IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN FREELOVE, Appellant, vs. LYNSEY FREELOVE, Respondent.	No. 82732-COA

FILED
FEB 07 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [illegible]
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Justin Freelove appeals from a district court order declining to modify a child support order. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.[1]

Justin and Lynsey were married for a little over a year before getting divorced.[2] They share one minor child. Lynsey has primary physical custody of the child and resides in Nevada. Justin lives in Idaho but shares joint legal custody with Lynsey.

Before moving, Justin filed a motion presumably seeking primary physical custody and permission to relocate with the child since he had joint physical custody of the minor child.[3] *See* NRS 125C.0065. Hearings were held on this motion, with Justin and Lynsey both present and represented by counsel. Following the hearings, Justin's child support obligation was set at $750 per month in November 2019. Justin was ordered to begin making child support payments and to also pay child support for

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[1]Court Master Gregory R. Shannon made the decisions that are at issue in this appeal and the district court clerk filed the order without a signature from Judge Steinheimer pursuant to NRS 425.3844(3)(a).

[2]We recount the facts only as necessary for our disposition.

[3]The motion is not in the record, but the child support order from November 2019 implies that this was the sequence of events.

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October 2019, which is when Lynsey was apparently awarded primary physical custody of the minor child.[4] Justin claims that he did not receive notice of this order, which is why he did not initially pay child support, but the record does not reveal whether the order was served on him or his former counsel, or not at all.

Lynsey filed a motion to alter or amend the judgment and sought to have the district court remove the $250 downward deviation Justin was granted in monthly child support if he traveled to exercise parenting time with the minor child. In April 2020, the district court denied Lynsey's motion as being untimely and declined to change Justin's child support obligation in an amended child support order. In this order the district court clarified that Justin's child support obligation began in October 2019. Justin received notice of his child support obligation after the district court entered the amended order and he began making child support payments. However, he sent a letter to the Washoe County District Attorney's Office contesting the amount of past-due child support because he claimed he had not been notified that he was required to pay because he never received the 2019 order. By June 2020, Justin owed $6,031.59 in arrears, interest, and penalties.

In February 2021, Justin obtained new employment in Idaho. This resulted in a gross monthly income decrease of 32.8 percent. After obtaining his new employment, Justin requested that his child support obligation be modified to reflect his new income. A modification hearing was held in front of a court master, and neither Justin nor Lynsey were represented by counsel at that hearing. The master determined that there were no significant changed circumstances warranting modification of the

[4]The original child support order indicates that Lynsey was awarded primary physical custody in October 2019.

child support order. Neither Justin nor Lynsey filed an objection to the master's findings and recommendations, so the clerk of the district court filed the findings and recommendations as a judgment and order after the expiration of the objection period. This appeal followed.

On appeal, Justin raises three arguments: (1) the court master erred in determining there was no change of circumstances because his gross monthly income had decreased by over 20 percent, and the court master failed to adequately review the circumstances; (2) the court master erred by not making specific findings on the relevant modification factors because his income decrease required a review of the child support order; and (3) his due process rights were violated when the court master imposed interest and penalties on his child support arrears because he did not have notice of the original child support order. In addition to responding to the merits of Justin's arguments, Lynsey argues that Justin's arguments are waived because he failed to file an objection to the master's findings and recommendations to the district court. We disagree that Justin waived his arguments, and that Justin's due process rights were violated by the imposition of interest and penalties on his arrears, but we agree that the court master erred by not adequately reviewing the circumstances and by not making specific findings. We address each argument in turn.

Justin did not waive his arguments

Lynsey argues that Justin waived his claims on appeal because he failed to object to the special master's findings and recommendations below. Justin responds that the waiver rule is not as strict as Lynsey claims and that enforcing Lynsey's proposed rule would be fundamentally unfair because it would be a harsh and overly formalistic punishment.

Lynsey relies on the principle that "[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." *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). NRS 3.405(2) allows the district court to appoint masters to hear child support cases and NRS 3.405(4) requires an objection to the findings and recommendations to be filed within 10 days. Additionally, NRS 425.3844(3)(a) states that a notice of objection to the recommendation for child support must be filed within 10 days following the decision. It is undisputed that Justin did not object to the master's findings and recommendations until filing the present appeal.

