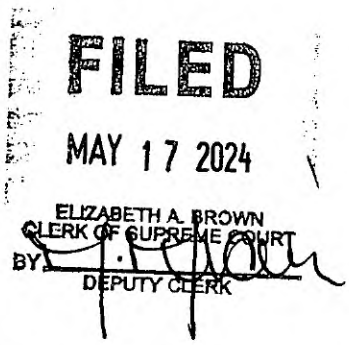
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRAVIS ANDERSON,
Appellant,
vs.
KERSTIN MORALES, F/K/A KERSTIN ANDERSON,
Respondent.

No. 86327-COA



ORDER OF AFFIRMANCE

Travis Anderson appeals from a district court post-divorce decree order modifying child support. Eleventh Judicial District Court, Lander County; Jim C. Shirley, Judge.

Anderson and respondent Kerstin Morales filed a joint petition for divorce and, based on the terms of their petition, the district court entered a divorce decree in December 2019 that awarded Morales primary physical custody of the parties' three minor children and required Anderson to pay her $1,400 per month in child support. Anderson became unemployed in 2021 and moved to modify child support. During an April 2021 hearing on the matter, the parties agreed to reduce Anderson's child support obligation to $350 per child per month. The district court subsequently entered an order modifying the decree based on the parties' agreement.

In August 2022, Morales moved to modify child support, arguing that Anderson secured employment and that, as a result, his income changed by more than 20 percent since the district court entered the order modifying the decree. Anderson opposed that motion, primarily arguing that child support was not subject to modification based on a

change in his income. In this respect, Anderson maintained that the parties agreed to reduce his child support obligation in April 2021 if he moved to Oregon, which he did, and intended the agreement to apply until his statutory duty to pay child support terminated. Moreover, Anderson essentially argued that, if the district court determined that modification of child support was appropriate, then a downward deviation from the amount that he would ordinarily be required to pay under the child support formula was warranted. Following a hearing, the district court entered an order in which it modified Anderson's child support obligation to $1,320 per month for the parties' two children who were still minors.[1] For support, the district court found that the April 2021 agreement was not contingent upon Anderson relocating or intended to apply "in perpetuity" and that there was no basis for deviating from the child support formula.

Anderson then filed a motion for reconsideration, which Morales opposed. Both parties largely reiterated their earlier arguments. But Anderson also asserted that there were mistakes in the financial disclosure form (FDF) Morales submitted in connection with her motion to modify child support, that the district court incorrectly found that his monthly income was $0 in April 2021 and subsequently increased by more than 20 percent. The district court denied Anderson's motion, finding that the transcript from the April 2021 hearing supported its decision to modify

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[1]Anderson's child support obligation with respect to the parties' third child terminated when she reached the age of majority and graduated high school. *Cf Davis v. Ewalefo*, 131 Nev. 445, 452, 352 P.3d 1139, 1143 (2015) ("A child custody determination, once made, controls the child's and the parents' lives until the child ages out . . . ."); *see also* NRS 125B.200(2) (defining a minor child, in relevant part, as a person who is either under the age of 18 years or, if still in high school, under the age of 19 years).

his child support obligation and that any mistakes in Morales's FDF were inadvertent scrivener's errors. This appeal followed.

On appeal, Anderson challenges the district court's order granting Morales's motion to modify child support. This court reviews child support orders for an abuse of discretion. *Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). A district court abuses its discretion when its findings are not supported by substantial evidence, *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018), which is evidence that a reasonable person may accept as adequate to sustain a judgment, *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

In challenging the order granting Morales's motion to modify child support, Anderson first attempts to demonstrate that his child support obligation was not subject to modification based on a change in his income by arguing that the district court incorrectly determined that the April 2021 agreement was not intended to apply until his duty to pay child support terminated and was not contingent upon his relocating to Oregon. Although Anderson does not elaborate on appeal concerning how he believes the purported contingency affects the modifiability of his child support obligation, he asserted during the proceedings below that, because the parties agreed to reduce his child support obligation in April 2021 based on his relocation, as opposed to his monthly income, a subsequent change in his income could not constitute changed circumstances warranting a modification.

However, to the extent Anderson contends that his child support obligation was nonmodifiable in light of the April 2021 agreement, his contention is based on a flawed premise. Indeed, although parents can stipulate to an appropriate child support order, child support involves

considerations of public policy and the child's best interest and, provided that the applicable criteria are satisfied, the district court "always has the power to modify an existing child support order, either upward or downward, notwithstanding the parties' agreement to the contrary." *Fernandez v. Fernandez*, 126 Nev. 28, 34, 222 P.3d 1031, 1035 (2010) (internal quotation marks omitted). Moreover, while the supreme court has considered whether equitable estoppel provides a basis to enforce an agreement to make child support nonmodifiable, notwithstanding the public policy against such arrangements, *see id.* at 39, 222 P.3d at 1038 (concluding that equitable estoppel was not available based on the facts presented), Anderson has waived that issue because he has never argued, either below or on appeal, that equitable estoppel is available to bar modification of the agreed upon support payment based on the facts of this case, *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."); *see also 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 on appeal are deemed waived). Consequently, relief is unwarranted in this respect.

Anderson next attempts to demonstrate that the criteria for modifying child support were not satisfied by challenging the district court's finding that there was a change in circumstances warranting modification of his child support obligation because his income increased by more than 20 percent from $0 when the parties entered into the April 2021 agreement to approximately $6,000 when Morales moved to modify child support. *See Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009) (explaining that the district court may modify child support upon a showing of, as

relevant here, changed circumstances), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023); *see also* NRS 125B.145(4) (providing that the district court has discretion to review child support at any time based on changed circumstances and that a change of 20 percent or more in gross monthly income "shall be deemed to constitute changed circumstances requiring a review"). In particular, Anderson contends that substantial evidence did not support the district court's finding that his monthly income was $0 in April 2021 and that the evidence before the court proved that he actually earned more in 2021 than in 2022 when Morales filed her motion to modify child support.

