IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS LUIS AREVALO,
Appellant,
vs.
CATHERINE MARIE AREVALO, N/K/A CATHERINE MARIE DELAO,
Respondent.

No. 81359-COA

FILED

MAR 30 2021

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

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

Jesus Luis Arevalo appeals from a post-divorce decree order in a family matter. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

Jesus and respondent Catherine Arevalo (n/k/a Catherine Delao) were divorced by way of a decree of divorce entered in February 2013.[1] Pursuant to the terms of the decree, the parties shared joint legal and joint physical custody of their minor child, Jesus was ordered to pay child support and spousal support, and the parties were to alternate claiming the child as a dependent for tax purposes each year. Additionally, pursuant to the decree, the parties were to obtain a Qualified Domestic Relations Order (QDRO) dividing Jesus's Public Employees' Retirement System (PERS) pension earned during the marriage, and Jesus was ordered to obtain a life insurance policy for Catherine's benefit in lieu of Catherine receiving a survivor benefit from the PERS pension.

[1]This case was initially assigned to Judge Duckworth, but was later administratively reassigned to Judge Hoskin.

In 2015, after a show cause hearing, the district court held Jesus in contempt for failing to pay his spousal support obligation. The district court ordered Jesus to serve two days of incarceration for each of the ten months he failed to pay support, for a total of 20 days of incarceration, but stayed that sentence pending future compliance with the order to pay spousal support. The court indicated that if Jesus failed to timely pay Catherine spousal support, she may submit an affidavit stating the amount she did not receive and a warrant shall issue for Jesus's arrest. If this occurred, bail would be set at $2,000, which would be released to Catherine.

In December 2019, when the parties could not agree on where the child should attend middle school the following school year, Jesus moved to allow the child to attend a charter school rather than his zoned middle school and sought a review of child support, amongst other things. Catherine opposed and counter-moved for an order to show cause why Jesus should not be held in contempt for failure to comply with the court's prior orders. As relevant here, Catherine asserted that Jesus improperly claimed the child on his 2017 tax return when it was Catherine's year to claim the child, causing her to incur a $1,420 tax penalty; failed to timely pay spousal support pursuant to the 2015 order; and failed to obtain the life insurance policy pursuant to the decree—which, Catherine asserted, should be valued at $185,000. Additionally, Catherine asserted that the parties never obtained a QDRO pursuant to the decree and that she had not received her share of Jesus's PERS pension after he retired in 2013.

After a hearing, the district court denied Jesus's request to allow the child to go to the charter middle school, concluding that the claim was not yet ripe as the child had not yet been admitted to the school. The

court also found that both parties agreed that Jesus failed to timely pay the spousal support payments pursuant to the 2015 order and that Jesus failed to obtain a life insurance policy pursuant to the decree. Accordingly, the district court lifted the stay on the contempt order, ordering that Jesus serve the 20-day sentence or quash the sentence by paying $2,000 to Catherine's counsel by March 6, 2020. The court went on to conclude that, upon stipulation, the parties would exchange information regarding their income to address the child support modification request; that they would exchange information regarding the 2017 taxes to attempt to resolve the tax penalty issue; and that the QDRO would be prepared by the McFarling Law Group. Additionally, the district court awarded Catherine $4,210 in attorney fees.

Jesus sought reconsideration of the district court's order, asserting that the district court did not address the charter school issue; that he was entitled to an evidentiary hearing regarding the school issue; that Catherine's requests for orders to show cause were insufficient as they failed to include affidavits in support of the requests; that his contempt was not willful, such that he should not have been held in contempt; and that because the finding of contempt was improper, the subsequent award of attorney fees was likewise improper. Jesus also filed a "Motion to Acknowledge the Statute of Limitations Pursuant to NRS 11.190(1)(a)," asserting that Catherine was not entitled to the life insurance policy or a portion of Jesus's PERS pension as the statute of limitations to enforce the decree expired. Catherine opposed both motions.

