IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HOPE ANTOINETTE BACKMAN,
Appellant,
vs.
DANIEL MORRIS GELBMAN,
Respondent.

No. 86396-COA

FILED

NOV 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Hope Antoinette Backman appeals from a district court order affirming a court master's findings and recommendations in a child support matter. Second Judicial District Court, Family Division, Washoe County; Aimee Banales, Judge.

Backman and respondent Daniel Morris Gelbman have litigated child support matters since not long after the birth of their child in 2013.[1] From 2014 to 2019, Gelbman paid Backman between $731 and $858 per month in child support, depending on the district court order in place at the time. Gelbman retired from firefighting in 2019 at age 44 and subsequently moved to modify child support based on a greater than 20 percent decrease in income pursuant to NRS 125B.145(4). At the May 2020 hearing on Gelbman's motion, Backman provided the family court master with the standard financial declaration required under WDCR 40(2), Venmo records pertaining to her self-employment as a house cleaner, and screenshots of her bank account balance. The master determined that these records were insufficient to determine Backman's income, imputed income to Backman equal to that of Gelbman, and set child support at zero.

[1]We recount the facts only as necessary for our disposition.

The district court later denied Backman's objection to the master's findings and recommendations (MFR). Backman moved several times over the next few years to modify child support based on changed circumstances. In August 2020, Backman filed a motion to modify in which she claimed that the restrictions caused by the COVID-19 pandemic eliminated her employment, but she did not provide documentation in support of that assertion. In May 2021, Backman again moved to modify based on a greater than 20 percent decrease in income but did not request a hearing or provide any proof of a decrease in income. Both of these motions were denied, and child support remained at zero.

In September 2022, Backman filed another motion to modify, this time alleging that Gelbman was receiving income from real estate sales and a substitute teaching job. The master conducted a hearing concerning Backman's motion and a deputy district attorney from the child support division appeared at the hearing. Based on the financial declarations filed by Backman and Gelbman, the deputy district attorney opined that Gelbman should pay Backman $286 per month in child support. The master, however, was suspicious of Backman's claims about Gelbman's additional income streams as well as her claims about her own income. Despite the deputy district attorney's calculations, the master declined to modify the child support award and left it at zero. The district court later denied Backman's objection to the MFR in January 2023 and adopted the recommendations as an order.

In February 2023, Backman again moved to modify, this time asserting she was unemployed, on the verge of homelessness, and desiring to relocate. In advance of the hearing on the motion, Backman provided a financial statement, her 2022 income information, a profit and loss

statement for 2022 for her housecleaning business, a text from her landlord stating that she was behind on rent, a letter from her auto loan servicer showing her past due amount, and a list of jobs to which she had applied. At the hearing on the motion, Backman explained her financial issues and reiterated her claims about Gelbman's income from real estate. Backman tried to inform the master that she had "lost [her] job" cleaning houses, but the master interjected and stated that it was his turn to talk. The deputy district attorney also attempted to explain how the documents Backman provided demonstrated a greater than 20 percent decrease in income since the last hearing. However, the master interjected, stated that there was no change of circumstances, and concluded the hearing. The master subsequently issued an MFR in which he recommended denying the motion. The MFR pointed out that Backman's motion was filed two weeks after the district court order affirming the previous MFR; that Gelbman's rental income had been discussed at the previous hearing; and that Backman's motion to relocate, if granted, would result in a change of circumstances warranting review of child support. The MFR, however, did not discuss Backman's loss of income and maintained the previously ordered support award from 2020 of zero dollars.

Backman timely objected to the MFR, stating, "[o]nce the Court Master was informed that there was a 20 percent change in Obligee's income, pursuant to NRS 125B.145(4), he was required to move forward with the review hearing. His failure to do so was an abuse of discretion." The district court entered an order affirming the MFR, finding that the master did not abuse his discretion by rejecting Backman's motion to modify the child support award. This appeal followed.

