IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALFREDO JORGE SILVA FILHO,
Appellant,
vs.
CRISTIANE BELAY DA SILVA,
Respondent.

No. 86120-COA

FILED

APR 19 2024

CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Alfredo Jorge Silva Filho appeals from the amended findings of fact, conclusions of law and order granting child support arrears and interest. Eighth Judicial District Court, Family Division, Clark County; Michele Mercer, Judge.

Alfredo and respondent Cristiane Belay Da Silva have two children together, G.A.B.S., born in November 2000, and R.B.S., born in November 2007.[1] The parties never married and when their relationship ended, the children resided with Cristiane, while Alfredo lived in Australia working as a circus performer. In December 2013, Cristiane filed a complaint for child custody in which she requested future child support and arrears from 2007. Alfredo also filed a complaint for custody, in which he proposed that he would pay child support to Cristiane in the amount of $600 per month. The district court consolidated the cases. Because Alfredo was living in Australia and did not answer the consolidated complaint, in May 2014 the district court entered a default order awarding Cristiane custody, but left the issue of child support unresolved.

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

24-13735

In 2016, Alfredo relocated to Las Vegas and moved to modify his parenting time. In Cristiane's opposition and countermotion, she requested that child support be set by the district court and noted that Alfredo had not paid any child support for the minor children in the past three years. The court granted Alfredo parenting time on Wednesday evenings and Friday evening through Saturday afternoon and set his child support obligation at $600 per month. The order from this hearing was entered on June 27, 2016. Cristiane filed a separate motion for the court to review child support arrears dating back to January 2014, but the district court vacated the hearing on her motion. Alfredo then moved to reduce his monthly child support to $300 because Cristiane had purportedly kicked G.A.B.S. out of the house, and the court held a hearing on that motion on August 18, 2016. The district court reduced his support as requested but also ordered Alfredo to pay $30 per month to Cristiane toward child support arrears.[2] The court additionally noted at the hearing that, "Mom shall either file a Child Support case with the District Attorney – Family Support Division, or file a Schedule of Arrears to address Dad's arrears." However, the written order from the August 2016, hearing was not filed until June 2017, and the written order did not include the language pertaining to filing a case with the district attorney or filing a schedule of arrears to address Alfredo's arrears. Nevertheless, the order did set forth that Alfredo was to pay $30 per month toward child support arrears.

In April 2022, Cristiane moved for an order to show cause why Alfredo should not be held in contempt due to his failure to pay child support

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[2]However, this order did not specify the amount of arrears or the date from which the arrears had accrued. The order also did not address the factual and legal basis for the award.

arrears and to modify Alfredo's child support based on changes to his income. The court set the matter for an evidentiary hearing on child support modification, the order to show cause, and related issues. In August 2022, Cristiane sought an amendment to the order from the August 18, 2016, hearing to clarify that she was entitled to child support arrears. Alfredo filed an opposition on October 4, 2022, asserting that the statute of limitations on Cristiane's ability to collect arrears had expired.

The district court held an evidentiary hearing on child support issues on October 5 and 6, 2022. At the hearing, the court granted Cristiane's request to amend the order from the August 18, 2016, hearing nunc pro tunc, adding the key language that Cristiane was entitled to seek child support arrears. The court found that the parties reached a verbal agreement where Alfredo was to pay $600 per month to Cristiane in child support, and Alfredo was current on his monthly payments until December 2013. The court further found that Alfredo owed Cristiane arrears of $47,160, and owed $24,360 in interest on those arrears. The court also awarded Cristiane $14,890 as lump sum child support from Alfredo's "America's Got Talent" earnings. The court further determined that an award of attorney fees and costs to Cristiane was warranted, upon the filing of a memorandum of fees and costs. This appeal followed.

On appeal, Alfredo argues that (1) the district court miscalculated child support arrears and interest on the arrears based on the second amended schedule of arrears; (2) the district court abused its discretion in ordering child support arrears for the period of December 2013 through July 2016 after the court entered its child support order in June 2016; (3) Cristiane should have been barred from requesting child support

arrears under the doctrine of laches[3]; and (4) the district court abused its discretion in granting Cristiane attorney fees and costs.[4]

Conversely, Cristiane asserts that the district court properly awarded arrears to her because her request for arrears was not initiated with her 2022 motion. Cristiane argues that she requested child support and arrears in her December 10, 2013, complaint for child custody. She also points to 2016 when she requested child support in her opposition and countermotion to Alfredo's motion for parenting time in May 2016, and then filed a separate motion for the court to review child support arrears. Cristiane also acknowledges that the district court miscalculated the amount of child support arrears and interest and asserts that this amount should be recalculated.

