IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH RAUL GARCIA RODRIGUEZ,
Appellant,
vs.
ZOILA LEON-YANEZ,
Respondent.

No. 85289-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Joseph Raul Garcia Rodriguez appeals from a decree of divorce and order resolving a post-decree motion. Eighth Judicial District Court, Family Division, Clark County; Charles J. Hoskin, Judge.

In the underlying divorce proceeding between Garcia Rodriguez and respondent Zoila Leon-Yanez, the parties' disputes focused on distribution of community property, child support, alimony, and attorney fees. Garcia Rodriguez, who was proceeding pro se, eventually failed to file a pre-trial memorandum and appear at calendar call. The district court treated Garcia Rodriguez's failure to appear as a default and conducted a prove-up hearing where it took Leon-Yanez's testimony. Most notably, Leon-Yanez testified regarding a parcel of real property, which consisted of a single building on the corner of two streets, which had two units with separate street addresses: one on Pine Street and one on Ashton Street (P&A Street property). In particular, Leon-Yanez testified that the district court should award her the P&A Street property, require Garcia Rodriguez to compensate her for credit card debt she incurred to renovate the property,

and award Garcia Rodriguez rental income from the property that he had collected, which, according to Leon-Yanez, was a fair and equal distribution.

Thereafter, the district court entered a decree of divorce that required Garcia Rodriguez to pay Leon-Yanez $1,500 per month in alimony for 10 years and set his child support obligation at $1,128 per month. The decree further awarded Leon-Yanez the P&A Street property, referring to "properties located on [Pine and Ashton Street] with . . . [the] same legal description," but made her responsible for any associated credit card debt. The decree also awarded each party the personal property in his or her possession and made them responsible for any associated debts. Lastly, the decree required Garcia Rodriguez to pay Leon-Yanez $5,500 in attorney fees for failing to appear at calendar call and pursuant to *Sargeant v. Sargeant*, 88 Nev. 223, 226-27, 495 P.2d 618, 620-21 (1972) (allowing the district court to award attorney fees to a spouse on the basis of disparity in income to ensure an even playing field in the courtroom).

Garcia Rodriguez then retained counsel and moved to set the decree aside under NRCP 60(b)(1) and (6), arguing he had been unaware that he was required to file a pre-trial memorandum and appear for calendar call, that the spousal and child support awards were inconsistent with his income, that the division of the parties' community property was unequal, that the decree omitted debts in his name, and that the award of attorney fees was improper because Leon-Yanez did not address the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Leon-Yanez opposed that motion, asserting that Garcia Rodriguez's ignorance of procedural requirements did not warrant relief

under NRCP 60(b)(1) and (6), that he was underemployed, and that the decree equally divided the parties' community property. Leon-Yanez also brought a countermotion to amend the decree to resolve a typographical error in the street address for the P&A Street property's Ashton Street unit.

Following a hearing, the district court entered an order in which it essentially found that Garcia Rodriguez failed to establish a basis for NRCP 60(b) relief, reasoning that the credibility of his justification for missing the calendar call was questionable and that he failed to produce sufficient documentation to support his challenges to the divorce decree. Most notably, the district court found that Garcia Rodriguez provided an updated Financial Disclosure Form (FDF) in June 2022 that was missing the page that required him to provide a detailed breakdown of his income. Nevertheless, because Garcia Rodriguez requested additional time to submit supporting documentation, the district court directed the parties to file supplemental briefs addressing their property and financial disputes.

Garcia Rodriguez filed an amended FDF in July 2022 that was complete as well as a supplemental brief. In his supplemental brief, Garcia Rodriguez argued that he was the one who incurred debts to renovate the P&A Street property, that Leon-Yanez received substantially more income than she represented at trial, and that there was not a sufficient disparity in the parties' income to warrant the decree's award of attorney fees. Moreover, Garcia Rodriguez asserted that the parties owned two real properties—the P&A Street property and a property located on Division Street—and he maintained that Leon-Yanez received both properties under the decree because it mistakenly referred to the Division Street property as

the P&A Street property's Ashton Street unit. In her supplemental opposition, Leon-Yanez asserted that Garcia Rodriguez's arguments concerning her income were outdated, that the decree only awarded her the P&A Street property, that Garcia Rodriguez presumably retained the Division Street property since it was not disclosed in the decree, and that the decree equally divided the parties' community property.