Backman argues that the master abused his discretion in imputing income to her equal to that of Gelbman at the May 2020 hearing which resulted in an award of zero child support. She further argues that the master compounded this error by leaving child support at zero over the course of subsequent hearings despite evidence of changed circumstances from May 2020. Backman finally argues that the master should have conducted a substantive review of the child support order pursuant to NRS 125B.145(4) at the March 2023 hearing as she had presented evidence of a greater than 20 percent decrease in income at that hearing. Gelbman argues that this court cannot review any possible errors made at the May 2020 hearing, and in the corresponding MFR and district court order, because Backman did not identify that order in her notice of appeal. Gelbman contends that, since the March 2023 MFR and corresponding district court order is the only order identified in her notice of appeal, Backman bears the burden of showing changed circumstances, particularly in the two weeks between the January 2023 district court order affirming the December 2022 MFR and her February 2023 motion to modify.[2]

Orders regarding child support are reviewed for abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543

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[2]Gelbman also devotes much of his answering brief to arguments that the supreme court already rejected when denying his motion to dismiss this appeal. For example, Gelbman argues that the March 2023 MFR and corresponding district court order was not a "final judgment" under NRAP 3A(b)(1), that Backman was not an aggrieved party under NRAP 3A(a), and that a March 2024 child custody order renders this appeal moot. Because the supreme court specifically rejected these arguments, *see Backman v. Gelbman*, Docket No. 86396 (Nev. July 22, 2024) (Order Denying Motion), we decline to address them here as those decisions are now the law of the case. *See Recontrust Co. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014).

(1996). An abuse of discretion occurs when findings are not supported by substantial evidence. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled in part on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022). "Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted).

"[T]he district court only has authority to modify a child support order upon finding that there has been a change in circumstances since the entry of the order and the modification is in the best interest of the child." *Rivero*, 125 Nev. at 431, 216 P.3d at 228. A 20 percent change in the gross monthly income of a party subject to a child support order constitutes changed circumstances requiring a review for modification of child support. NRS 125B.145(4); *see also Rivero*, 125 Nev. at 432, 216 P.3d at 228 (stating "a change of 20 percent or more in the obligor parent's gross monthly income requires the court to review the support order").

Gelbman is correct that Backman did not identify the May 2020 MFR and the district court order affirming it in her notice of appeal. Thus, we cannot review that order for abuse of discretion. *See Collins v. Union Fed. Sav. & Loan Ass'n*, 97 Nev. 88, 89-90, 624 P.2d 496, 497 (1981) (stating that this court will generally not consider any order on appeal that is not included in a notice of appeal unless, among other things, "the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice"). However, the supreme court has held that when reviewing a motion to modify a child support order, we must determine if there "has

been a change in circumstances since the entry of the order." *Rivero*, 125 Nev. at 431, 216 P.3d at 228.

Here, the controlling order is the May 2020 order affirming the master's MFR.[3] This is the last time that the court made a finding about Gelbman and Backman's income and it never modified that order. Specifically, it imputed income to Backman equal to Gelbman. At the time, Gelbman was receiving a $6,033 gross benefit from PERS each month, and apparently, an unspecified amount of income from rental properties he owned and from investment accounts. Thus, the master imputed gross income to Backman to equal approximately $6,033 per month. At the March 2023 hearing, Backman provided the master with the financial declaration required by WDCR 40(2), her income information for 2022, and a profit and loss statement from 2022, along with other documents related to rent and debts owed. This was enough evidence to suggest that Backman's income from cleaning houses had decreased by more than 20 percent since the imputation of income in May 2020.[4] Backman also testified at the 2023 hearing that she was only making $600-$800 per month at the time.

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[3]Gelbman's answering brief misstates the supreme court's holding in *Rivero* by adding the word "prior" in brackets between the words "the" and "order." To the extent that this represents an argument that the controlling order is the January 2023 district court order affirming the December 2022 MFR and not the May 2020 order affirming the May 2020 MFR, we reject this argument for the reasons described above.

[4]Additionally, Backman may have experienced a significant reduction in income from cleaning houses between May 2020 and March 2023, as the COVID-19 public health emergency, which began in early 2020, lasted until May 11, 2023. *See End of the Federal COVID-19 Public Health Emergency (PHE) Declaration*, CDC Archive (Sept. 12, 2023), https://archive.cdc.gov/www_cdc_gov/coronavirus/2019-ncov/your-health/end-of-phe.html.

