IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALBERT JONATHON KAGAN,
Appellant,
vs.
APRIL DEEANN KAGAN,
Respondent.

No. 84644-COA

ORDER OF REVERSAL AND REMAND

Albert Jonathon Kagan appeals from a post-divorce decree order concerning child support and child support arrears. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

In their stipulated divorce decree, Albert and respondent April Deeann Kagan were awarded joint physical custody of their two minor children, and Albert was directed to pay April $906 per month in child support. Albert later moved to modify child support, arguing that more than three years had elapsed since child support was last addressed and that circumstances had changed since his gross monthly income decreased by more than 20 percent within that time. April, in turn, filed an opposition and countermotion in which she did not dispute that there had been a change in circumstances warranting a modification of child support, but instead, disputed what Albert's child support amount should be and argued that she was entitled to child support arrears.

Following a hearing, the district court entered an order in which it modified Albert's child support amount to $644.16 per month. Moreover, the district court concluded that Albert owed April $6,663.02 in child support arrears; and, based on the new child support amount,

determined that Albert made $1,407.36 in overpayments between the date that he filed his motion and the date the district court entered the modification order, which were to be credited against his child support arrears. Thus, the district court reduced $5,255.66 in child support arrears to judgment and directed Albert to begin paying $90 per month in satisfaction of that amount. This appeal followed.

This court reviews child support orders for an abuse of discretion. *Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). A district court abuses its discretion when its findings are not supported by substantial evidence, *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018), which is evidence that a reasonable person may accept as adequate to sustain a judgment, *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Although we deferentially review the district court's discretionary determinations, "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).

On appeal, Albert initially argues that the district court miscalculated his child support amount, pointing to certain representations that April's counsel made concerning her monthly gross income during the hearing on this matter, which Albert contends should have been factored into the district court's calculation. As a preliminary matter, the district court's failure to make any oral or written findings concerning April's monthly gross income hinders our review of its decision to modify Albert's child support amount. We recognize that, since the district court found that April's base child support obligation was $510.84, it is possible to work backward to determine that the monthly gross income on which that figure

was based was $2,322.[1] *See* NAC 425.115(3) (explaining that, when the parties' have joint physical custody, the district court must determine the base child support obligation of both parties); NAC 425.140 (setting forth the formulae for determining base child support obligations, which are based on the obligor's monthly gross income). However, regardless of whether we look at the income reported in the paycheck stubs attached to April's financial disclosure form or her counsel's representations concerning her income during the hearing on this matter, we discern no formula on which the district court could have relied to determine that April's monthly gross income was $2,322.

And because the district court's oral and written findings do not provide any clarification as to how the court calculated April's monthly gross income or otherwise indicate that there was a basis for deviating from the child support guidelines, *see* NAC 425.150(1) (authorizing the district court to adjust a party's child support obligation "in accordance with the specific needs of the child and the economic circumstances of the parties" provided that the district court considers certain enumerated factors and sets forth supporting findings of fact to support its decision), we cannot fully evaluate this issue. As a result, we cannot conclude that the district court's modification of Albert's child support amount was supported by substantial evidence. *See Miller*, 134 Nev. at 125, 412 P.3d at 1085; *Ellis*, 123 Nev. at 149, 161 P.3d at 242. Accordingly, we must reverse and remand for additional findings to support the district court's calculation of Albert's

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[1]Because April's base child support obligation for two children is 22 percent of her first $6,000 of income, *see* NAC 425.140(2)(a), and the district court determined that her base child support obligation was $510.84, the formula is as follows: $510.84 / 0.22 = $2,322.

child support amount, including an explanation of how the district court calculated April's monthly gross income.[2] *See Davis*, 131 Nev. at 450, 352 P.3d at 1142; *see also* NAC 425.120(1) (requiring the district court to determine each obligor's monthly gross income by considering "information relevant to the earning capacity of the obligor" without specifying a formula by which monthly gross income is to be calculated).

Additionally, since it is unclear from the record whether the district court considered if the modification was required based on changed circumstances and whether it was in the children's best interest to modify support, the court should likewise make findings to clarify those issues on remand. *See Romano v. Romano*, 138 Nev. 1, 7, 501 P.3d 980, 985 (2022) (providing that the "district court may modify a child-support order if there has been a change in circumstances and the modification is in the child's best interest"), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023).

Albert next challenges the district court's decision to reduce $5,255.66 in child support arrears to judgment, arguing, among other things, that the court's handling of the arrearages issue violated his due process rights. The record before this court demonstrates that, around the same time that Albert moved to modify his child support obligation, April sought assistance from the Clark County District Attorney Family Support Division (DAFS) to enforce Albert's child support obligation. *See* NRS

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[2]Because the district court relied on its modification of Albert's child support amount in concluding that he made overpayments between the date he filed his motion to modify child support and the date the challenged order was entered, the district court may need to reevaluate the overpayment amount on remand depending on how it resolves Albert's motion to modify child support.

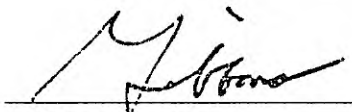
125B.150(1) (requiring the district attorney to assist custodial parents in establishing and enforcing support obligations). As a result, DAFS prepared an audit showing that Albert owed April $6,663.02 in child support arrears, which April requested the district court reduce to judgment in her motion practice that followed Albert's motion to modify support. Although Albert had previously argued that he satisfied his child support obligations in his motion practice, at the eventual hearing in this matter, the district court declined to consider his arguments in this respect. Instead, the district court orally adopted DAFS's $6,663.02 figure for Albert's child support arrears and indicated that he should present any concerns that he may have with DAFS's audit to DAFS.

Under these circumstances, we conclude that the district court violated Albert's procedural due process rights. In particular, by declining to consider Albert's arguments concerning his alleged child support arrears,[3] the district court denied him a meaningful opportunity to be heard with respect to the arrears before the court reduced them to judgment and directed Albert to begin making payments in satisfaction of the arrears—a deprivation of his property. *See In re Guardianship of Jones*, 139 Nev., Adv. Op. ___, 531 P.3d 1236, 1244 (2023) (explaining that procedural due process

[3]Albert's arguments below largely focused on certain of April's filings in a separate bankruptcy proceeding that she commenced, which appeared to contradict her allegation in the present case that she was entitled to child support arrears. Although April disputed the significance of the filings identified by Albert on grounds that she amended them in a manner consistent with her representations in the present case, because the district court declined to reach this issue, no evidence or testimony was taken to establish why her representations concerning child support arrears in the bankruptcy action were initially inconsistent with those that she made in the present case.

requires "notice and a meaningful opportunity to be heard"). Accordingly, we conclude that the district court erred by reducing Albert's alleged child support arrears to judgment, *see Mesi v. Mesi*, 136 Nev. 748, 750, 478 P.3d 366, 369 (2020) (providing that a deprivation of due process is an issue of constitutional dimension, which is reviewed de novo), and we therefore reverse that decision and remand for further proceedings before the district court.

It is so ORDERED.[4]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Vincent Ochoa, District Judge
Albert Jonathon Kagan
The Law Offices of Patrick Driscoll, LLC
Eighth District Court Clerk

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[4]While this court generally will not grant a pro se appellant relief without providing the respondent an opportunity to respond, *see* NRAP 46A(c), this appeal was submitted for decision on the opening brief and record after April filed a notice of her intent not to file an answering brief.

Insofar as Albert raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.