After a hearing, the district court issued an order concluding that, regarding the charter school issue, the matter was improperly raised in a reply and was therefore not properly before the court. Regarding the

contempt finding, the court concluded that Catherine did provide appropriate affidavits to support her requests for the orders to show cause and, regardless, because Jesus had since paid the $2,000, the issue was moot. The district court also concluded that the statute of limitations did not apply to Jesus's obligation to obtain a life insurance policy pursuant to the decree, but the PERS payments owed to Catherine were subject to the six-year statute of limitations pursuant to NRS 11.190(1)(a). Therefore, the court concluded that Catherine was entitled to arrears payments going back six years from the date she filed her motion. Additionally, the district court ordered that Jesus reimburse Catherine $1,420 for the tax penalty she incurred in light of Jesus reporting on his 2017 tax return that he paid for the child's health insurance premium; that Jesus had 30 days to obtain an actuary and demonstrate what he believed would be an appropriate amount for the life insurance policy; and that if he did not obtain an actuary, the life insurance policy would be valued at $185,000 as Catherine proposed. The district court also awarded Catherine $2,850 in attorney fees and costs. This appeal followed.

*Charter School Issue*

On appeal, Jesus first challenges the district court's denial of his motion seeking an order allowing the child to attend a charter middle school without an evidentiary hearing. This court reviews a child custody decision for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.* "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).

When parents sharing joint legal custody disagree on the child's education, they may request that the district court decide what is in the child's best interest. NRS 125C.0045(1)(a) (providing that the district court may make orders regarding a child's education "as appears in his or her best interest"); *Rivero v. Rivero*, 125 Nev. 410, 421, 216 P.3d 213, 221-22 (2009). And "[a] district court must hold an evidentiary hearing on a request to modify custodial orders if the moving party demonstrates 'adequate cause.'" *Arcella v. Arcella*, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017) (quoting *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993)); *see also Rivero*, 125 Nev. at 420, 216 P.3d at 221 (explaining that legal custody involves making major decisions regarding the child's education, amongst other things). To establish adequate cause, the movant must present a prima facie case that modification of custody is in the child's best interest by showing "(1) the facts alleged in the affidavits are relevant" to the custody modification, and "(2) the evidence is not merely cumulative or impeaching." *Rooney*, 109 Nev. at 543, 853 P.2d at 125.

Here, the district court denied Jesus's request for a ruling on what middle school the child should attend, concluding that the issue was not yet ripe as the child had not yet been accepted to the charter school, and on reconsideration, concluding that the issue was improperly raised for the first time in the reply brief. But based on our review of the record, neither of these findings is correct. First, the district court cited no authority and our research has revealed no authority to support its conclusion that, although the child was on the waiting list to be admitted to the charter

school, Jesus's request to determine whether the child could attend that school was not yet ripe. *Cf. Arcella*, 133 Nev. at 871, 407 P.3d at 345 (concluding that one of the facts establishing adequate cause for an evidentiary hearing was that the child "was about to finish elementary school"). Second, the district court's conclusion that Jesus improperly raised the charter school issue in his reply brief to his motion for reconsideration is belied by the record. Indeed, on pages three and five of Jesus's motion for reconsideration, he specifically asserted that the district court failed to consider his request regarding the charter school, that he was entitled to an evidentiary hearing pursuant to *Arcella*, and that the child had in fact since been accepted to the charter school. Accordingly, we reverse and remand the district court's denial of Jesus's motion regarding the charter school for further proceedings on this issue.[2] *See Davis*, 131 Nev. at 450, 352 P.3d at 1142.

*QDRO and Life Insurance Policy*

Next, Jesus challenges the district court's orders regarding the QDRO and life insurance policy. In particular, Jesus argues that Catherine is no longer entitled to any payments under his PERS retirement (pursuant to a QDRO) or the life insurance policy in lieu of receiving the survivor benefit under the PERS retirement plan because the statute of limitations for enforcing the decree of divorce has expired. This court reviews the district court's decisions in divorce proceedings for an abuse of discretion.

---

[2]To the extent the district court purported to make "advisory" findings pursuant to *Arcella*, those findings are not supported by the record, as the district court failed to take any evidence in the proceedings below. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241-42 (providing that "the district court must have reached its [custody determinations] for the appropriate reasons" and that such determinations must be "supported by substantial evidence").

*Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Claims to enforce property distribution provisions in a decree of divorce are subject to the six-year statute of limitations provided by NRS 11.190(1)(a). *Davidson v. Davidson*, 132 Nev. 709, 718, 382 P.3d 880, 886 (2016). In such a case, "the statute of limitations begins to accrue when there is evidence of indebtedness." *Id.*

Here, contrary to Jesus's assertion, the district court correctly concluded that Catherine's interest in the PERS pension payments was subject to the six-year statute of limitations and, therefore, she was only entitled to recover those missed payments for which the limitations period had not yet expired at the time she filed her motion and any future payments. *See Bongiovi v. Bongiovi*, 94 Nev. 321, 322, 579 P.2d 1246, 1247 (1978) (concluding that the statute of limitations period commences against each installment as it becomes due, not from the date of the decree of divorce). Accordingly, the district court did not abuse its discretion in determining Catherine was entitled to enforce the provision of the decree entitling her to obtain her share of Jesus's PERS pension that had not yet expired under the statute of limitations, and ordering that a QDRO be entered to enforce that provision going forward. *See Williams*, 120 Nev. at 566, 97 P.3d at 1129; *cf. Henson v. Henson*, 130 Nev. 814, 820 n.6, 334 P.3d 933, 937 n.6 (2014) (noting the district court's inherent authority to enforce its orders and concluding that the court had jurisdiction to modify a QDRO—more than six years after the QDRO was first entered—because the amended QDRO effectuated the divorce decree and did not modify the parties' interests under the divorce decree).

Regarding the life insurance policy, Jesus likewise asserts that the statute of limitations expired to enforce that provision of the decree and

that the district court abused its discretion in determining the value of the life insurance policy should be $185,000 based on Catherine's counsel's argument. As noted above, claims to enforce property distribution provisions in a decree of divorce are subject to the six-year statute of limitations provided by NRS 11.190(1)(a). *Davidson*, 132 Nev. at 718, 382 P.3d at 886. And although a nonemployee spouse is not automatically entitled to receive a survivor beneficiary interest in an employee spouse's PERS pension, Catherine was explicitly awarded the life insurance policy in lieu of the survivor beneficiary interest in the decree of divorce. *Cf. Henson*, 130 Nev. at 820, 334 P.3d at 937 (explaining that the nonemployee spouse does not automatically receive a survivor beneficiary interest in a PERS pension and, therefore, where the decree did not explicitly award the nonemployee spouse with a survivor beneficiary interest, she was not entitled to one). Thus, under the facts of this case, because the decree explicitly awarded Catherine the life insurance policy in lieu of the survivor benefit, Catherine has a property interest in the life insurance policy such that NRS 11.190 applies. Accordingly, the district court erred in concluding that the statute of limitations does not apply to enforcement of the life insurance provision and we therefore reverse that portion of the challenged decision and remand for further proceedings. *See id.* at 818, 334 P.3d at 936 (explaining that a district court's interpretation of a divorce decree presents a question of law and is reviewed de novo).

But, contrary to Jesus's assertions, the statute of limitations does not commence at the time the decree is entered. Rather, pursuant to NRS 11.200, "the statute of limitations begins to accrue when there is evidence of indebtedness." *Davidson*, 132 Nev. at 718, 382 P.3d at 886. Here, Catherine asserted that, at some point, Jesus obtained a $5,000 life

insurance policy, and Jesus failed to oppose this assertion. If Jesus obtained a life insurance policy, this act would constitute "evidence of indebtedness," and the statute of limitations would begin to run from that date. *See id.* But the district court failed to make any findings regarding this issue, and the record does not indicate when the insurance policy was obtained, if at all. Thus, on remand, the district court must make findings of fact to determine when the statute of limitations began to run and whether Catherine's claim to enforce the life insurance policy provision was barred by the statute of limitations.[3] *See Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011) ("Without an explanation of the reasons or bases for a district court's decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation."); *see also Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (concluding that "an appellate court is not an appropriate forum in which to resolve disputed questions of fact").

*Attorney Fees*

Jesus also challenges the district court's award of attorney fees. This court reviews a district court's award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). An abuse of discretion occurs when the district court's decision is not

---

[3]On remand, if the district court determines that enforcement of the life insurance policy is not barred by the statute of limitations, it likewise must making findings to support its determination as to the value of the policy. We note that the district court failed to make any findings regarding how it determined the value of the policy would be $185,000, and nothing in the record supports that determination. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142; *see also Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014) (explaining that "[a]rguments of counsel . . . are not evidence and do not establish the facts of the case").

supported by substantial evidence. *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013). And as noted above, "deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis*, 131 Nev. at 450, 352 P.3d at 1142 (internal citations omitted). When awarding attorney fees in a family law case, the district court must consider the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), and must also consider the disparity in the parties' income pursuant to *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). *Miller*, 121 Nev. at 623-24, 119 P.3d at 730.