While courts are not required to hold evidentiary hearings based on naked assertions, the court is required to conduct a substantive review of the child support order when some credible evidence supports the request for relief. *Cf. Myers v. Haskins*, 138 Nev. 553, 557, 513 P.3d 527, 532 (Ct. App. 2022) (describing the minimal threshold necessary to justify an evidentiary hearing when a party is seeking to modify child custody); *see also Rivero*, 125 Nev. at 431, 216 P.3d at 228 (stating that child support may be modified if there has been a change of circumstances and it is in the best interest of the child). While NRS 125B.145(4) does not describe how much evidence is needed to show a greater than 20 percent decrease in income, here, Backman's documentation, testimony, and logical inference all suggest her income was not close to $6,000 per month. She alleged a reduction in employment resulting in earnings of less than $1,000 per month, plus other circumstances impacting her ability to work. Thus, pursuant to NRS 125B.145(4), the master was required to review Backman's motion based upon changed circumstances. *See Rivero*, 125 Nev. at 432, 216 P.3d at 228.

Therefore, when the master was presented with evidence of Backman's significant decrease in income, he was required to substantively determine whether modification of the support order was warranted. Notably, while presentation of evidence of a greater than 20 percent decrease in income does not require *modification* of a child support order, it does require *review* of the child support order. *See id.* at 432-33, 216 P.3d at 228-29. Such a review entails considering the guidelines created by the Administrator of the Division of Welfare and Supportive Services of the Department of Health and Human Services. *See id.* at 433, 216 P.3d at 229;

see also NRS 125B.080.[5] When considering the adjustment of a child support order, the court must evaluate, among other things, "[t]he relative income of both households" and "[t]he obligor's ability to pay." NAC 425.150(1)(f), (h).

The master summarily found that there had not been a change of circumstances. He then ended the hearing and failed to conduct an appropriate review of the support order after presentation of evidence indicating Backman experienced a 20 percent decrease in income and he also failed to consider the proper child support guidelines. Because NRS 125B.145(4) required the master to review the child support order, the master abused his discretion by declining to conduct the statutorily mandated review. Moreover, this court grants deference to the district court and master in child support orders, but the findings here are so conclusory that they may mask the legal error in failing to properly review the motion to modify the child support order and make appropriate findings. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142. In light of the foregoing, we conclude that the district court abused its discretion in affirming the family court master's findings and recommendations.[6] Accordingly, we

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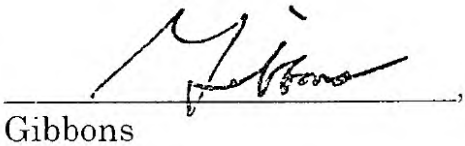
[5]When *Rivero* was decided, the statutory formula for setting and modifying child support was found in NRS 125B.070 and NRS 125B.080. Effective February 1, 2020, courts must now "apply the guidelines established by the Administrator of the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.620" to establish and modify child support obligations. NRS 125B.080.

[6]Backman also argues that the master abused his discretion by failing to provide specific findings of fact supporting his decision to deviate from the child support calculation formula found in NAC 425.140(1). Because the master imputed equal income to both parties in 2020, there is no

ORDER the judgment of the district court REVERSED AND REMAND this matter for proceedings consistent with this order.[7]



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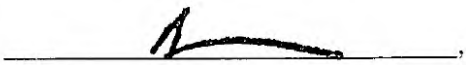

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Aimee Banales, District Judge, Family Division
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Kemp Jones, LLP
Barbara Buckley
Kelly H. Dove
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Washoe District Court Clerk

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deviation from the formula as there is no computation to make—the parents' incomes offset. Thus, this argument provides no basis for relief.

[7]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not provide a basis for relief or need not be reached given the disposition of this appeal. *See Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 315 n.1, 774 P.2d 1047, 1048 n.1 (1989) (declining to resolve an issue in light of the court's disposition).