The Nevada Supreme Court has addressed a similar issue in the context of alimony and NRS 125.005(4). *See Siragusa v. Siragusa*, 108 Nev. 987, 843 P.2d 807 (1992). NRS 125.005(4), much like NRS 3.405(4) and NRS 425.3844(3)(a), states that a referee's report and recommendations become a judgment that may be entered if they are not objected to within 10 days. Siragusa failed to object to the referee's report but, instead, challenged the alimony order on appeal. *Siragusa*, 108 Nev. at 990, 843 P.2d at 809. The supreme court concluded that under NRS 125.005(4), Siragusa's failure to object to the referee's report only prevented Siragusa from challenging the report in district court; it did not prevent Siragusa from appealing the district court's order adopting the referee's report to the Nevada Supreme Court. *Id.* at 991, 843 P.2d at 810. The court reached this conclusion after turning to legislative history, which revealed that the Legislature did not intend for the referee to be the final decision maker and "highest legal authority over many legal disputes." *Id.*

Turning to NRS 3.405 and NRS 425.3844, we interpret a statute in harmony with other statutes whenever possible. *See Pub. Emps.' Ret. Sys. of Nev. v. Gitter*, 133 Nev. 126, 131, 393 P.3d 673, 679 (2017). Since the supreme court has already interpreted NRS 125.005 to allow for an appeal to the supreme court even when the referee's report was not objected to, we

conclude that the principle of harmonizing statutes suggests NRS 3.405 and NRS 425.3844 be interpreted to allow an appeal even if the master's findings and recommendation were not objected to.

Finally, we note that the supreme court has a policy of deciding cases upon their merits whenever possible, *see Banks v. Heater*, 95 Nev. 610, 612, 600 P.2d 245, 246 (1979), but the best procedure is for the parties to object below and let the district court first determine and apply the facts and the law. For the foregoing reasons, we will consider this case on its merits despite the general rule that parties should object below.

The court master abused his discretion when he summarily denied Justin's request for modification by failing to consider and make specific findings as to the relevant modification factors

Justin argues that the court master abused his discretion by either (1) finding that Justin's gross monthly income had not decreased by at least 20 percent or (2) failing to substantively review the child support order for modification and make specific findings considering Justin's decreased income. Lynsey responds that the master did review the order and that there is no requirement under Nevada law to make specific factual findings when denying a motion to modify a child support order. We conclude that the court master acknowledged at the hearing that Justin's gross monthly income had decreased by at least 20 percent but abused his discretion when he failed to substantively review the child support order and make specific findings in support of his decision to deny modification.

This court reviews child support orders for an abuse of discretion. *Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 985 (2022). A district court abuses its discretion when its findings are not supported by substantial evidence. *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009), *overruled in part on other grounds by Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980. "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).

NRS 125B.145 governs the review and modification of orders for child support. NRS 125B.145(4) provides that "a change of 20 percent or more in the gross monthly income of a person who is subject to an order for the support of a child shall be deemed to constitute changed circumstances requiring a review for modification" of that order. In *Rivero,* the Nevada Supreme Court explained what a factfinder is required to do when conducting a mandatory "review" of a child support order: consider the "same factual circumstances" that were relevant to the initial child support order. *Rivero,* 125 Nev. at 432, 216 P.3d at 228. Contrary to Lynsey's argument, the requirement that a factfinder "expressly set forth its findings of fact" applies even when the factfinder *denies* a motion to modify child support. *Id.* at 438, 216 P.3d at 232. (reversing a district court denial of a motion to modify child support where the district court failed to make "specific findings of fact regarding whether Ms. Rivero was entitled to receive child support . . . and explaining any deviations from the statutory formulas").

Here, the record shows that Justin's income decreased by about 33 percent, triggering a mandatory review of his child support obligation. *See* NRS 125B.145(4). The court master held a hearing to consider Justin's motion, but a review of the child support order required the court master to consider the guidelines created by the Administrator of the Division of Welfare and Supportive Services of the Department of Health and Human Services. *See Rivero*, 125 Nev. at 433, 216 P.3d at 229;[5] *see also* NRS

[5]When *Rivero* was decided, the statutory formula for setting and modifying child support was found in NRS 125B.070 and NRS 125B.080.

125B.080. When considering the adjustment of a child support order, the court or master must consider "[t]he obligor's ability to pay," along with other factors not relevant to the present matter. *See* NAC 425.150(1)(h). We note that while the master was required to review the child support order, he was not required to modify the child support order. *See Rivero*, 125 Nev. at 431-32, 216 P.3d at 228.

The court master found that there was not a significant change of circumstances to warrant modification of the child support order. This conclusory statement does not offer any findings of fact supported by substantial evidence as required by *Rivero*. It is undisputed that Justin's gross monthly income decreased by nearly 33 percent after he relocated to Idaho and obtained a new job. This information was presented to the master. While this information alone did not require a modification to the child support order, it did require a proper review of the existing order. *See id.* at 432-33, 216 P.3d at 228-29.

Additionally, when a factfinder "deviates from the statutory child support formula, it must set forth specific findings of fact stating the basis for the deviation and what the support would have been absent the deviation." *Rivero*, 125 Nev. at 438, 216 P.3d at 232. Further, the requirement that a factfinder make express factual findings applies "[e]ven if the record reveals the district court's reasoning for the deviation." *Id.*

The master heard testimony that not only had Justin's income decreased, but the effect of the decrease resulted in his base child support obligation decreasing from $750 to $555. This lesser amount would be the

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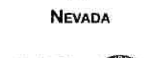
Effective February 1, 2020, Nevada courts must now "apply the guidelines established by the Administrator of the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.620" to establish and modify child support obligations. NRS.125B.080.

correct amount if NAC 425.140(1)(a) was applied, which states that the base child support obligation of an obligor earning $6,000 or less in gross monthly income is 16 percent of the obligor's gross monthly income. However, the master determined that Justin's base child support obligation would remain $750 per month. This effectively acts as an upward deviation. Certainly, the master could have modified Justin's base child support obligation "in accordance with the specific needs of the child and the economic circumstances of the parties based on [certain enumerated] factors and specific findings of fact." NAC 425.150(1). But in order to do so, the master was first required to make "specific findings of fact." *Rivero*, 125 Nev. at 438, 216 P.3d at 232.

