

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BARTHOLOMEW M. MAHONEY, JR.,
Appellant,
vs.
BONNIE M. MAHONEY,
Respondent.

BARTHOLOMEW M. MAHONEY, JR.,
Appellant,
vs.
BONNIE M. MAHONEY,
Respondent.

No. 82412-COA

FILED

JUL 21 2022

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

No. 82413-COA

ORDER OF AFFIRMANCE

Bartholomew M. Mahoney, Jr. (Bart) appeals from post-divorce decree orders reducing arrearages to judgment and awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

In 2000, Bart and Bonnie M. Mahoney were married in Las Vegas, Nevada.¹ During their marriage, Bart and Bonnie had two children: B.M., born on October 29, 2001, and S.M., born on June 12, 2004. In February 2016, Bart filed for divorce. The parties reached an agreement on the provisions of the divorce, and their agreement was merged into the divorce decree.

In the decree, Bonnie and Bart agreed that they would share joint legal custody of the two minor children, but that Bonnie would receive primary physical custody of both children. Further, the decree provided that Bart was to pay Bonnie child support and cover the children on his medical insurance plan. Additionally, the decree ordered Bart to pay Bonnie

¹We do not recount the facts except as necessary to our disposition.

monthly alimony for five years beginning September 1, 2015, as well as 25% of his annual bonuses, also commencing on September 1, 2015, and to provide Bonnie with his W-2 forms annually for five years. The degree also provided that if Bart failed to provide Bonnie with his annual W-2 forms, Bart would have to pay Bonnie 35% of his annual bonuses. Moreover, Bart was to pay the attorney fees and costs that Bonnie incurred in litigating the divorce.

Thereafter, Bart failed to pay the child support, alimony, and attorney fees as set forth in the decree, nor did he pay Bonnie a portion of his annual bonuses or provide her with his annual W-2 forms as required. Accordingly, in May 2019, Bonnie filed a motion to reduce arrearages, interest, and penalties to judgment; to modify alimony; to review child support; and for sanctions and attorney fees (hereinafter “motion to reduce arrearages to judgment”). In her motion, Bonnie moved to collect from Bart unpaid child support, alimony, attorney fees, insurance coverage, and portions of Bart’s annual bonuses, including interest and penalties. Bonnie also claimed that Bart failed to provide her with any of his W-2 forms and therefore was required to pay her 35% of his bonuses as ordered in the divorce decree. Bonnie further requested that the court review and modify Bart’s child support obligations, as it had been three years since the initial order set child support and Bonnie was now unemployed.

Subsequently, the district court set a hearing for June 2019, to address Bonnie’s motion to reduce arrearages to judgment, but Bonnie moved to continue the hearing for 30 days because the motion with the notice of the hearing had been mailed to Bart’s former address and was returned undelivered. Bart was then served with the motion at his current address on Rafael Rivera Way. On August 21, 2019, Bart—by and through his

attorney—filed an opposition to Bonnie’s motion to reduce arrearages to judgment and a countermotion to strike Bonnie’s motion.

After a hearing on the matter, the district court entered an order directing Bart to provide Bonnie with his W-2 forms for 2015-2018 and continued the matter to November 2019. At the November hearing, the court heard arguments from both parties and set the matter for an evidentiary hearing in May 2020. In March 2020, Bart’s attorney filed a motion to withdraw because Bart had not yet formally retained him as counsel and Bart had ceased communicating with him for over a month. The district court ultimately granted Bart’s counsel’s motion to withdraw.

Thereafter, Bart, acting pro se, and Bonnie’s attorney stipulated to a continuance of the evidentiary hearing, and the district court reset the evidentiary hearing for October 2020. In September 2020, the court sua sponte entered a notice rescheduling the evidentiary hearing to December 3, 2020. The district court’s notice certified that Bart’s former attorney was served via electronic service but did not indicate that Bart as a pro se litigant was served with the notice. In September 2020, Bonnie’s attorney filed a notice of the new evidentiary hearing date with an amended certificate of service that showed Bart was served with the notice via mail at his Rafael Rivera Way address, which was the address on file with the court. In October 2020, the district court entered a separate order confirming December 3, 2020, as the date for the evidentiary hearing. The certificate of service for this order listed Bart’s last-known address but did not specify that Bart was served by U.S. mail. In November 2020, Bonnie made multiple pre-trial filings that contained the date and time of the evidentiary hearing and included a certificate of service that showed Bart was served with copies of the filings via electronic mail, using the same email address that Bart had previously used to directly correspond with Bonnie’s attorney.

