

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALAN TERRY SASSLER,
Appellant,
vs.
JULIE VICTORIA LEO SASSLER,
A/K/A JULIE VICTORIA LEO,
Respondent.

No. 87017-COA

FILED

JUN 17 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Alan Terry Sassler appeals from a district court post-divorce decree order involving marital property and modifying alimony. Eighth Judicial District Court, Family Division, Clark County; Stacy Michelle Rocheleau, Judge.

In 2019, the district court entered a decree of divorce that ended the marriage of Alan and respondent Julie Victoria Leo Sassler, distributed their community property, and awarded Julie alimony. As relevant to this matter, in the decree, the court found that the Internal Revenue Service (IRS) held a surplus of the tax credits belonging to the marital community, that the value of that surplus should be identified by the IRS, and that the parties should divide that surplus amount equally. The court also found that Julie was entitled to a monthly alimony award in the amount of \$2,500 for the following seven years and that the alimony award would thereafter be reduced to \$1 per month for an additional ten years. The court also directed Alan to provide Julie with information each year concerning all of his sources of income.

Julie subsequently attempted to enforce the decree and sought discovery related to her enforcement attempts, as she contended that Alan

failed to provide her with information concerning his income and the parties' tax credits. Julie also moved to modify the alimony award and to reduce the award to a lump sum based on Alan's failure to provide her with the monthly alimony payments and information related to his income.

Alan opposed Julie's attempts to enforce the decree. Documents produced during discovery revealed that Alan filed an application for a loan in which he stated that his monthly income was more than \$20,000. Alan also filed his 2021 Schedule K-1, which revealed that he earned \$254,450 in self-employment income and \$115,662 in another income category, both during 2021. In addition, Julie filed a copy of Alan's 2018 tax returns wherein he stated that the IRS held a tax credit of \$67,557, and she asserted that she was therefore entitled to \$33,778.50 as her one-half share of that credit.

Alan declined to disclose further information related to his income, including several years' worth of income tax returns. The district court subsequently ordered Alan to file and produce his recent income tax returns but Alan did not do so. The district court then found that the information regarding Alan's increase in income warranted modification of the alimony award beginning May 2022 to \$3,500 but it stated that the alimony award was subject to further modification pending information presented at a later evidentiary hearing.

Julie also moved for an order to show cause as to why Alan should not be held in contempt based on his failure to comply with the discovery orders and failure to provide her with alimony payments.

The district court subsequently issued an order to show cause requiring Alan's attendance at the related hearing. The court also set this matter for an evidentiary hearing concerning enforcement of the decree and modification of alimony. In addition, Julie filed a schedule of arrears stating

that Alan had failed to provide her with previously ordered monthly alimony payments in the amount of \$30,500.

Julie thereafter sought sanctions based on Alan's failure to disclose information concerning his income and requested an order precluding Alan from utilizing information at the evidentiary hearing that he had not timely disclosed to her. The district court held a hearing concerning Julie's motion for sanctions and subsequently filed a written order granting Julie's motion. The court found that Alan stated he will not travel to Nevada to participate in the upcoming evidentiary hearing and that he saw no reason to gather documentation for a hearing that he will not attend. The court therefore precluded Alan from utilizing any evidence at the evidentiary hearing that he had not timely disclosed and stated that it would apply an adverse inference to evidence Alan withheld from Julie. The court also reminded Alan that he was required to appear at the upcoming show-cause and evidentiary hearing.

The district court subsequently conducted the show-cause and evidentiary hearing on June 23, 2023. The record indicates that Julie testified at the hearing but that Alan did not attend it. The court subsequently entered a written order finding that Julie testified concerning her monetary needs and noted she requested the monthly alimony award to be set at \$3,500. The court also noted that Alan previously claimed he was unable to afford monthly alimony payments but found he did not meet his burden under NRS 125.150(8) to demonstrate he cannot afford the alimony payments because he failed to produce his income tax returns from 2019, 2020, 2021, and 2022. The court also noted that Alan's failure to produce his income tax returns and additional documentation related to his income deprived Julie of the opportunity to seek modification of the alimony award for the previous four years. Based on the foregoing, the court found that

modification of the alimony award to \$3,500 for the total remaining 161 months of alimony payments was appropriate.

