

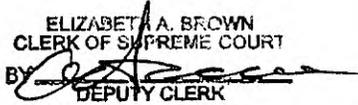
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN JACE ROOSEVELT
SMITH,
Appellant,
vs.
STATE OF NEVADA DIVISION OF
WELFARE AND SUPPORTIVE
SERVICES,
Respondent.

No. 83309-COA

FILED

OCT 31 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

Jonathan Jace Roosevelt Smith appeals from a district court order regarding child support. Eighth Judicial District Court, Clark County; Jack B. Ames, Senior Judge.

This matter involves the enforcement of a California child support order. In 2017, respondent Nevada Division of Welfare and Supportive Services filed a “Notice and Finding of Financial Responsibility to Enforce, Adjust and/or Register an Existing Order, Determine Controlling Order, Establish an Obligation or Determine Paternity,” which appears to be a combined “notice and finding of financial responsibility” under NRS 425.3822 and notice of registration of a 2013 California child support order under the Uniform Interstate Family Support Act (UIFSA) as codified in NRS 130.605. The California order named “Jonathan Jace Roosevelt Smith” as the father of the minor child and required him to pay \$238 per month in child support.¹ The petition also included documents

¹Smith contends that this order was intended for a different person, as his name is “Jonathan Lee Smith” and not “Jonathan Jace Roosevelt Smith,” and also contends that paternity of the minor child was never

which demonstrated that Smith had not made payments since entry of the California order and that he therefore owed approximately \$12,376 in child support arrears.

Smith did not respond or object to that initial 2017 notice, but in 2021, after retaining counsel, he filed a “Motion to Void Enforcement of Child Support Order,” alleging, among other things, that he was never served with notice of the California proceedings, the subsequent California order, or the Nevada notice filed in 2017.² Consequently, Smith argued that the failure to serve him with the notice in 2017 violated his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution as he was unable to contest the registration and enforcement of the order. Smith also alleged in the motion that he became aware of this Nevada action when respondent improperly intercepted \$19,811.12 out of a \$30,000 civil settlement paid to him from the Bureau of Prisons through the Treasury Offset Program (TOP) established in 31 U.S.C. § 3716 and 31 C.F.R. § 285.1.

At the hearing on the motion, counsel for respondent argued that, in 2015, Smith had been served with notice that his child support arrears were being enforced by Nevada and that respondent had mailed him the statutory notice required to inform him that any federal payments would be subject to future administrative offset. Following the hearing, the

established. However, Smith failed to present any evidence to support these assertions in the district court.

²In its answering brief, respondent admitted that it did not complete service of the Nevada notice upon Smith in the manner required by NRS 425.3822 or NRS 130.602.

district court entered an order denying Smith's motion and summarily concluded that because respondent had previously notified Smith that his child support arrears had been referred to the Bureau of the Fiscal Service, he was not required to be provided with additional notice that any federal payments may be subject to offset. Notably, neither the district court nor respondent addressed Smith's contentions that he was not served with the 2017 notice. This appeal followed.

On appeal, Smith argues that his due process rights were violated as he was never served with notice of the Nevada child support proceedings, and also contends that respondent failed to comply with federal regulations when it intercepted his settlement funds to pay his alleged child support arrears. Consequently, Smith asks this court to remand this matter for a return of the offset funds and for further proceedings in the district court.

Due to the service concerns in this case, this court entered an order directing full briefing in this appeal, which instructed respondent to address Smith's arguments, and to provide briefing on whether the district court complied with the provisions of the UIFSA under NRS Chapter 130, and whether Smith had been properly served with notice of the California child support order under NRS Chapter 130 and NRS Chapter 425.

In its answering brief, respondent states it was not required to register the California support order, as it was enforcing that order through administrative procedures permitted by NRS 130.507(2) (stating that "[u]pon receipt of the documents [establishing an out of state order of support], the support-enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or

an income-withholding order, or both”). Additionally, respondent argues that Smith’s due process rights were not violated by the administrative offset of his settlement funds as it mailed him the required notice that his funds were subject to offset under 31 C.F.R. §285.1 (d) and (h) in April of 2015. Finally, respondent indicates that it began the process of registering the California support order by filing the 2017 notice but admits that it did not complete that process or serve that notice on Smith due to his incarceration.

