IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY RANDALL,
Appellant,
vs.
STATE OF CALIFORNIA; AND
FANCHON BRIANNA CALDWELL,
Respondents.

No. 85049

FILED

MAY 30 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a motion to modify child support. Second Judicial District Court, Family Court Division, Washoe County; Aimee Banales, Judge.

Appellant Jeffrey Randall and respondent Fanchon Brianna Caldwell have two children together. A Nevada district court entered a support order for one of the children in 2020, and a California court entered a support order for the other child in 2017. When the California order was registered in Nevada, Randall filed the underlying motion to modify his support obligations and for a monthly payment plan on arrears, primarily arguing that the parties' financial circumstances had changed. The matter was referred to a master, who rejected Randall's changed circumstances claim. In calculating support, the master applied the statutory formula for both children based on income imputed to Randall in the 2020 Nevada order and offset by Caldwell's income. The master also recommended that Randall pay $1,000 per month toward arrears as addressed in the District Attorney's notice and intent to enforce the 2020 order. The district court denied Randall's objections to the master's findings and recommendations.

On appeal, Randall first argues that the "[a]utomatic referral of child support cases pursuant to WFDCR 31(2)(c) to masters, along with the

application of a clearly erroneous standard of review for objections to the masters' reports," is "an unconstitutional delegation and allocation of the judicial power." We are not persuaded by this argument. Randall was notified that his motion would be referred to a master and that he had a right to object. By not objecting, Randall waived the argument against referral. *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 118 Nev. 124, 130, 41 P.3d 327, 330 (2002) (stating that a "party who wishes to object to the appointment of a special master must do so at the time of appointment, or within a reasonable time thereafter, or else its objection is waived"); *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. 742, 757, 334 P.3d 408, 418 (2014) ("[D]ue process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right." (quoting *In re Medagalia*, 52 F.3d 451, 455 (2d Cir. 1995))), *superseded by statute on other grounds as stated in Saticoy Bay LLC 9050 W Warm Springs 2079 v. Nev. Ass'n Servs.*, 135 Nev. 180, 444 P.3d 428 (2019).

Randall next argues that the district court improperly reviewed the master's findings and recommendations for clear error. He contends that under a 2019 amendment that removed the words clearly erroneous from NRCP 53(f)(2), de novo review is now required of a master's findings. We are not persuaded by this argument either. *Humphries v. Eighth Judicial Dist. Court*, 129 Nev. 788, 792, 312 P.3d 484, 487 (2013) ("This court reviews a district court's interpretation of the Nevada Rules of Civil Procedure and statutory construction de novo . . . .").

In objecting, Randall did not argue that NRCP 53 required the district court to review the master's findings de novo, nor did he request de novo review. In raising this for the first time on appeal, Randall fails to

cogently argue that in amending NRCP 53, this court implicitly adopted the de novo standard of review that appears in FRCP 53(f)(2)(A), which would be contrary to the rule's revised language and existing caselaw. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating it is a party's responsibility to provide cogent arguments supported by salient authority); *Venetian*, 118 Nev. at 132, 41 P.3d at 331-32 (holding that a clearly erroneous standard applies to the "district court's review of a special master's findings of fact," and de novo review applies to its review of a master's conclusions of law).

Randall next argues that the district court erred in treating the master's recommendations as factual findings and reviewing them for clear error, and failing to correct issues the master did not consider or for which they made unsupported recommendations regarding inclusion of interest and penalties on arrears and continued imputed income. We conclude that substantial evidence supports the findings at issue and that the resultant recommendations are legally sound. *Romano v. Romano*, 138 Nev. 1, 7, 501 P.3d 980, 985 (2022) (reviewing child support order for an abuse of discretion); *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004) ("[This court] will uphold the district court's determination if it is supported by substantial evidence."); *Levy v. Levy*, 96 Nev. 902, 904, 620 P.2d 860, 861 (1980) (stating that findings are not clearly erroneous when based on substantial evidence and such findings will not be disturbed on appeal).