At the evidentiary hearing on December 3, 2020, Bart failed to appear, and the district court proceeded to address the pending motion and countermotion with only Bonnie and her attorney present. Bonnie introduced numerous exhibits into evidence showing, inter alia, Bart's income and bonus receipts, which had been obtained via subpoenas. Later in December 2020, the district court granted Bonnie's motion to reduce arrearages to judgment, finding that Bart was not present despite being fully notified of the evidentiary hearing. Further, the court found that Bart owed Bonnie child support, alimony, and attorney fees and costs from the underlying divorce. The court also found that Bart failed to pay Bonnie a portion of his bonuses and, because he also failed to provide her with his annual W-2 forms, awarded her 35% of Bart's bonuses. Further, the district court granted Bonnie's request for attorney fees and costs for having to file her motion to reduce arrearages to judgment, but the court deferred determining the amount of the award until Bonnie submitted a memorandum setting forth the attorney fees and costs that she incurred. Thereafter, Bonnie filed a memorandum detailing her attorney fees and costs incurred in enforcing the divorce decree and reducing arrearages to judgment. In January 2021, the district court awarded Bonnie attorney fees and costs.

Soon thereafter, Bart filed a motion to set aside the district court's orders pursuant to NRCP 60(b), claiming that he was never notified of the December 3, 2020, evidentiary hearing and therefore the resulting orders were void. However, before the district court had an opportunity to rule on Bart's motion to set aside, Bart prematurely² filed a notice of appeal,

²Although Bart filed the instant appeal before the post-judgment motion was resolved by the district court, it is properly before us pursuant

challenging the district court's orders granting Bonnie's motion to reduce arrearages to judgment, distribution of bonus monies, and Bonnie's request for attorney fees and costs.

On appeal, Bart first argues that the district court's finding that Bart was properly notified of the December 3, 2020, evidentiary hearing is not supported by substantial evidence in the record. Second, Bart raises numerous arguments challenging whether the findings in the district court's order granting Bonnie's motion to reduce arrearages to judgment are supported by substantial evidence, specifically regarding the court's award of spousal and child support arrears, portions of Bart's annual bonuses, and interest and penalties. Finally, Bart argues that the district court erred when it awarded Bonnie attorney fees and costs because she failed to itemize her fees and costs.

Conversely, Bonnie asserts that substantial evidence supports the district court's pertinent findings. Moreover, Bonnie contends that the district court properly awarded her attorney fees and costs as she submitted a detailed memorandum outlining her fees and costs and the district court made comprehensive findings in accordance with *Brunzell*.³ We find Bart's arguments unpersuasive and therefore affirm.

to NRAP 4(a)(6) as the notice of appeal is treated as being filed on April 12, 2021, the date the district court entered its order denying Bart's motion to set aside pursuant to NRCP 60(b). However, because Bart failed to address the district court's order denying his motion to set aside in his briefings, he waived any challenge to that order. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that those issues that could be raised on appeal, but are not, are deemed waived).

³*Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

First, there is substantial evidence in the record supporting the district court's findings that Bart was properly notified of the evidentiary hearing to afford him due process. On appeal, "this court will not disturb a district court's findings of fact if they are supported by substantial evidence." *Keife v. Logan*, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003). "Substantial evidence is that [evidence] which a reasonable mind might accept as adequate to support a conclusion." *J.D. Constr., Inc. v. IBEX Int'l Grp.*, 126 Nev. 366, 380, 240 P.3d 1033, 1043 (2010) (alteration in original) (quoting *Radaker v. Scott*, 109 Nev. 653, 657, 855 P.2d 1037, 1040 (1993)).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Grupo Famsa, S.A. de C.V. v. Eighth Judicial Dist. Court*, 132 Nev. 334, 337, 371 P.3d 1048, 1050 (2016) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950)). "Due process is satisfied by giving both parties 'a meaningful opportunity to present their case.'" *J.D. Constr.*, 126 Nev. at 376, 240 P.3d at 1040 (quoting *Mathews v. Eldridge*, 424 U.S. 319 (1976)).