Anderson did not submit an updated FDF prior to the April 2021 hearing that resulted in the settlement agreement to reflect that he was unemployed and he did not specifically state whether he was receiving income from any source during the April 2021 hearing when the parties were negotiating whether to reduce his child support obligation. Nevertheless, Anderson repeatedly emphasized that he was unemployed and that, unless the parties agreed otherwise, his child support obligation would be $138 due to his unemployment, which he indicated was based on information he received from the child support division of the Elko County District Attorney's office (DACSD). In this respect, it appears that DACSD was relying on the low-income schedule that is published annually by the Administrative Office of the Courts, which, in 2021, provided that the child support obligation for a parent with three children who earned from $0 to $805 per month was $138. *See* NAC 425.145 (setting forth the circumstances in which the district court must use the low-income schedule

to determine a parent's child support obligation, permitting the district court to deviate from the schedule under certain circumstances, and requiring the Administrative Office of the Courts to publish the schedule annually); *Child Support Obligation of Low-Income Payers at 75% to 150% of the 2021 Federal Poverty Guidelines* 1, https://nvcourts.gov/__data/assets/pdf_file/0026/15938/low_income_obligation_cse_2021.pdf (last visited May 14, 2024) (hereinafter *Child Support Obligation of Low-Income Payers*).

When Morales later moved to modify Anderson's reduced child support obligation in 2022, Anderson did not assert that he earned substantially more in 2021 than in 2022, but instead, he repeated his assertion that he was unemployed in April 2021, explained that the $138 figure discussed above was based on him "being unemployed (zero income)," and asserted that Morales failed to submit any evidence showing that his income increased by more than 20 percent. However, Anderson is correct that, in opposing Morales's motion, he also produced evidence showing that he earned substantially more in 2021 than in 2022. In particular, Anderson produced an updated FDF showing that he was employed and earning a gross monthly income of $5,958.33—suggesting an annual income of $71,499.96—along with tax documentation showing that he received approximately $150,000 in income in 2021, including unemployment benefits and income from the entities with which he was employed before and after the period he was unemployed.

However, while Anderson was apparently receiving unemployment benefits at the time of the April 2021 hearing and received substantial earnings from employment before and after the hearing, those earnings were not mentioned during the parties' settlement negotiations, in

part because Anderson was unemployed at the time of the hearing, and his post-hearing earnings derived from employment that he subsequently secured. Instead, through their negotiations, the parties agreed to reduce Anderson's child support obligation after he represented that he was unemployed and would therefore be required to pay only $138 absent a contrary agreement, which, as discussed above, was the appropriate child support amount at the time for a parent earning less than $805 per month. *See* NAC 425.145; *Child Support Obligation of Low-Income Payers*.

And the record demonstrates that, when Anderson later secured employment, his income increased from the amount he implied he was receiving during the April 2021 hearing—between $0 and $805 per month—to approximately $6,000 at the time Morales moved to modify child support.[2] That increase represented a change in Anderson's income of far more than 20 percent since the district court entered the order modifying the decree based on the April 2021 agreement. Thus, for the foregoing reasons, we conclude that the district court's finding concerning the change in Anderson's income was supported by substantial evidence, *see Ellis*, 123 Nev. at 149, 161 P.3d at 242, and that he therefore failed to establish a basis for relief in this respect.

Anderson next challenges the amount of his modified child support obligation, arguing that he was entitled to a downward deviation from the child support amount that he would ordinarily be required to pay based on the formula for calculating a parent's base child support

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[2]In addition to the monthly income of $5,958.33 that Anderson disclosed in his updated FDF, Anderson represented at the hearing on Morales's motion that he was receiving approximately $100 per month from a second employer.

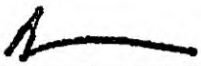
obligation. *See* NAC 425.115(1), (3) (explaining that the parent who does not have primary physical custody is the obligor and that his or her child support obligation must be determined in accordance with the guidelines set forth in NAC Chapter 425); *see also* NAC 425.140 (setting forth the formulae for determining the obligor parent's base child support obligation); *see also* NAC 425.150(1) (authorizing the district court to adjust the obligor's base child support obligation "in accordance with the specific needs of the child and the economic circumstances of the parties based upon [certain enumerated] factors and specific findings of fact"). Here, the parties presented evidence concerning their financial situations; their incomes; the costs of care, support, and maintenance they provided for the children; and Anderson's transportation costs associated with exercising his parenting time. Having considered that evidence, the district court determined that Anderson was not entitled to a downward deviation, which decision was within the court's discretion and supported by substantial evidence. *See* NAC 425.150(1); *Ellis*, 123 Nev. at 149, 161 P.3d at 242.

Given the foregoing and because the district court correctly applied NAC 425.140's formula for calculating child support when it determined Anderson's modified child support obligation, we conclude that he failed to demonstrate that the court abused its discretion in granting Morales's motion to modify child support. *See Edgington*, 119 Nev. at 588, 80 P.3d at 1290. And although Anderson also challenges the district court's order denying his motion for reconsideration, he does not separately address that decision, but instead, relies on the same arguments that we addressed and rejected above and has therefore failed to demonstrate that relief is warranted with respect to that decision. *See Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007) (holding that appellate courts may consider

arguments asserted in a motion for reconsideration if the district court chose to entertain the motion on its merits and it is properly part of the appellate record). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Jim C. Shirley, District Judge
Travis Anderson
Kerstin Morales
Clerk of the Court/Court Administrator

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