Following a hearing, the district court entered an order in which it denied Garcia Rodriguez's request for NRCP 60(b) relief but construed his motion as seeking modification of child support and alimony, which the court denied with respect to child support and granted with respect to alimony. For support, the court found that Garcia Rodriguez received the Division Street property under the decree because it was purportedly in his name and that he failed to produce sufficient evidence to establish that the parties did not receive an equal distribution of community property. Next, without addressing Garcia Rodriguez's July 2022 amended FDF, the district court concluded that there was no basis to modify child support because the June 2022 FDF was missing a page. Nevertheless, in considering whether to modify the alimony payment, the district court looked to paystubs attached to the June 2022 FDF to determine Garcia Rodriguez's monthly income from employment, assumed that he was still receiving rental income, and concluded that his combined income was insufficient to satisfy his $1,500 per month alimony obligation under the decree. As a result, the court modified Garcia Rodriguez's alimony obligation to $700 per month based on changed circumstances. The court's

order did not specifically address Garcia Rodriguez's arguments concerning the decree's attorney fees award.

Shortly after entering the foregoing order, the district court entered an amended decree, which corrected the typographical error referenced above but did not include revisions to reflect Garcia Rodriguez's modified alimony obligation. This appeal followed.

On appeal, Garcia Rodriguez challenges the district court's decisions concerning the distribution of community property, child support, alimony, and attorney fees. We review each decision in turn.

Distribution of community property

Garcia Rodriguez maintains that, even after the post-decree proceedings, the district court failed to equally distribute the parties' community property. The district court must equally divide community property unless it finds a compelling reason for making an unequal distribution and sets forth in writing the reasons for doing so. NRS 125.150(1)(b). This court reviews the district court's decisions concerning the disposition of community property for an abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75, 439 P.3d 397, 406 (2019). Our review of orders concerning omitted assets is governed by the same standard. *Doan v. Wilkerson*, 130 Nev. 449, 453, 327 P.3d 498, 501 (2014), *superseded by* NRS 125.150(3) *on other grounds as recognized by Kilgore v. Kilgore*, 135 Nev. 357, 364-65, 449 P.3d 843, 849 (2019). We defer to the district court's factual findings and will not disturb them unless they are clearly erroneous or unsupported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). Substantial evidence is evidence that a

reasonable mind may accept as adequate to sustain a judgment. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

Garcia Rodriguez's specific position on appeal is that the district court was required to award each party one of their real properties to provide for an equal disposition, but instead, awarded Leon-Yanez both the both the P&A Street property and the Division Street property in the decree. However, while there was some ambiguity in the decree insofar as it referred to Ashton and Pine Street "properties," which could be read to suggest that Leon-Yanez received two separate real properties under the decree, the decree clarified that ambiguity by expressly stating that the "properties" had the same legal description, which demonstrates that the district court only intended to award Leon-Yanez the P&A Street property. This is consistent with Leon-Yanez's testimony from the prove-up hearing, where, with some clarification from her counsel, she requested the P&A Street property and did not mention the Division Street property. *See Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 608 (2011) (recognizing that an appellate court may consult the record giving rise to a district court order to construe its meaning when the order is ambiguous).

As to the Division Street property, the district court's order resolving Garcia Rodriguez's post-decree motion stated that, under the terms of the decree, Garcia Rodriguez received the Division Street property because it was purportedly in his name. However, no provision in the decree expressly mentions the Division Street property—presumably because it was not addressed at the prove-up hearing. And while the decree included a catchall provision providing for each party to receive the personal property

in his or her possession, that provision did not distribute the Division Street property to either party given that it was real property.

Nevertheless, the order resolving Garcia Rodriguez's post-decree motion reflects the district court's intent to award him the Division Street property, which the court could properly do under these circumstances given that it was omitted from the decree without having been litigated and adjudicated. *See* NRS 125.150(3) (authorizing a party in a divorce proceeding to file a post-judgment motion for adjudication of an asset omitted from a decree due to fraud or mistake within three years after discovery of the fraud or mistake by the aggrieved party); *see also Doan*, 130 Nev. at 456, 327 P.3d at 503 (holding that the relevant inquiry concerning omitted assets is whether the asset was litigated and adjudicated; and explaining that an asset has been litigated and adjudicated where it was mentioned in court documents, disclosed, and considered). Consequently, we construe the order resolving Garcia Rodriguez's post-decree motion as awarding him the Division Street property.