Here, the master made none of the required factual findings nor did he explain why Justin's decrease in income was not significant. *Cf.* NRS 125B.145(4) (stating that "a change of 20 percent or more in the gross monthly income of a person who is subject to an order for the support of a child *shall be deemed to constitute changed circumstances* requiring a review for modification of the order for the support of a child" (emphasis added)). The master's decision of leaving in place the prior child support amount had the effect of an upward deviation from the required amount of support without sufficient findings. *See Rivero*, 125 Nev. at 438, 216 P.3d at 232; *Anastassatos v. Anastassatos*, 112 Nev. 317, 320, 913 P.2d 652, 654 (1996); NAC 425.150(1).

This court grants deference to the district court and court master in child support orders, but the findings here are so conclusory that they may mask legal error in failing to properly review the motion to modify the child support order and make appropriate findings. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142. Therefore, we conclude that the court master abused his

discretion. Accordingly, the order must be reversed, and we remand for a new hearing.

Justin's due process rights were not violated when he was required to pay interest and penalties on his arrears

Justin summarily argues that his due process rights were violated when the court master ordered him to pay interest and penalties on his arrears from a child support order that he claims he had no knowledge of. Lynsey argues that Justin's argument has been waived and that Justin had notice of the amended child support order. Justin responds that he did not have notice of the 2019 child support order such that interest and penalties should not be enforced for failing to make his payments under that order. He acknowledges he knew about the amended child support order, which is why he began making payments after receiving the amended order.

Justin relies on a letter that he sent to the Washoe County District Attorney's Office to support his claim that he was not notified of the 2019 child support order. However, Justin's presence at the hearing that preceded the entry of the child support order was noted in the original child support order and he did not raise this due process argument in front of the court master despite having told the district attorney's office that he had no knowledge of the 2019 child support order prior to the hearing. Additionally, Justin failed to file a motion to set aside the order/judgment under NRCP 60(b). Accordingly, we conclude that Justin has waived this argument on appeal. *See Old Aztec*, 97 Nev. at 52, 623 P.2d at 983 (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal").[6]

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[6]Even if we consider the merits of Justin's argument, "[t]he key elements of due process are notice and hearing . . . ." *Kochendorfer v. Bd. of Cty. Comm'rs*, 93 Nev. 419, 424, 566 P.2d 1131, 1134 (1977). Justin did have

Justin also argues that the master failed to find whether the imposition of interest payments and penalties on the arrears was proper. Lynsey argues that the statute only requires findings if the court determines that paying interest on arrears would cause undue hardship. Since Justin never mentioned interest payments or penalties on his arrears during the hearing despite the Washoe County District Attorney notifying him it was seeking interest payments and penalties on his arrears and sought the same during the hearing, we consider this issue waived. *See Old Aztec*, 97 Nev. at 52, 623 P.2d at 983.[7]

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both notice and a hearing, since he was present at the hearing with counsel before the order was entered in November 2019 and knew that a written order was coming. While the record contains no explanation for Justin's claimed ignorance of and lack of notice of the child support order, the record also fails to reveal a due process violation. Further, Justin does not provide a cogent argument or relevant legal authority establishing a constitutional violation in these exact circumstances. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Moreover, we do not know what happened regarding service of the order. This issue should have been resolved in the district court. *See 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.").

[7]Even if we consider the merits of Justin's argument, no error occurred. NRS 125B.140(2)(c) states that the court shall include interest upon the arrears "unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts." The statute does not impose an affirmative duty on the court to state that no hardship exists before including interest payments on the arrears in the order. Additionally, Justin cites to no authority that requires a court to find that a parent would experience undue hardship before imposing penalties. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. We also note that the amount at issue here is approximately $378.

Finally, Justin argues that he should not have to pay arrears from October 2019 to November 2019 because the child support order was not entered until November 2019. The imposition of arrears beginning in October 2019 was clarified in the April 2020 amended child support order. Justin failed to appeal this order and failed to file a motion to set aside the order/judgment under NRCP 60(b). Therefore, this issue is not properly before this court.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[8]

_______________, C.J.
Gibbons

_______________, J.
Bulla

_______________, J.
Westbrook

cc: Hon. Connie J. Steinheimer, District Judge
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Jones Lovelock
Holland & Hart LLP/Las Vegas
Washoe District Court Clerk

[8]Insofar as the parties have raised 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.