As an initial matter, we note that the district court indicated its award of fees was pursuant to NRS 18.010, but failed to specify whether the award was pursuant to NRS 18.010(2)(a) or NRS 18.010(2)(b). And if the court awarded the fees pursuant to NRS 18.0101(2)(b), it failed to make any findings relating to the same. *See Henry Prods. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998) (explaining that the district court's failure to state a basis for an attorney fee award is an abuse of discretion); *but cf. Panicaro v. Robertson*, 113 Nev. 667, 668, 941 P.2d 485, 485-86 (1997) (concluding that although the district court is required to cite the relevant authority for awarding attorney fees, reversal is not required when the basis of the court's award is readily apparent).

Regardless of the rule upon which the award was based, from our review of the record, it is likewise unclear that the district court properly considered *Wright* in determining a reasonable award of attorney fees. Although the district court's order required Catherine's counsel to submit a declaration regarding the *Brunzell* factors, suggesting the court considered the same, it did not cite to *Wright* and it failed to make any

findings or otherwise demonstrate that it considered the disparity in the parties' income in making the award. *See MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. 235, 245, 416 P.3d 249, 258-59 (2018) (explaining that while the failure to make explicit findings as to the *Brunzell* factors is not a per se abuse of discretion, the district court must demonstrate that it considered the required factors and the award must be supported by substantial evidence). Thus, we are unable to discern from the record whether the district court actually considered the required factors. In light of this court's reversal on the issues above and the lack of clarity regarding the basis of the district court's fee award, we necessarily reverse the award of attorney fees and remand this matter to the district court for additional findings. *See Miller*, 121 Nev. at 622-24, 119 P.3d at 729-30.

*Remaining Issues*

On appeal, Jesus raises additional arguments that do not warrant relief. Jesus challenges the district court's child support order, asserting that the district court failed to consider his assertion that Catherine's income was higher than she indicated on her financial disclosure form. But this argument was not raised before the district court prior to Jesus filing his notice of appeal and is, therefore, not properly before us. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) ("We cannot consider matters not properly appearing in the record on appeal."); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

Similarly, Jesus challenges the district court's order requiring him to reimburse Catherine for the 2017 tax penalty she incurred for claiming the child as a dependent after Jesus reported on his 2017 tax return that he paid for the child's health insurance premiums. But on appeal, Jesus failed to provide any cogent argument to support his position that the district court erred in requiring him to reimburse Catherine. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (concluding that this court need not consider claims that are not cogently argued); *Sertic v. Sertic*, 111 Nev. 1192, 1197, 901 P.2d 148, 151 (1995) (explaining that the district court has broad discretion in allocating the child dependency exemption).

We likewise discern no basis for relief as to Jesus's claim that the district court was biased against him, as evidenced by the district court's rulings. *See Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) ("A judge is presumed to be unbiased . . . ."); *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988) (explaining that bias to disqualify a judge must come from an extrajudicial source, rather than what the judge learned from participating in the case, and stating that "rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification").

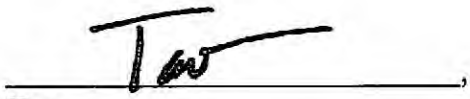
As to Jesus's challenge to the district court's grant of Catherine's motions for orders to show cause, those decisions are not substantively appealable. *See* NRAP 3A(b) (setting forth the judgments and orders from which an appeal may be taken); *Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984) (explaining that the appellate courts have jurisdiction to consider an appeal only when it is

authorized by statute or court rule). Thus, we lack jurisdiction to consider this appeal as to the order to show cause and dismiss the same.[4] *See Taylor Constr.*, 100 Nev. at 209, 678 P.2d at 1153.

Accordingly, to summarize, we affirm the district court's order as to the QDRO and PERS payments thereunder, and the 2017 tax penalty; we reverse and remand the district court's order as to the charter school issue, the life insurance policy provision, and attorney fees; and we dismiss the appeal as to the orders granting Catherine's motions for orders to show cause.

It is so ORDERED.[5]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

---

[4]To the extent Jesus intended to challenge the district court's order finding him in contempt, he has failed to offer any cogent argument regarding this decision, and thus, we need not consider this issue. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

[5]Insofar as the parties raise 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.

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Jesus Luis Arevalo
Willick Law Group
Eighth District Court Clerk