


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES A. GRYBOWSKI, A/K/A JAY A.
GRYBOWSKI,
Appellant,
vs.
DEBRA GRYBOWSKI,
Respondent.

No. 86067-COA

FILED

MAY 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

James "Jay" A. Grybowski appeals from a district court order denying his motion for reconsideration of an order in a post-divorce proceeding. Eighth Judicial District Court, Family Division, Clark County; Nadin Cutter, Judge.

Jay and respondent Debra Grybowski were married for 26 years.¹ During the marriage, Jay was the primary wage earner, while Debra was out of the work force for over 18 years due to a medical illness. In 2014, Debra filed a complaint for divorce. The district court entered findings of fact, conclusions of law, and a decree of divorce and judgment on December 22, 2016.² As pertinent to this appeal, the court found that Jay engaged in marital waste. The court ordered Jay to pay Debra \$1,800 per month in alimony. The court also awarded Debra half of the community property share of funds received from Jay's wrongful termination settlement with his former employer, Hewlett Packard (HP). In order to equalize the community assets and offset the marital waste, the court further ordered that Jay owed

¹We do not recount the facts except as necessary to our disposition.

²We note that Judge Lisa Brown entered the decree of divorce and certain post-decree orders, while Senior Judge Nancy Saitta entered other post-decree orders.

Debra an equalization payment of \$114,740.59, which was reduced to judgment. Additionally, the court ordered Jay to pay Debra's attorney fees and costs in the amount of \$65,000 to be paid in \$1,000 increments per month, which was also reduced to judgment (first attorney fees judgment).

Due to Jay's purported failure to make payments to Debra as ordered, Debra filed a motion for an order to show cause why Jay should not be held in contempt in 2017. Because Jay requested that the contempt matter be reassigned to a different judge, the matter was reassigned to Senior Judge Saitta for further proceedings. A trial was held on the order to show cause in March 2017, and a written order was issued in January 2018. The district court found that Jay willfully failed to pay Debra's alimony and attorney fees for the months of January, February, and March 2017. The court also found that Jay had the ability to pay, yet still neglected to pay Debra as previously ordered by the court. While the district court found Jay to be in contempt, he was not remanded into custody and was given the opportunity to purge his contempt. In November 2018, during a continuation of the contempt proceedings, the district court also awarded Debra additional attorney fees and costs in the total amount of \$95,023.45 to be paid in monthly payments of \$1,000, after an initial payment of \$5,000, beginning on December 1, 2018, which was also reduced to judgment (second attorney fees judgment). In addition, the court ordered Jay to pay Debra a separate, one-time attorney fees award of \$1,500, which was also reduced to judgment (third attorney fees judgment).

In December 2018, at the direction of the district court, Jay filed a brief and chart outlining proof of payments he had made toward the outstanding arrears owed to Debra based on the judgments entered by the court. Specifically, Jay asserted that he believed he owed \$1,800 per month for alimony and \$1,000 per month for attorney fees based on the court's

orders. He also asserted that he had already paid Debra the amount owed for her portion of the HP settlement. After a subsequent status check hearing on February 22, 2019, the district court issued a written order entered on February 27, 2020, finding that there were three different judgments for attorney fees: the January 5, 2017 award of \$65,000 payable at a rate of \$1,000 per month, a November 2018 award of \$95,023.45 payable at a rate of \$1,000 per month after an initial payment of \$5,000, and a November 16, 2018 award of \$1,500 (one-time payment). Nevertheless, in its order, the district court stated that Jay shall pay Debra \$1,800 in alimony per month and \$1,000 per month toward the remaining balance owed for judgments for attorney fees and costs for a total monthly amount of \$2,800.

In March 2020, Debra moved for reconsideration, amendment, correction and/or modification of the district court's order entered on February 27, 2020. She argued the order contained computation errors with respect to monthly payments to be made by Jay and inadvertently modified the prior orders, which required monthly payments of \$1,800 for alimony and \$2,000 for arrears due for the first and second judgments awarding attorney fees and costs. Debra also asserted that there were six separate orders or judgments that Jay owed arrears or payments toward (alimony, one-half of the community property share of funds from the HP settlement, the equalization payment, and all three attorney fees judgments). But despite this, the court inadvertently or erroneously modified the prior orders and only required Jay to pay a total of \$2,800 per month toward all outstanding arrears. It appears from the record that the district court took the motion under advisement and did not resolve it in 2020.

