IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL MARTIN,
Appellant,
vs.
STATE OF NEVADA, DIVISION OF WELFARE AND SUPPORTIVE SERVICES; AND MARCELLA A. RICO,
Respondents.

No. 80879-COA

FILED

NOV 25 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Daniel Martin appeals from a district court order modifying child support. First Judicial District Court, Carson City; James E. Wilson, Judge.

In the proceedings below, Daniel was ordered to pay child support to respondent Marcella Rico for their minor child pursuant to *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998). In December 2018, the district court modified support, requiring Daniel to pay $885 per month in child support and $377 per month for the child's health insurance premium through his employer. Daniel appealed and this court entered an order of reversal and remand, concluding that the district court improperly included Daniel's current wife's income in calculating Daniel's gross monthly income, that the district court failed to make findings of fact demonstrating a change in circumstances occurred warranting modification, and that the court failed to consider whether the cost of the child's health insurance was reasonable. *See Martin v. State, Div. of Welfare and Supportive Servs.*, Docket No. 77795-COA (Order of Reversal and Remand, January 8, 2020).

After remand, the district court entered a new order modifying Daniel's child support obligation. In particular, the district court made findings that Daniel's income increased by more than 20 percent, constituting a change in circumstances warranting modification, and the court did not include Daniel's wife's income when calculating Daniel's gross monthly income. Instead, the district court determined Daniel's support obligation was $555 pursuant to the statutory formula and *Wright*, and then made several findings in support of deviating upward from the statutory formula. In this regard, the district court considered Daniel's wife's income in considering the relative income of the parties and found that it was in the child's best interest to deviate upward by $300, making Daniel's child support obligation $855 per month. The district court also found that the cost of the child's health insurance premium was not reasonable and ordered that Daniel was no longer required to provide insurance through his employer. But based on the disparity in income between the parties, the district court found that it was more equitable to require Daniel to bear the cost of those premiums previously paid, without reimbursement from Marcella. This appeal followed.

On appeal, Daniel challenges the district court's order asserting that his income was calculated incorrectly, that his wife's income should not be considered for any purpose, that Marcella should be required to pay half of the insurance premiums he paid, and that Marcella is willfully underemployed. 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. *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013).

First, Daniel asserts that the district court incorrectly calculated his income because he has always indicated that he is salaried and makes $55,000 per year, and that his final paycheck in 2019 indicated he made $53,785.26. But the district court's order was entered following this court's order of reversal and remand, and the district court indicated that it was reconsidering whether the child support modification was appropriate based on the information before the court when it entered the December 2018 order modifying support. Thus, Daniel's current income and his 2019 income were not relevant to the district court's analysis. As to Daniel's 2018 income, the district court found his income was not in dispute, and our review of the record does not indicate that Daniel previously challenged the calculation of his 2018 income. *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."). Based on these facts, we cannot conclude that the district court abused its discretion in calculating Daniel's 2018 income for purposes of determining child support.[1] *See Wallace*, 112 Nev. at 1019, 922 P.2d at 543.

Next, Daniel asserts that his current wife's income should not be considered for purposes of determining whether a deviation from the statutory formula is warranted. But as this court noted in its prior order of reversal and remand, when calculating child support, a remarried parent's community property interest in the new spouse's income may not be included in calculating the parent's gross monthly income, but it may be considered when determining whether a deviation is warranted. *See*

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[1]Because Daniel did not file a motion to modify support based on his most recent income, any issue pertaining to a possible change in support payments based on his post-2018 income was not properly before the district court at the time of the challenged order's entry, and is likewise not properly before this court on appeal.

Rodgers v. Rodgers, 110 Nev. 1370, 1373-76, 887 P.2d 269, 271-73 (1994). Thus, we cannot conclude that the district court abused its discretion in considering Daniel's community property interest in his wife's income when determining whether a deviation was warranted. *See Wallace*, 112 Nev. at 1019, 922 P.2d at 543.

Daniel also asserts that Marcella should be required to pay half of the insurance premiums because Marcella was ordered to pay half of the premiums, but failed to do so. But Daniel has failed to point to anywhere in the record that Marcella was previously ordered to pay half of the child's insurance premiums, and based on our review of the record, the district court's original written order did not require Marcella to pay half of the premiums. Indeed, the order required Daniel to pay for the child's health insurance and did not indicate that he would receive an offset to his child support obligation for half of that amount. Moreover, in the order at issue in this appeal, the district court found that although it should not have ordered Daniel to pay for health insurance because the $377 premium was unreasonably high, it concluded that Daniel should incur the cost of having complied with that order, without reimbursement from Marcella, based on the disparity in income between the parties. Based on these facts, we cannot conclude that the district court abused its discretion in declining to order Marcella to reimburse Daniel for half of the insurance premiums paid. *See id.*

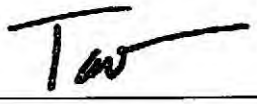
Finally, Daniel contends that Marcella is willfully underemployed. The district court previously considered this argument and concluded that there was no evidence to support Daniel's contention. Indeed, the court found that Marcella worked part-time due to financial constraints and her obligation to transport her second child to school, such that she was not willfully underemployed for the purpose of avoiding child support. Based on these findings, we cannot conclude that the district court

abused its discretion in declining to find Marcella was willfully underemployed.[2] *See id.*

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. James E. Wilson, District Judge
Daniel Martin
Attorney General/Carson City
Marcella A. Rico
Carson City Clerk

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[2]Insofar as Daniel raises 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.

[3]Before this matter was transferred to this court, both parties filed documents in the supreme court indicating that they reached a settlement agreement resolving all pending matters. The supreme court denied the parties' motions seeking approval of their settlement agreement, noting that the appellate courts cannot approve settlements and the parties are required to file a stipulation or motion to dismiss should they no longer wish to proceed with the appeal. Nevertheless, the parties did not file a stipulation or request to dismiss this matter based on any settlement agreement. Regardless, we note that nothing in this order precludes the parties from presenting any settlement agreement to the district court and seeking to have the district court approve and adopt any such agreement.