

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN RENALDO CARTER,  
Appellant,  
vs.  
SHERI DIANE FREEMAN,  
Respondent.

No. 78449-COA

**FILED**

APR 27 2020

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

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Kevin Renaldo Carter appeals from a district court order regarding child support. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Senior Judge.

As relevant here, in 2014, Carter was ordered to pay respondent Sheri Freeman \$870 per month in child support. In that order, the district court provided that once the youngest child emancipated, Carter would continue to pay \$870 per month toward arrearages. In September 2018, Carter sought to modify his child support obligation, arguing that the youngest child emancipated in 2016, that his obligation should be reduced based on his change in financial circumstances, and that the interest should be waived due to his financial hardship. After the hearing in October 2018, the child support hearing master recommended maintaining Carter's child support obligation at \$870 pursuant to the district court's 2014 order, but that the entire amount would go toward arrearages owed as the youngest child had emancipated. The hearing master also recommended denying Carter's request to waive or modify interest, concluding that Carter had not

provided a legal basis to modify or reduce interest. Because the arrears were not addressed at that hearing, the hearing master set another hearing date in December 2018. That recommendation was filed as a district court order on November 15, 2018, after no objection to the recommendation was filed pursuant to NRS 425.3844.

After the hearing in December 2018, the hearing master issued a recommendation maintaining Carter's child support payment at \$870 per month toward arrearages only, denying Carter's request to adjust his arrears payment based on the emancipation of the youngest child, and concluding that "[s]tatutory interest and penalties are set by statute and not waived." The recommendation also found that Carter's employer verified that his gross monthly income was \$5037, but that Carter testified he was currently unemployed and earning a gross monthly income of \$4389 in California state disability income. Carter objected to this recommendation and the district court affirmed and adopted the recommendation over his objection. This appeal followed.

On appeal, Carter challenges the district court's denial of his request to modify his child support amount and the denial of his request to waive interest based on financial hardship. This court reviews a child support order for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996); *see also Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018) (stating that in child support matters, this court "will uphold the district court's determination if it is

supported by substantial evidence” (quoting *Flynn*, 120 Nev. at 440, 92 P.3d at 1227)). Although we review discretionary determinations deferentially, deference is not owed to legal error. *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142-43 (2015).

First, Carter asserts that the district court abused its discretion in denying his request to modify his child support payment as his request was unopposed and because he alleges the court failed to consider that his income had significantly reduced. Contrary to Carter’s assertion, a district court is not required to grant an unopposed motion. Rather, the decision to grant an unopposed motion is discretionary. *See* EDCR 2.20(e) (providing that the failure to file an opposition to a motion *may* be construed as a consent to granting the same). Thus, we discern no abuse of discretion in the district court’s denial of Carter’s request on the basis that it was unopposed. *See Wallace*, 112 Nev. at 1019, 922 P.2d at 543.


Similarly, Carter’s assertion that the court failed to consider his change in financial condition is belied by the record. Indeed, the challenged order specifically found that Carter testified he was not currently employed, but was receiving California state disability and his gross monthly income from that disability was \$4389 per month. And to the extent Carter challenges the weight of the evidence or the credibility of the witnesses used in determining his amount of child support, we do not reweigh the same on appeal. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to make credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). We likewise discern no abuse of discretion in

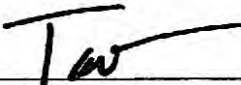
the district court's denial of Carter's request to modify the child support amount based on his income and the youngest child's emancipation as the court properly maintained the child support obligation in effect at the time the youngest child emancipated. *See* NRS 125B.100 (providing that a parent who is in arrears at the time the child emancipates "shall continue to make payments for the support as previously ordered until the arrearages are paid."). Accordingly, we reject Carter's challenge to the arrearages payment amount and affirm that determination.

Next, as to the district court's denial of Carter's request to modify or waive interest, based on our review of the record it is not clear that the district court properly considered NRS 125B.140(2)(c). Pursuant to the order, it appears that the district court denied Carter's request because interest is set by statute. While the amount of interest is set by statute, *see* NRS 125B.140(2)(c)(1), the statute also provides that the court shall determine the amount of interest "unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts." NRS 125B.140(2)(c). Thus, because it appears that the district court failed to properly consider Carter's argument pursuant to NRS 125B.140(2)(c), we necessarily reverse and remand the matter for reconsideration of whether Carter would experience undue hardship if required to pay interest. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142-43.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>1</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Chief Judge, Eighth Judicial District Court  
Hon. Kathy A. Hardcastle, Senior Judge  
Kevin Renaldo Carter  
Sheri Diane Freeman  
Eighth District Court Clerk

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<sup>1</sup>We note that Freeman requested relief from this court in her responsive filing. Because she did not file a cross-appeal, we cannot consider those issues or provide her any relief on appeal. *See Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) (“[A] respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal.”).

Insofar as the parties raise additional arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.