

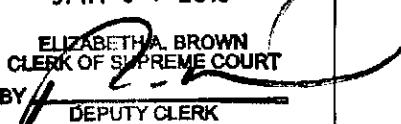
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON KERRIGAN,  
Appellant,  
vs.  
JENNA SARAH KERRIGAN,  
Respondent.

No. 75546-COA

**FILED**

JAN 31 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jason Kerrigan appeals from a district court order granting a post-divorce decree motion to modify child support. Eighth Judicial District Court, Family Court Division, Clark County; Bill Henderson, Judge.

After entry of the underlying divorce decree, respondent Jenna Sarah Kerrigan moved to modify Jason's child support obligation, but her motion was continued. Jenna eventually re-noticed the motion, arguing that Jason's gross monthly income exceeded \$25,000, as evidenced by deposits to his personal and business bank accounts; that his child support obligation should therefore be set at the presumptive statutory maximum; and that his obligation should be retroactive to the date of her original motion. Jason opposed that motion, arguing that the deposits were not income, that he did not otherwise have any income, and that he was entitled to child support from Jenna. Following an evidentiary hearing, the district court held that it must treat the deposits as income for Jason because he failed to produce sufficient evidence to explain the source of the deposits or to demonstrate that they were offset by business expenses. As a result, the district court set Jason's child support obligation at the presumptive

statutory maximum and ordered him to pay \$41,590 in arrears. This appeal followed.

Initially, Jason challenges the district court's determination of his prospective child support obligation, asserting that the court improperly based its decision on a finding that he was underemployed. But although the district court made a finding regarding Jason's continued ability to operate his business, nothing in the court's order indicates that it applied the underemployment doctrine to determine Jason's child support obligation. Indeed, the district court specifically found that Jason was working for his own business and it set his child support obligation based on his gross monthly income rather than true potential earning capacity.<sup>1</sup> Compare NRS 125B.070(b) (including gross monthly income in the general formula to determine child support obligations), with NRS 125B.080(8) (substituting true potential earning capacity as the factor for setting an underemployed parent's child support obligation). Thus, Jason failed to establish a basis for relief as to this issue and, as a result, we turn to his challenges to the district court's determination of his gross monthly income.

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<sup>1</sup>Because the parties focused on Jason's financial situation in 2016, the district court determined his gross monthly income for that year and used that figure to set his retroactive and prospective child support obligations. In his December 13, 2018, motion for a stay, Jason challenged that procedure insofar as the district court relied on his gross monthly income in 2016 to set his prospective child support obligation in 2018. But Jason waived that challenge by failing to raise it below or in his opening brief. 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) ("Issues not raised in an appellant's opening brief are deemed waived.").

In this regard, insofar as Jason argues that, under NRS 125B.080(3), the district court could only consider his federal income tax returns to determine his gross monthly income, his argument is unavailing, as that statute did not impose any limitations on what the court could consider to resolve the parties' dispute over Jason's gross monthly income. See NRS 125B.080(3) (authorizing the district court to direct the parties to "furnish financial information or other records, including income tax returns" to aid the court in resolving disputes over gross monthly income). Nevertheless, Jason also argues that Jenna bore the burden of establishing his gross monthly income and that, to the extent she asserted that the subject deposits constituted his income, she failed to present substantial evidence to satisfy her burden. But Jenna did not merely assert that Jason's deposits were indicative of his gross monthly income. Instead, she presented extensive banking records to show that, during the period in which Jason asserted that he had no income, he deposited more than \$300,000 into his personal and business bank accounts and spent more than \$138,000 from those accounts at various gaming establishments.

As those deposits and expenditures gave rise to substantial questions regarding Jason's finances, the district court conducted an evidentiary hearing to determine his child support obligation. And when Jason did not present adequate evidence to explain the source of those deposits or otherwise demonstrate that they were offset by business expenditures, the district court reasonably exercised its discretion in concluding that it must treat them as income. See *Rivero v. Rivero*, 125 Nev. 410, 438, 216 P.3d 213, 232 (2009) (reviewing the district court's decisions concerning child support for an abuse of discretion).

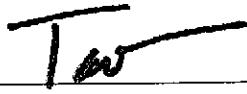
Jason also challenges the district court's decision to include his deposits in his gross monthly income by baldly asserting that they derived from various sources other than income and that the court improperly counted certain deposits twice. But Jason does not direct this court's attention to any evidence in the record to support his positions or otherwise cite any relevant legal authority to guide this court's analysis of what constitutes a party's gross monthly income for purposes of child support despite having filed a full, formal brief in this matter. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument or relevant legal authority in resolving a fully briefed pro se appeal); *see also* NRAP 28(a), (k) (stating the general requirement that an appellant's opening brief include citations to relevant legal authority, and authorizing, but not requiring, an appellant who proceeds pro se to use an informal brief form that does not cite such authority). Moreover, Jason failed to provide this court with much of the transcript from the relevant evidentiary hearing, and, as a result, we presume that the missing portion of the transcript supports the district court's decision. *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 [documents] support[ ] the district court's decision"); *see also* 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 transcripts with the court clerk).

Thus, given the foregoing and because Jason does not otherwise challenge the district court's order, we conclude that the court did not abuse

its discretion in determining his child support obligation and directing him to pay \$41,590 in child support arrears. *See Rivero*, 125 Nev. at 438, 216 P.3d at 232. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, A.C.J.  
Douglas

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Bill Henderson, District Judge, Family Court Division  
Joseph W. Houston, II  
Black & LoBello  
Eighth District Court Clerk

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<sup>2</sup>Given our disposition of this appeal, we deny Jason's December 13, 2018, motion for a stay as moot. And insofar as the record on appeal includes documents that were not part of the pre-appeal district court record, we did not consider them. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (providing that the appellate courts cannot consider materials that are not a proper part of the record on appeal).