The district court also considered Julie's request to convert the monthly alimony payments to a lump sum. The court found Alan failed to provide Julie with the full amount of the previously ordered alimony payments. The court also noted Alan's serial non-compliance with the court's orders and his overall misconduct during the course of the divorce proceedings. For those reasons, the court found conversion of the monthly alimony award to a lump sum payment was necessary to ensure that Julie actually received alimony. The district court therefore awarded Julie a lump sum payment of alimony in the amount of \$563,000.

In addition, the district court found that Julie was entitled to her one-half share of the IRS tax credits and awarded her \$33,778.50. The court also found that Alan was in arrears for alimony in the amount of \$30,500. And the district court held Alan in contempt for his failure to disclose his income tax returns and for his non-payment of alimony. This appeal followed.

First, Alan argues that the district court abused its discretion by modifying the alimony award and converting the periodic alimony payments to a lump-sum payment, which he contends amounts to a wholesale rewriting of the decree. Alan claims that the district court should not have believed Julie's testimony about his income and earning potential. Alan also contends that the court improperly awarded alimony for a period that will encompass his retirement years, he has a poor outlook for continued employment as an engineer, and the alimony award will be more than he can afford to pay.

Alan further contends that he previously provided the monthly alimony payments to Julie, he does not fit into a traditional category of a

person that is wealthy but too old or sick to pay periodic alimony payments over a long period of time, and he is not a flight risk. For those reasons, Alan contends the district court should not have converted the periodic alimony award into a lump sum payment.

“This court reviews district court decisions concerning divorce proceedings, such as [alimony], for an abuse of discretion.” *Davitian-Kostanian v. Kostanian*, 139 Nev., Adv. Op. 27, 534 P.3d 700, 705 (2023) (internal quotation marks omitted). “Furthermore, this court will not disturb the district court’s rulings if they are supported by substantial evidence, which is that which a sensible person may accept as adequate to sustain a judgment.” *Id.* (internal quotation marks omitted). In addition, this court is not at liberty to reweigh the evidence or the district court’s credibility determinations on appeal. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

The district court may modify its order for a party to make periodic alimony payments pursuant to a divorce decree upon a finding of changed circumstances. NRS 125.150(8). To that end, the district court may “analyze any factors the court considers relevant, including changes to the income of the spouse who is ordered to pay alimony.” *Davitian-Kostanian*, 139 Nev., Adv. Op. 27, 534 P.3d at 705 (internal quotation marks omitted). In addition, the district court “[m]ay award such alimony . . . in a specified principal sum or as specified periodic payments, as appears just and equitable.” NRS 125.150(1)(a). The district court may award a lump sum of alimony if a party’s conduct indicates that the party may attempt to avoid paying the monthly alimony payments. *Klabacka v. Nelson*, 133 Nev.

164, 179, 394 P.3d 940, 952 (2017) (citing *Sargeant v. Sargeant*, 88 Nev. 223, 228, 495 P.2d 618, 622 (1972)).

On appeal, Alan challenges the district court's factual findings supporting its decision to modify the alimony award and to convert alimony into a lump sum and he also challenges the court's credibility findings. However, this court will not second guess a district court's resolution of factual issues involving conflicting evidence so long as its decision is supported by substantial evidence and this court will not reweigh the district court's credibility determinations. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244.

Here, despite Alan's refusal to provide Julie with many of his tax returns, the documentary evidence in the record concerning Alan's income supports the court's finding that Alan's income increased substantially following entry of the decree. As a result, the district court's decision to modify alimony is supported by substantial evidence. Further, the district court applied an adverse inference to evidence that Alan did not disclose to Julie when concluding that Alan did not demonstrate he could not afford to pay the alimony award, and Alan does not challenge that decision on appeal. Thus, he has waived any such challenge. *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 on appeal are deemed waived).

With regard to the lump sum payment issue, the district court correctly noted that periodic alimony payments may be converted to a lump sum when a party fails to follow a court's orders concerning such payments, *see Klabacka*, 133 Nev. at 179, 394 P.3d at 952, and the record supports the court's findings concerning Alan's refusal to disclose information concerning his income, which stymied Julie's ability to ascertain whether modification of the alimony award was warranted. The district court also found that

Alan failed to provide Julie with portions of the previously awarded alimony payments and that he repeatedly failed to follow the court's orders during the post-divorce proceedings. Thus, the district court found that Alan's misconduct indicated he was likely to decline to provide Julie with the appropriate alimony payments, such that a lump sum award was warranted, and that decision is supported by substantial evidence. *See id.*; *Davitian-Kostanian*, 139 Nev., Adv. Op. 27, 534 P.3d at 705.

