

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KORI LOVETT CAGE,
Appellant,
vs.
MALIKA COPPEDGE,
Respondent.

No. 83148-COA

FILED

JUN 10 2022

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

ORDER OF REVERSAL AND REMAND

Kori Lovett Cage appeals from a district court order denying an objection to a hearing master's recommendation and a post-judgment order awarding attorney fees and costs in a child support matter. Eighth Judicial District Court, Family Court Division, Clark County; Dedree Butler, Judge.

Cage, with the assistance of the Clark County District Attorney Family Support Division (DAFS), moved to modify his child support obligation due to a change in his income of more than 20 percent. Based on that motion, Cage's support obligation was initially adjusted temporarily, and eventually, on October 27, 2020, the hearing master recommended a permanent modification. Cage then attempted to object to the hearing master's recommendation on various grounds. The objection was dated November 9, 2020, included a certificate of mailing wherein Cage certified that he mailed a copy to the district court clerk's office the same day, and consistent with that certification, was seemingly postmarked the same day. However, the district court clerk's office did not stamp Cage's objection as received until November 17, 2020, and did not file it until November 30,

2020. Meanwhile, on November 19, 2020, the district court clerk's office marked the box on the master's recommendation indicating that no objection had been filed within the ten-day objection period set forth in NRS 425.3844(2) and that, as a result, the district court deemed the recommendation approved and entered judgment against Cage.

DAFS responded to Cage's objection, arguing that it should be denied because it was untimely based on NRS 425.3844(2)'s 10-day objection period, as well as the substantially similar 10-day objection period set forth in EDCR 1.40(e) and the 14-day objection period set forth in NRCP 53(f)(1).¹ Respondent Malika Coppedge likewise responded to Cage's objection, asserting that it should be denied as untimely based on the 10-day objection period set forth in NRS 3.405(4), which is substantially similar to the 10-day objection periods set forth in NRS 425.3844(2) and EDCR 1.40(e).² Moreover, Coppedge requested an award of attorney fees and costs

¹On April 11, 2022, various amendments to the EDCR were adopted, including an amendment to EDCR 1.40 that, among other things, eliminated the rule's timing requirement. *In re Amendment of Part I and V of the Rules of Practice for the Eighth Judicial Dist. Court*, ADKT 0590 (Order Amending Part I and Part V of the Rules of Practice for the Eighth Judicial District Court, Apr. 11, 2022). However, the amendments do not take effect until June 10, 2022, and we therefore look to the pre-amendment version of the EDCR in resolving this appeal.

²While Coppedge also cited EDCR 1.31, that rule does not establish an objection period. Instead, as relevant here, EDCR 1.31(b)(5)(ii) requires the presiding judge of the family division to "[m]eet with and supervise the activities of the child support hearing masters in the performance of their duties under Rule 1.40," which does establish a 10-day objection period, as DAFS correctly observed in its response.

pursuant to NRS 18.010 and EDCR 7.60(b). In his reply, Cage argued that he was required to file his objection by November 10, 2020, based on NRCP 53(f)(1)'s 14-day objection period, and he further maintained that his objection should have been deemed filed on November 9, 2020, when it was postmarked.

The district court determined that the deadline for Cage to file an objection was November 6, 2020, if a 10-day objection period applied, or November 10, 2020, if a 14-day objection period applied. And because Cage's objection was not filed until November 30, 2020, the district court concluded it was untimely and refused to consider it. Nevertheless, the district court observed that it was required to accept the hearing master's recommendation unless it was clearly erroneous, and the court indicated that it could make no such finding. As a result, the district court denied Cage's objection and ordered the hearing master's recommendation accepted. The district court also granted Coppedge's request for attorney fees and costs, reasoning that Cage's objection was untimely and that the court previously denied two objections that Cage filed concerning the temporary modification of his support obligation.

Fourteen days after Cage was served with notice of entry of the district court's decision, he moved for reconsideration reiterating his arguments concerning the timeliness of his objection. However, the hearing master determined that Cage's motion was untimely and recommended that it be denied, which the district court approved. This appeal followed.