The master found that Randall lacked credibility in claiming changed circumstances, pointing out several inconsistencies. Substantial evidence supports those findings and likewise supports the master's finding that Randall was seeking to avoid child support altogether, as he claimed that neither party should pay child support. Substantial evidence also

supports the master's finding that Randall submitted insufficient evidence to show a change in circumstances occurred since entry of the previous order 17 months earlier imputing income to Randall, and that the profit and loss statement Randall prepared lacked meaningful supporting documentation, such that the court's previous willful underemployment conclusion should stand. NAC 425.125(2) (directing the court to consider the specific circumstances of the obligor in imputing income, including, without limitation: employment and earnings history, relevant background factors, record of seeking work, age, health, education, skills, and lack of criminal record or other employment barriers); *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009) ("[A] court cannot modify a child support order if the predicate facts upon which the court issued the order are substantially unchanged."), *overruled in part on other grounds by Romano*, 138 Nev. 1, 501 P.3d 980. We do not substitute our judgment for that of the district court and must defer to the district court's credibility determinations. *See Klabacka v. Nelson*, 133 Nev. 164, 173, 394 P.3d 940, 948 (2017) ("We recognize that the district court is in the best position to weigh the credibility of witnesses, and we will not substitute our judgment for that of the district court here."); *Cavell v. Cavell*, 90 Nev. 334, 339-40, 526 P.2d 330, 333 (1974) (Batjer, J., concurring in the result) (observing in a spousal support case that appellate courts cannot substitute their judgment for that of the trial court on conflicting evidence and concluding there was sufficient evidence in the record to support the district court's findings, such that it should not be disturbed on appeal). Because the master properly considered the parties' credibility and did not misapprehend the effect of the evidence under the applicable legal standards in rendering a recommendation, the

district court properly denied Randall's objections to the master's findings and recommendation.

Randall's claim that NRS 125B.140 prohibits the inclusion of interest on arrearages defies common sense and is otherwise unsupported. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. He fails to explain how the statute works in the way he claims, but it clearly allows the inclusion of interest on arrearages. NRS 125B.140(2)(c)(1). The 2020 child support order addressed Randall's 2017 motion to modify support and because it did not resolve arrearages or otherwise enforce a child support order, it could not have "determine[d] and include[d] [i]nterest upon the arrearages." *Id.* Thus, the inclusion of interest on the unadjudicated arrears was not a retroactive modification or adjustment of the 2020 child support order. NRS 125B.140(1)(a), (3). Also, the master found that Randall would not experience undue hardship, pointing out that he would no longer be incurring the $2,200 he claimed to be paying for insurance. NRS 125B.140(2)(c)(1). Thus, the district court did not abuse its discretion by denying Randall's objections to interest on the arrearages.[1]

Finally, Randall asserts that the district court erred in not correcting the recommendation allowing him 30 days to provide proof of overpayments of support in California and receive credit for such payments. While Randall fails to provide argument or authority to support this

[1]In district court, Randall cited NRS 125B.140(2)(c)(1) in arguing that he should not be charged interest because no amount became due before the 2020 child support order. Randall's argument ignores that a temporary support order was in place as of December 2015, with the first payment due in January 2016. The master applied interest and penalties consistent with the District Attorney's notice as to underpayments from that date. Penalties only applied through January 31, 2020, because the statute requiring penalties, NRS 125B.095, was repealed as of February 1, 2020.

argument, *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38, it is unclear why the master included a 30-day limit. Randall, however, has not alleged that he has been aggrieved by this because he does not contend that the District Attorney has refused to accept evidence of overpayment outside the 30 days and credit him for such, and we are confident that if he provides such proof, he will be properly credited. Accordingly, we

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

Stiglich, J.

Stiglich

Pickering, J.

Pickering

Parraguirre, J.

Parraguirre

cc: Hon. Aimee Banales, District Judge, Family Court Division
Jeffrey Randall
Anderson Keuscher, PLLC
State of California
Washoe District Court Clerk

[2]As to any remaining claims of error, we conclude that they were not cogently argued and do not warrant a different outcome. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.