Administrative Order 20-17, which was issued on June 1, 2020, by the Eighth Judicial District Court, provides that "[a]ll lawyers and self-represented litigants are required to register for electronic service and update any change of e-mail with the Court." Nevada Electronic Filing and Conversion Rule (NEFCR) 9(d) provides that "[i]f a party is not receiving electronic service through the [electronic filing system], the filer must serve each submitted document on the party by traditional means." And NRCP 5(b)(2)(C) provides that service of "a written notice, appearance, demand, offer of judgment, or any similar paper" may be made by "mailing it to the

person's last-known address—in which event service is complete upon mailing.”

In this case, substantial evidence supports the district court's finding that Bart was properly notified of the evidentiary hearing, and as such, Bart fails to demonstrate that any due process violation occurred. Here, the record demonstrates that Bart received notice of the rescheduled hearing by mail at his last-known address.⁴ The record also reflects that after the district court rescheduled the evidentiary hearing to December 3, 2020, Bonnie's attorney filed an amended certificate of service, which showed that Bart was served by mail at the address. Thus, the district court did not err in finding that Bart was notified of the evidentiary hearing because the record reflects that Bonnie mailed notice of the evidentiary hearing to Bart at his last-known address, which was proper notice under NRCP 5(b)(2)(C). *See Durango Fire Prot., Inc. v. Troncoso*, 120 Nev. 658, 663, 98 P.3d 691, 694 (2004) (rejecting a party's claimed lack of knowledge of a scheduled hearing when notice of the hearing was mailed to the party's address of record because, under NRCP 5(b), service is complete upon mailing).

Moreover, Bart had actual notice of the evidentiary hearing as the record shows that Bonnie's attorney sent Bart emails, containing several pretrial filings containing the date and time of the hearing, to the same email address that Bart had previously used to communicate with Bonnie's attorney. Bart points to nothing in the record indicating that he did not

⁴The record supports that this was Bart's last-known address when Grigsby filed his notice of withdrawal as Bart's attorney. Grigsby included a certificate of service that listed this address as Bart's mailing address. Moreover, when Bart, acting pro se, stipulated to continue the evidentiary hearing, this address was listed as his mailing address.

actually receive notice of the December 3, 2020, evidentiary hearing, such as a sworn affidavit or other proof that he was not in fact living at his last-known address and therefore did not receive notice.⁵ Thus, Bart fails to show that he did not have notice of the evidentiary hearing, and the district court's finding that Bart was properly served and actually notified of the hearing date is supported by substantial evidence in the record.

Second, regarding Bart's objections to the district court's findings in its order granting Bonnie's motion to reduce arrearages to judgment, we deem such arguments waived as Bart failed to argue these points in the proceedings below.⁶ *See Old Aztec Mine, Inc. v. Brown*, 97 Nev.

⁵Even if Bart did move residences during the pendency of the litigation, the onus was on him to update the court with his address, as he clearly was aware that he was a party in the litigation. *See Prestige of Beverly Hills, Inc. v. Weber*, No. 55837, 2012 WL 991696, at *4 (Nev. Mar. 21, 2012) (Order of Affirmance) (citing 66 C.J.S. *Notice* § 15 n.1 (2007) for the proposition that a party has the duty to keep the court informed of any change in address). Moreover, Bart was required to register for electronic service pursuant to Administrative Order 20-17, but evidently failed to do so.