When Judge Nadin Cutter was assigned the case in January 2021, after her election to the bench, she undertook steps to resolve the outstanding motion, including by conducting an evidentiary hearing on the

reconsideration motion in July 2021. In its written decision and order entered in August 2022, following the evidentiary hearing, the district court found that the prior district court order contained a clerical error that resulted in Jay owing Debra \$2,800 per month instead of \$3,800 per month, the correct amount for alimony and toward satisfying the first and second attorney fees judgments. Thus, the court clarified that Jay owed Debra \$1,800 per month for permanent alimony, \$1,000 per month for the first attorney fees judgment, and \$1,000 per month for the second attorney fees judgment, for a total of \$3,800 per month. The court further reviewed the amounts that Jay owed based on the existing judgments and determined that Jay owed Debra the outstanding balance of \$360,549.48. With respect to the three remaining judgments, which included Debra's share of the HP settlement, the equalization payment, and the third attorney fees judgment, the court found that no payment plan currently existed to satisfy the outstanding balance due and owing, and therefore ordered Jay to pay Debra \$10,000 per year for 13 years until the outstanding balance was paid and the remaining three judgments were satisfied. The court also found that Jay had the financial ability to make this yearly payment as well as the monthly payments of \$3,800.

In weighing the credibility of each party, the district court found that Debra furnished more proof of Jay's payments toward the amounts she was owed than the documentation Jay submitted. The court found that "the difference in representations of proof of payment between Husband and Wife was significant. Specifically, Wife [Debra] provided proof of payment of \$143,072.32 towards the above judgments and Husband [Jay] only provided proof of payment of \$91,040 to this Court." The court also found that, per Jay's own testimony, he only paid Debra the \$1,800 per month in alimony

and failed to pay the additional \$2,000 per month in attorney fees based on the district court's prior judgments and orders.

Thereafter, Jay moved for reconsideration of the district court's August 2022 decision and order, which the district court denied in December 2022. The court confirmed that the full amount of \$3,800 was due and payable to Debra each month.³ Jay now appeals.

On appeal, Jay argues that the district court improperly modified the prior judgments. Specifically, he argues that the district court's order that required a payment of \$2,800 per month was correct and that the district court erred in subsequently deviating from this payment schedule. Jay also argues that the district court erred in finding that he had not paid the full amount from the HP settlement owed to Debra. And he further contends that the district court's August 2022 decision and order contained erroneous factual findings concerning his financial ability to make monthly and annual payments to Debra. Thus, on appeal, Jay argues for the reversal of the district court's August 2022 and December 2022 orders.

In response, Debra argues that the district court did not abuse its discretion in clarifying the judgments or the amounts owed to her based on these judgments, including arrears, as well as abused its discretion implementing a payment plan for Jay to follow in order to satisfy the outstanding judgments against him. She also argues that the district court properly adjudicated the total amount due and made appropriate findings based on Jay's financial ability to make payments. She further asserts that

³We note that Jay's motion for reconsideration is not included in the record, so it is unclear exactly what issues he challenged from the district court's August 2022 decision and order.

Jay's additional arguments are meritless, and that Jay's appeal is frivolous such that he should be sanctioned pursuant to NRAP 38.⁴

We review the denial of a motion for reconsideration for an abuse of discretion. *Saticoy Bay, LLC, Series 34 Innisbrook v. Thornburg Mortg. Sec. Tr. 2007-3*, 138 Nev. 335, 343, 510 P.3d 139, 146 (2022). Further, “[t]his court reviews district court decisions concerning divorce proceedings for an abuse of discretion.” *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (quoting *Shydler v. Shydler*, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998)). We review the district court’s factual findings for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009); *see also Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (“[D]eference is not owed to legal error.”). “An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law.” *MB Am., Inc. v. Alaska, Pac. Leasing Co.*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016).

Additionally, while a district court lacks continuing jurisdiction to modify provisions of a divorce decree regarding property rights except as provided by statute or rule, *Kramer v. Kramer*, 96 Nev. 759, 761, 610 P.2d 395, 397 (1980) (“A decree of divorce cannot be modified or set aside except as provided by rule or statute.”), the district court retains inherent authority to interpret and enforce its prior orders, *Byrd v. Byrd*, 137 Nev. 587, 590, 501 P.3d 458, 462 (Ct. App. 2021); *see also* NRS 125.240 (“The final judgment and

⁴See NRAP 38(a) (permitting this court to impose monetary sanctions if the appeal is frivolous).

any order made before or after judgment may be enforced by the court by such order as it deems necessary.”).