Thus, Leon-Yanez received the P&A Street property under the decree, and Garcia Rodriguez received the Division Street property under the order resolving his post-decree motion, which is the one-to-one distribution of real property that Garcia Rodriguez contends was necessary for an equal distribution of community property. Although Garcia Rodriguez presents arguments concerning the evidentiary support for the value of certain of the parties' remaining community property and whether an evidentiary hearing was needed, he does not present any argument or explanation as to how he was aggrieved by the allocation of any particular

property given the one-to-one division of the parties' real property. *See* NRAP 3A(a) (providing that a party must be aggrieved to have standing to appeal); *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (explaining that "[a] party is aggrieved within the meaning of NRAP 3A(a) when either a personal right or right of property is adversely and substantially affected by a district court's ruling" (internal quotation marks omitted)); *see also Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues unsupported by cogent argument). Consequently, we conclude that Garcia Rodriguez failed to demonstrate that the district court abused its discretion in distributing the parties' community property in the divorce decree and order resolving his post-decree motion. *See Kogod*, 135 Nev. at 75, 439 P.3d at 406; *see also Doan*, 130 Nev. at 453, 327 P.3d at 501. Thus, we affirm those decisions insofar as they relate to the distribution of community property.

Child Support

Garcia Rodriguez next argues that the district court improperly declined to modify child support on grounds that his June 2022 FDF was missing a page when he filed an amended FDF in July 2022 that was complete. Under NRS 125B.145(4), the district court has discretion to modify child support at any time based on a showing of changed circumstances. This court reviews district court determinations concerning child support for an abuse of discretion. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018).

When the district court entered the decree by default following a prove-up hearing, the court set Garcia Rodriguez's child support obligation based on an FDF he filed in April 2021, which showed that his gross monthly income (GMI) was $4,028, consisting of $3,328 in income from employment and $700 in rental income. The July 2022 amended FDF that Garcia Rodriguez filed to supplement his post-decree motion showed that his total gross monthly income had decreased to $3,293, which was comprised entirely of income from employment. Although the district court permitted Garcia Rodriguez to file that FDF after finding that he provided an incomplete FDF in June 2022, the district court subsequently declined to modify child support, without addressing the July 2022 amended FDF, on the basis that the June 2022 FDF was incomplete.

Leon-Yanez does not acknowledge Garcia Rodriguez's argument concerning the impropriety of this approach. Instead, Leon-Yanez argues that, because the district court treated Garcia Rodriguez's failure to appear at calendar call as a default, her pre-decree allegations that he was underemployed were deemed admitted, *see* EDCR 2.69(c); *see also Estate of Lomastro v. Am. Fam. Ins. Grp.*, 124 Nev. 1060, 1068 n.14, 195 P.3d 339, 345 n.14 (2008) (explaining that, when a defendant is in default, well pleaded facts will generally be deemed admitted), such that his subsequent request to modify child support lacked credibility.

Here, when the district court entered the divorce decree, it did not find that Garcia Rodriguez was willfully underemployed—presumably because Leon-Yanez did not testify to that effect at the prove-up hearing. Instead, the district court established Garcia Rodriguez's initial child

support obligation based on the representations that he made concerning his income in his April 2021 FDF. Consequently, this case did not present a situation in which Garcia Rodriguez's needed to overcome a prior underemployment determination before he could demonstrate that a modification of child support was warranted based on a decrease in his income. *Cf. Minnear v. Minnear*, 107 Nev. 495, 498, 814 P.2d 85, 86-87 (1991) (stating that "where evidence of willful underemployment preponderates, a presumption will arise that such underemployment is for the purpose of avoiding support" and that the burden is on the underemployed party to show contrary intent).