In addition, Alan's arguments regarding modification of the alimony award and the conversion of the periodic payments to a lump sum concern evidence presented at the evidentiary hearing and the district court's findings based on that evidence. While Alan filed a transcript request form in the district court, the requested transcript is not included in the district court record, and Alan failed to provide this court with a copy of the evidentiary hearing transcript or otherwise act to ensure this court received a copy of the transcript. *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 transcript with the clerk of court).¹

Because Alan did not provide this court with the transcript of the evidentiary hearing, we necessarily presume that the transcript supports the district court's decisions. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing

¹We note the supreme court issued a notice to Alan 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).

[documents] support[] the district court's decision"). Indeed, without a copy of the relevant transcript, we are unable to meaningfully review Alan's arguments concerning the modification of alimony and the conversion of the periodic payments to a lump sum. Accordingly, we discern no abuse of discretion by the district court; thus, Alan is not entitled to relief based on this claim. *See Davitian-Kostanian*, 139 Nev., Adv. Op. 27, 534 P.3d at 705.

Second, Alan argues that the district court abused its discretion by awarding Julie \$33,778.50 for her one-half share of the IRS tax credits. Alan contends that there were actually zero remaining tax credits and that Julie was therefore not entitled to any additional award for those credits.

"This 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) (quotation marks omitted); *see also Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010) (reviewing a district court division of marital property for an abuse of discretion). Moreover, "[t]he district court has inherent authority to interpret and enforce its decrees." *Byrd v. Byrd*, 137 Nev. 587, 590, 501 P.3d 458, 462 (Ct. App. 2021); *see also* NRS 125.240 ("The final judgment and any order made before or after judgment may be enforced by the court by such order as it deems necessary.").

Here, in the decree of divorce, the district court directed the parties to obtain the value of the IRS tax credits from the IRS. The court further stated that, after the value of the tax credits was established, Julie would be entitled to a one-half share of those credits.

As explained previously, in its written order, the district court found that Alan failed to disclose information from his 2019 tax returns that would have established the value of the tax credits. However, the court noted that Alan's 2018 tax return stated that the tax credits had a value of

\$67,557. Based on that information, the district court found that Julie was entitled to an award of \$33,778.50 for her share of the IRS tax credits.

While Alan asserts that the tax credits actually had zero value, this court will not second guess a district court's resolution of factual issues involving conflicting evidence or reconsider its credibility findings. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. Thus, Alan's challenge to the court's decisions concerning disputed factual issues related to the IRS tax credits do not provide a basis for relief. Instead, based on our review of the documents before us, we conclude that the district court's factual findings regarding the distribution of the IRS tax credits are supported by substantial evidence. Accordingly, we discern no abuse of discretion by the district court in making this determination. *See Schwartz*, 126 Nev. at 90, 225 P.3d at 1275.

Third, Alan argues that the district court violated EDCR 5.706 by failing to require Julie to provide him with a copy of proposed orders for him to review. "[A] district court may properly adopt a party's proposed order, provided that the opposing party is apprised of the order and given an opportunity to respond." *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 483 (Ct. App. 2023). To the extent that the district court adopted Julie's proposed orders without Alan first being apprised of the proposed order and having an opportunity to respond, that constituted error. *See* EDCR 5.706(a)(1) ("The party obtaining an order, judgment, or decree shall have 7 days to prepare it and request the countersignature of the opposing party as to its form and content."). However, for the reasons discussed throughout this order, Alan failed to demonstrate the district court abused its discretion concerning the alimony award or the enforcement of the decree of divorce concerning the distribution of the IRS tax credits. Accordingly, any error concerning the adoption of the proposed order was

harmless because it did not affect Alan's substantial rights and he did not establish that, but for that error, "a different result might reasonably have been reached." *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010); cf. NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²To the extent Alan purports to challenge the district court's post-judgment order awarding Julie attorney fees, that issue is not properly before us. An order granting attorney fees and costs is independently appealable as a special order after final judgment. See NRAP 3A(b)(8) (providing for appeals from special orders entered after a final judgment); *Smith v. Crown Fin. Servs.*, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995). And the record demonstrates that the order awarding attorney fees was entered after Alan initiated this appeal and Alan did not thereafter file a notice of appeal from that order.

Further, insofar as Alan 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. Stacy Michelle Rocheleau, District Judge, Family Division
Alan Terry Sassler
Carman & Price
Eighth District Court Clerk