⁶Below, Bart had several opportunities to challenge the district court's award of alimony and child support arrears, portions of Bart's annual bonuses, and interest and penalties, but failed to do so. Bart filed an opposition to Bonnie's motion to reduce arrearages to judgment but failed to argue any of the specific arguments that he now raises on appeal. Although Bart claimed that Bonnie's schedule of arrears was "inaccurate and incomplete," Bart failed to explain why this was the case. Moreover, after filing her first schedule of arrears, Bonnie filed multiple updated schedules, which showed the amounts Bart owed in spousal and child support arrears, delinquent attorney fees and costs from the underlying divorce, and unpaid portions of Bart's bonuses, including interest and penalties. However, Bart failed to dispute or otherwise respond to the claims in Bonnie's updated schedules of arrears. Further, Bonnie filed a pretrial memorandum detailing her requests and the amounts owed to her by Bart and substantively addressing the issues that Bart now raises, but Bart again

49, 52, 623 P.2d 981, 983 (1981) (recognizing that arguments raised for the first time on appeal are waived); *Lam v. Nhu Tran Found., Inc.*, No. 82032-COA, 2021 WL 4317390 (Nev. Ct. App. Sept. 22, 2021) (Order of Affirmance) (rejecting appellant’s argument that “manifest injustice” and “exceptional circumstances” are exceptions to waiver where the appellant had the opportunity to raise an issue below but failed to do so); *cf.* NRCP 1 (“These rules . . . should be construed, administered, and employed by the court and the parties to secure the just, *speedy*, and *inexpensive* determination of every action and proceeding.” (emphases added)).

Finally, the district court did not abuse its discretion in awarding Bonnie attorney fees and costs. An award of attorney fees and costs is reviewed for an abuse of discretion. *MB Am., Inc. v. Alaska Pac. Leasing Co.*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016); *see also Campbell v. Campbell*, 101 Nev. 380, 383, 705 P.2d 154, 156 (1985). As to child support arrears, the Nevada Supreme Court has recognized that absent a finding of undue hardship, NRS 125B.140(2)(c)(2) mandates an award of attorney fees if the court finds that arrearages are owed. *See Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003) (providing that the district court must award attorney fees under NRS 125B.140 unless it finds an undue hardship). Moreover, NRS 125.180(1), which governs judgments for arrearages in payment of “alimony and support,” provides that

[w]hen either party to an action for divorce, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, the district court may make an order directing entry of judgment for the amount of such

failed to respond, nor did he file a pretrial memorandum of his own. Finally, Bart failed to attend the evidentiary hearing despite being properly notified of the date, and therefore, failed to dispute, address, or offer testimony or other evidence at the hearing to support his position.

arrears, together with costs and a reasonable attorney's fee.

Importantly, NRS 125.180(1) permits an award for both attorney fees *and* costs. Further, while it is within the trial court's discretion to determine the reasonable amount of attorney fees under a statute or rule, in exercising that discretion, the court must evaluate the factors set forth in *Brunzell*. *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005). The *Brunzell* factors include

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

85 Nev. at 349, 455 P.2d at 33.

In this case, the district court granted Bonnie's request for attorney fees and costs in its order granting the motion to reduce arrearages to judgment, which was authorized by the above statutes, but reserved making a specific award until Bonnie submitted a memorandum of her fees and costs. After Bonnie filed a memorandum detailing her attorney fees and costs, the district court entered an award accompanied by detailed findings pursuant to *Brunzell*. Specifically, the court found that (1) Bonnie's attorney was qualified, and her hourly fee was reasonable based on her qualifications; (2) the character of the work was intricate and obfuscated by Bart's failure participate in the proceedings; (3) the fees incurred were "necessary, reasonable, and commensurate to the work performed;" and (4) Bonnie was successful in bringing her motion and was the prevailing party. As the

district court thoroughly analyzed the *Brunzell* factors, we conclude that the district court did not abuse its discretion in awarding attorney fees and costs to Bonnie.⁷ Therefore, we


ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla

TAO, J., concurring:

I concur in the judgment.


_____, J.
Tao

cc: Hon. Vincent Ochoa, District Judge
Ara H. Shirinian, Settlement Judge
The Grigsby Law Group
Radford J. Smith, Chartered
Eighth District Court Clerk

⁷Insofar 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 our disposition of this appeal.