On appeal, Cage challenges the district court's determination that his objection to the hearing master's recommendation was untimely. This court reviews decisions regarding child support for an abuse of

discretion. *See Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

Because the parties' arguments from below reflect confusion over the applicable deadline for objecting to a hearing master's recommendation concerning child support, we first clarify which legal authority governs. Initially, several statutes and court rules address the deadline for filing an objection to a hearing master's recommendation in a child support matter, but the requirement was traditionally that such an objection must be filed and served within 10 days after the objecting party receives the recommendation. *See* NRS 3.405(4) (setting forth a 10-day objection period in the context of NRS Chapter 3's provisions concerning actions relating to paternity or support of children); NRS 425.3844(2) (doing the same in the context of NRS Chapter 425's provisions establishing procedures for the judicial enforcement of a parent's child support obligation); EDCR 1.40(e) (doing the same in setting forth the duties of a child support hearing master appointed by the presiding judge of the family division of the district court pursuant to EDCR 1.31(b)(5)). When a party failed to file a timely objection, the district court was required to accept the hearing master's recommendation and to enter judgment thereon under NRS 425.3844(3)(a) and EDCR 1.40(e), and to do the same pursuant to NRS 3.405(4) provided that the recommendation was not clearly erroneous.

Until recently, NRCP 53(e)(2) (2005) provided for a similar 10-day objection period, but the rule only applied to proceedings referred to a special master, rather than those referred to a standing master pursuant to statutes or rules like NRS 3.405(2), NRS 425.381, and EDCR 1.31(b)(5), such as the matter at issue here. However, NRCP 53 was amended effective

March 1, 2019—well before DAFS filed the motion to modify support on Cage’s behalf, which was the motion that led to the order at issue in this appeal. *See In re Creating a Comm. to Update and Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, Dec. 31, 2018). The amended rule applies to any proceeding before a special or standing master, and it authorizes the district court to adopt a hearing master’s recommendation without a hearing if a party does not object to the recommendation within fourteen days after it is served. NRCP 53(f)(1), (h)(1)-(2). That 14-day objection period supplanted the previous 10-day objection period set forth in NRS 3.405(4), NRS 425.3844(2), and EDCR 1.40(e), and it governs in this case. *See* NRCP 83(a)(1) (“A local rule must be consistent with—but not duplicate—[the NRCP.]”); *see also State v. Connery*, 99 Nev. 342, 345, 661 P.2d 1298, 1300 (1983) (“[W]here . . . a rule of procedure is promulgated in conflict with a pre-existing procedural statute, the rule supersedes the statute and controls.”). Thus, because notice of entry of the hearing master’s recommendation was served on Cage on October 27, 2020, the deadline for him to file an objection was November 10, 2020. *See* NRCP 53(f)(1).

Turning to the timeliness of Cage’s objection, he maintains that it should have been deemed filed on November 9, 2020, when it was postmarked. We agree. Indeed, the record on appeal demonstrates that, although Cage mailed his objection before the filing deadline, 8 days passed before it was stamped as received by the district court clerk’s office, which did not file it until another 13 days had passed. It therefore appears from the record that Cage made every effort to timely object to the hearing

master's recommendation, but was hindered by delays in the postal system and the district court clerk's office. See NRCP 5(b)(2)(C) (stating that service is complete upon mailing), (d)(2)(A) (stating that papers not filed electronically are filed by delivering them to the clerk). Thus, under these circumstances, we conclude that the district court abused its discretion insofar as it approved the hearing master's recommendation based on its determination that Cage's objection to the recommendation was untimely. See *Wallace*, 112 Nev. at 1019, 922 P.2d at 543.

We recognize that the district court also approved the hearing master's recommendation because it determined that it could not find that the recommendation was clearly erroneous. However, in making its ruling, the district court expressly refused to consider Cage's objection. As a result, we necessarily reverse and remand the order approving the hearing master's recommendation for the district court to consider Cage's objection.³ See *9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020) (declining to address an issue that the district court did not resolve); see also *Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance."). And in light of the foregoing, we must also reverse the district court's order granting Coppedge's request for attorney fees and costs, which

³While this court generally will not grant a pro se appellant relief without providing the respondent an opportunity to respond, NRAP 46A(c), a response here would be futile given that the district court improperly concluded that Cage's objection was untimely and apparently did not consider it as a result.

was based in part on the court's conclusion that Cage's objection was untimely. Nevertheless, nothing in this order precludes the district court from reevaluating Coppedge's request for attorney fees and costs once it considers the merits of Cage's objection to the hearing master's recommendation and makes a ruling on that objection.

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Dedree Butler, District Judge, Family Court Division
Kori Lovett Cage
Ghandi Deeter Blackham
Clark County District Attorney
Eighth District Court Clerk

⁴Insofar as Cage 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 our disposition of this appeal.