The Nevada Supreme Court has previously explained the difference between modification of an order versus the enforcement or clarification of an order. “[I]n the family law context, a modification occurs when the district court’s order alters the parties’ substantive rights, while a clarification involves the district court defining the rights that have already been awarded to the parties.” *Vaile v. Porsboll*, 128 Nev. 27, 33, 268 P.3d 1272, 1276 (2012) (concluding that setting a sum certain for the father’s support obligation constituted a modification, rather than merely a clarification, of the support obligation contained in a previous divorce decree because it contradicted the decree’s requirement that the obligation be redetermined each year based on the parties’ circumstances).

Here, we are not persuaded by Jay’s argument that the district court modified the district court’s prior judgments and orders rather than clarified them. The district court had the authority to review the extensive record, including the prior orders that were issued, the proof of payments that had been made, the correct amount of arrears, and the outstanding payments owed to Debra. Likewise, the district court had the authority to enforce the prior judgments and orders accordingly and implement a payment plan to do so. *See Byrd*, 137 Nev. at 590, 501 P.3d at 462; *see also Schlotfeldt v. Schlotfeldt*, No. 69094, 2016 WL 3418695, at *1 (Nev. June 16, 2016) (Order of Reversal and Remand) (concluding that the district court was not precluded from considering its previous orders, “determining the correct amount of arrears owed, and entering a judgment accordingly”). Because the district court did not make modifications to the court’s prior judgments and orders, but rather clarified them, the court did not abuse its discretion.


To the extent that Jay specifically asserts that the district court was precluded from modifying the payment plan from \$2,800 per month to \$3,800 per month, we are not persuaded by his contention. The Nevada Supreme Court has held that the district court has discretion to schedule payments of a judgment “in any manner the district court deems proper under the circumstances.” *Reed v. Reed*, 88 Nev. 329, 331, 497 P.2d 896, 897 (1972); *see also Kennedy v. Kennedy*, 98 Nev. 318, 320, 646 P.2d 1226, 1227 (1982) (explaining that the district court did not err by permitting installment payments for a judgment but remanding for the “determination of a payment schedule which will allow for liquidation of arrearages on a reasonable basis”). Moreover, although Jay argues that his monthly obligations were in fact only \$2,800, this is belied by the record. Specifically, the record reflects a monthly alimony obligation of \$1,800 and two separate attorney fees judgments with monthly obligations of \$1,000 each, totaling \$3,800 per month. We further reject Jay’s argument that Debra was time-barred from raising the issue of the payment plans, as the district court retains authority to consider and enforce the prior orders, and Debra timely moved for reconsideration of the district court order entered on February 27, 2020. *See* NRS 125.240; EDCR 2.24 (stating that a motion for reconsideration must be filed within 14 days). Thus, the district court did not abuse its discretion by clarifying that the monthly payment due was \$3,800 based on the existing judgments.


Furthermore, to the extent Jay challenges the district court’s factual findings concerning his financial ability to pay, including his income, the payments he made to Debra, and his ability to make future payments, this court will not reweigh the district court’s resolution of these factual issues so long as its decision is supported by substantial evidence, nor will we reweigh a witness’s credibility. *See Ellis v. Carucci*, 123 Nev. 145, 152,


161 P.3d 239, 244 (2007). Here, the court specifically found that Debra was more credible than Jay based on the financial evidence submitted, and Jay fails to prove otherwise. For example, Jay fails to cite to the record for his assertion that Debra purportedly admitted that Jay had paid her in full for her share of the HP settlement. *See* NRAP 28(e)(1); *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 495 n.21 (Ct. App. 2023) (declining to consider contentions that were not accompanied by appropriate citations to the record). Moreover, the record on appeal supports the district court's findings with respect to Jay's financial ability to make payments toward arrears as well as payments owed to Debra based on the existing judgments. Because this court defers to the district court's factual findings and will not disturb them unless clearly erroneous, *see Ogawa*, 125 Nev. at 668, 221 P.3d at 704, we conclude that the district court did not abuse its discretion.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Bulla


_____, C.J.
Gibbons


_____, J.
Westbrook

⁵Insofar as the parties raise other arguments that are not specifically addressed herein, we have considered the same and conclude that they do not present a basis for relief. Because it does not appear that Jay's appeal was solely brought for the purposes of delay, we deny Debra's request for NRAP 38 sanctions.

cc: Hon. Nadin Cutter, District Judge, Family Division
Vaccarino Law Office
TCM Law
Eighth District Court Clerk