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)).

We first address Smith’s arguments that he was not served with the 2017 notice and finding of financial responsibility. As relevant here, a notice and finding of financial responsibility under NRS 425.3822(2) “must be served upon the parent [against whom support is sought] in the manner prescribed for service of summons in a civil action or by certified mail, restricted delivery, with return receipt requested.” And under the UIFSA—specifically NRS 130.605(1)—“[w]hen a support order or income-withholding order issued in another state . . . is registered, the registering tribunal of this State shall notify the nonregistering party and a support-enforcement agency of this State.” These service requirements are especially important, as they protect the nonmoving party’s due process

rights by informing him or her of the time and ability to contest the registration. *See* NRS 130.605(2)(b); 130.606(1) (allowing a party, within 20 days of service of a notice of registration to “seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to NRS 130.607”); NRS 425.3828(1) (stating, that upon a written objection to the notice of financial responsibility, the court must hold an evidentiary hearing under NRS 425.3832).

In the hearing below, the district attorney’s office failed to inform the court that it abandoned its attempt to register the California order in light of its decision to continue administratively enforcing the case and that it did not serve the 2017 notice. And the district court failed to address Smith’s arguments that he was not served with the 2017 notice during the hearing or in its order.³ Consequently, the district court treated the 2017 notice as properly served and entered an order confirming the amount of child support and arrears Smith owed without providing him with the due process protections required under NRS 130.605(2)(b) and NRS 130.606(1). The district court’s failure to address these points is especially egregious here, as failure to contest the validity of such an order

³In its answering brief respondent admits that it did not complete the registration and service requirements related to its 2017 notice of financial responsibility and contends that it can continue to administratively enforce the California support order without registering the same. However, respondent raises this argument for the first time on appeal, and we therefore decline to consider it. *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, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).

within the time provided in NRS 130.605(2)(b) “precludes further contest of that order with respect to any matter that could have been asserted.” NRS 130.605(2)(c); *Blount v. Blount*, 138 Nev., Adv. Op. 52, 512 P.3d 1254, 1257-58 (2022) (strictly construing a similar deadline under the Uniform Child Custody Jurisdiction and Enforcement Act and noting its parallels to the Interstate Family Support Act in NRS Chapter 130). For these reasons, we conclude that the district court abused its discretion by failing to address Smith’s arguments that he was not served with the 2017 notice and finding of financial responsibility.⁴

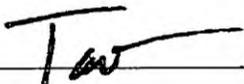
Because Smith was not served with the 2017 notice as required under Nevada law, we vacate the challenged order and remand this matter to the district court for further proceedings. On remand, we direct the district court to strike the Notice and Finding of Financial Responsibility to Enforce, Adjust and/or Register an Existing Order, Determine Controlling Order, Establish an Obligation or Determine Paternity, filed on October 18,

⁴As to Smith’s argument that respondent failed to provide him with notice that his child support debt would be referred to the Treasury Offset Program, we note that the record before us on appeal is devoid of admissible evidence demonstrating that respondent provided Smith with the required notice that his federal funds would be subject to administrative offset under 31 C.F.R. §285.1 (d), (h). Indeed, in the proceedings below, the only “evidence” respondent produced concerning this fact was the oral argument of counsel provided at the hearing on the motion, and respondent relies upon those same representations on appeal. Respondent did not file a written opposition to the motion, nor did it file an affidavit or enter any documents into evidence supporting these claims. See *Nev. Ass’n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014) (stating that “[a]rguments of counsel are not evidence and do not establish the facts of the case”). We therefore conclude that the district court’s findings in regards to the notice of administrative offset were not supported by substantial evidence.

2017, in light of respondent's failure to serve this document on Smith. We clarify that this disposition does not preclude the continued enforcement of the California support order by any means permitted under Nevada or federal law or prevent respondent from initiating new proceedings to register the California support order. However, any future attempts to judicially enforce the California support order in Nevada must comply with the registration and service requirements of NRS Chapter 130.

It is so ORDERED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Presiding Judge, Eighth Judicial District Court, Family Division
Hon. Jack B. Ames, Senior Judge
Jonathan Jace Roosevelt Smith
Clark County District Attorney
Eighth District Court Clerk

⁵Insofar 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