Further, when the district court later entered the order resolving Garcia Rodriguez's post-decree motion, the court did not decline to modify child support on the basis that he was willfully underemployed or incredible. Instead, without acknowledging the July 2022 amended FDF, the district court declined to modify child support because his June 2022 FDF was missing a page. Yet the July 2022 amended FDF showed that Garcia Rodriguez's income had dropped from $4,028 prior to the decree's entry to $3,293. And because the district court failed to consider whether this alleged change in circumstances warranted review of Garcia Rodriguez's child support obligation, *see Rivero v. Rivero*, 125 Nev. 410, 431-32, 216 P.3d 213, 228 (2009) (explaining when review of a child support order is discretionary or mandatory and providing that, in either scenario, the district court has discretion to deny a modification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev.,

Adv. Op. 43, 535 P.3d 1167, 1171 (2023), it abused its discretion in its handling of the child support issue in the order resolving Garcia Rodriguez's post-decree motion.[1] *See Miller*, 134 Nev. at 125, 412 P.3d at 1085. As a result, we reverse the order resolving Garcia Rodriguez's post-decree motion insofar as it related to child support and remand for consideration of his July 2022 amended FDF.

Alimony

While the district court determined that modification of child support was unwarranted because a page was missing from his June 2022 FDF, the court took a different approach in considering whether to modify alimony. In particular, the district court looked to paystubs that Garcia Rodriguez appended to the June 2022 FDF, determined that the paystubs showed he received $3,676 in income from employment, and further assumed that he continued to receive $700 per month in rental income. Based on the combined total of those figures—$4,376—the district court found that Garcia Rodriguez was unable to satisfy the $1,500 per month alimony obligation established in the decree and reduced that obligation to $700 per month. Garcia Rodriguez essentially contends that this obligation should have been reduced below $700, arguing that the district court improperly relied on the June 2022 FDF and its assumption that he received $700 in rental income in determining the modified amount of alimony.

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[1]Leon-Yanez's failure to address Garcia Rodriguez's argument concerning the July 2022 amended FDF reinforces our decision in this respect. *See SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 135 Nev. 346, 352 n.4, 449 P.3d 461, 466 n.4 (2019).

Leon-Yanez makes no attempt to address the propriety of the district court's approach in this respect, but instead, contends that the court should not have modified the obligation in the first place. This court reviews a district court's determination concerning alimony for an abuse of discretion. *Kogod*, 135 Nev. at 66, 439 P.3d at 400.

Initially, because Leon-Yanez did not file a cross-appeal to challenge the modification of Garcia Rodriguez's alimony obligation, we cannot consider her challenge to the order resolving his post-decree motion, *see Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) ("A respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal."), and the only question properly before this court is whether his obligation should have been reduced below $700 per month.[2]

As discussed above in the context of child support, the district court failed to consider Garcia Rodriguez's July 2022 amended FDF in evaluating his income, notwithstanding that the court granted him leave to supplement his post-decree motion before ruling on the matter. That FDF, which was the most current in this case, showed that Garcia Rodriguez changed employers after filing the June 2022 FDF, that his monthly income from employment dropped from the $3,676 reflected in the paystubs

[2]By extension, insofar as Garcia Rodriguez directs his appeal at the portion of the divorce decree that initially set his alimony obligation at $1,500 per month, his appeal is moot. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (providing that a case on appeal is moot when Nevada's appellate courts can no longer grant relief with respect to the challenged order).

attached to his June 2021 FDF to $3,293, and that he did not receive any rental income, which directly contradicted the district court's assumption when calculating child support that Garcia Rodriguez continued to received $700 per month in rental income.[3] Under these circumstances, the district court's failure to consider the July 2022 FDF was an abuse of discretion. *See Kogod*, 135 Nev. at 66, 439 P.3d at 400. Although the district court nevertheless found that circumstances had changed based on the June 2021 FDF and its assumption concerning Garcia Rodriguez's rental income, such that a modification was warranted, *see* NRS 125.150(8) (providing that, where a divorce decree requires a party to make specified periodic payments of alimony, the district court retains jurisdiction to modify the party's alimony obligation with respect to unaccrued payments based on a showing of changed circumstances), it is unclear whether the district court would have reduced Garcia Rodriguez's alimony obligation below $700 based on the information in his July 2022 amended FDF. Consequently, we reverse the order resolving Garcia Rodriguez's post-judgment motion to the extent it related to alimony and remand for consideration of his July 2022 amended FDF.[4]

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[3]It is unclear what the district court's basis was for drawing this assumption, as the decree awarded Leon-Yanez the P&A Street property, which was the only property referenced below in the parties' discussions concerning rental income.

[4]Leon-Yanez's failure to address Garcia Rodriguez's argument concerning the approach the district court used in determining his modified alimony amount reinforces our decision in this respect. *See SFR Invs. Pool 1, LLC*, 135 Nev. at 352 n.4, 449 P.3d at 466 n.4.

Attorney fees

Garcia Rodriguez next contends that the award of attorney fees to Leon-Yanez was improper, arguing that it was unsupported by substantial evidence and findings with respect to the factors set forth at *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. This court reviews a district court's award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). Likewise, we review an order resolving an NRCP 60(b) motion for an abuse of discretion. *Willard v. Berry-Hinckley Indus.*, 139 Nev., Adv. Op. 52, 539 P.3d 250, 255 (2023). An abuse of discretion occurs when the court's decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013). However, "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). When awarding attorney fees in a family law case, the court must consider the *Brunzel* factors, 85 Nev. at 349, 455 P.2d at 33, and must also consider the disparity in the parties' income pursuant to *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). *Miller*, 121 Nev. at 623-24, 119 P.3d at 730.

In arguing that the decree's $5,500 attorney fees award was unsupported by substantial evidence, Garcia Rodriguez contends that his July 2022 amended FDF demonstrated that he lacked sufficient income to satisfy the award given his child support and alimony obligations. To the extent that Garcia Rodriguez is thereby asserting that the district court improperly awarded Leon-Yanez attorney fees pursuant to *Sargeant*, 88

Nev. at 226-27, 495 P.2d at 620-21, which authorizes district courts to award attorney fees to a spouse due to a disparity in income to ensure an even playing field in the courtroom, reversal is unwarranted. Indeed, Garcia Rodriguez's reliance on the July 2022 amended FDF is misplaced, as it reflects a post-decree change in Garcia Rodriguez's employment and corresponding reduction in his income, whereas the district court determined that an award of attorney fees was warranted under *Sargeant* based on the disparity in the parties' incomes during the period leading up to entry of the decree.

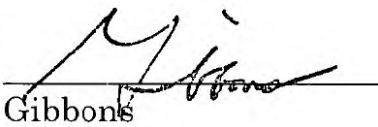
Moreover, the district court also awarded Leon-Yanez attorney fees due to Garcia Rodriguez's failure to appear at calendar call. *See, e.g.*, EDCR 2.69(c). While Garcia Rodriguez attempted to justify his absence from calendar call in seeking relief from the attorney fees award under NRCP 60(b) below, which the district court denied after questioning the credibility of his justification, he fails to revisit whether his justification established a basis for such relief, and as a result, cannot obtain reversal of the district court's implicit decision not to set aside the award, at least insofar as it determined that some award of attorney fees was appropriate. *See Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1285, 1287 (Ct. App. 2022) (providing that an appellant generally must challenge all the independent alternative grounds relied upon by the district court to obtain reversal); *see also Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (concluding that a district court's failure to rule on a motion constituted a denial of the motion).

Nevertheless, Garcia Rodriguez is correct that Leon-Yanez's briefing in connection with the attorney fees award was deficient, as she only summarily addressed two of the *Brunzell* factors in her pre-trial memorandum. Moreover, the district court did not provide any analysis, or even mention, the *Brunzell* factors when it orally awarded Leon-Yanez attorney fees and later memorialized that decision in the decree. In light of the foregoing, it does not appear that the district court considered the *Brunzell* factors in awarding Leon-Yanez $5,500 in attorney fees. Consequently, we reverse the decree and order resolving Garcia Rodriguez's post-judgment motion with respect to the attorney fees and remand for consideration of the *Brunzell* factors. *See Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (explaining that an award of attorney fees will be reversed if the record does not demonstrate that the district court considered the *Brunzell* factors).

Conclusion

To summarize, we reverse the award of attorney fees in the decree as well as the order resolving Garcia Rodriguez's post-decree motion insofar as it related to child support, alimony, and attorney fees, and remand for consideration of whether his child support obligation should be modified based on his July 2022 amended FDF, whether his alimony obligation should be reduced below $700 based on the same FDF, and whether the $5,500 attorney fees award was reasonable based on the *Brunzell* factors. We affirm all other aspects of the decree and order resolving the post-decree motion. 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.[5]



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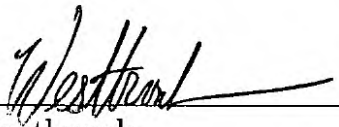

_____, J.
Westbrook

cc: Hon. Charles J. Hoskin, District Judge, Family Division
Bonanza Legal Group
McFarling Law Group
Eighth District Court Clerk

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[5]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.