The district court did not abuse its discretion in granting child support arrears for the period of December 2013 through July 2016

We review a district court's order regarding child support for an abuse of discretion. *Hargrove v. Ward*, 138 Nev. 116, 117, 506 P.3d 329, 331 (2022). Indeed, this court will defer to and uphold the district court's findings that are not clearly erroneous and are supported by substantial evidence, *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009),

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[3]As Cristiane notes, Alfredo's argument regarding laches is raised for the first time on appeal, and, accordingly, we decline to address it. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Nevertheless, even considering this argument, we are not persuaded that Cristiane was responsible for any delay in seeking child support for the period of December 2013 through July 2016, as the district court addressed arrears at the August 18, 2016, hearing and the subsequent order from hearing.

[4]We do not address this issue herein as the appeal from the order granting Cristiane attorney fees and costs is not before us. *See* NRAP 3A(b)(8).

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). While this court's review is deferential, we do not defer "to legal error or to findings so conclusory that they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (citations omitted).

"Questions of statutory construction, including the meaning and scope of a statute, are questions of law, which we review de novo." *Miller v. Miller*, 134 Nev. 120, 122, 412 P.3d 1081, 1083 (2018) (alterations and internal quotation marks omitted). "[W]hen a statute's language is plain and its meaning clear, [we generally] apply that plain language." *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007).

Here, the record supports that the parties had a verbal agreement where Alfredo agreed to pay child support in the amount of $600 per month, the amount he proposed in his complaint for custody, and that Alfredo was current on his support payments until November 2013. Further, the district court, having reviewed Alfredo's complaint for custody, also found that Alfredo admitted to proposing that he would pay Cristiane $600 per month for child support. *See Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 343, 255 P.3d 268, 278 (2011) (citing to *Scalf v. D.B. Log Homes, Inc.*, 128 Cal.App.4th 1510, 27 Cal.Rptr.3d 826, 833 (2005) for the proposition that concessions in pleadings are judicial admissions); *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988) (explaining that factual assertions in pleadings are considered judicial admissions conclusively binding on the

party who made them).[5] Thus, substantial evidence supports the district court's decision to enforce the agreement between the parties and requiring Alfredo to pay Cristiane $600 in child support arrears for the period of December 2013 through July 2016. Therefore, the district court did not abuse its discretion.

Moreover, we are not persuaded by Alfredo's contention that the district court could not award child support arrears based on the expiration of the relevant statute of limitations. Indeed, NRS 125B.050(1) provides:

> If there is no court order for support, any demand in writing to a parent not having physical custody for payment of support on behalf of a minor child, mailed to the last known address of the parent, tolls the running of the statute of limitations for the bringing of an action for that support.

In this case, Cristiane initiated an action for child support with the filing of her complaint for custody in 2013. Thus, pursuant to NRS 125B.050(1), the statute of limitations was tolled once Cristiane filed her complaint. The complaint was personally served on Alfredo, so he had actual knowledge of her request and proposed, in his own complaint for custody, that he pay $600 a month in child support. Additionally, Cristiane's opposition and countermotion was mailed to Alfredo in May

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[5]Alfredo's complaint is not in the record on appeal. As the appellant, Alfredo bears the burden of providing on appeal "any . . . portions of the record essential to determination of issues raised in [his] appeal." NRAP 30(b)(3); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). Thus, because Alfredo "fail[ed] to include necessary documentation in the record, [this court] necessarily presume[s] that the missing portion supports the district court's decision." *Cuzze*, 123 Nev. at 603, 172 P.3d at 135.

2016 and qualifies as a demand for support pursuant to the terms of NRS 125B.050(1).

Further, to the extent that Alfredo argues that Cristiane cannot recover arrears for the period before the district court's June 27, 2016, order, we are not persuaded by this argument. NRS 125B.030 provides that where

> the parents of a child do not reside together, the physical custodian of the child may recover from the parent without physical custody a reasonable portion of the cost of care, support, education and maintenance provided by the physical custodian. In the absence of a court order for the support of a child, the parent who has physical custody may recover not more than 4 years' support furnished before the bringing of the action to establish an obligation for the support of the child.

Cristiane's request for arrears from December 2013 through July 2016 was proper when considering NRS 125B.030. The district court first set child support in its June 27, 2016, order and first addressed child support arrears in its order from the August 18, 2016, hearing, but failed to provide the amount of arrears to which Cristiane was entitled. The arrears from December 2013 through July 2016 were within four years before the district court first granted child support, and thus, not barred by NRS 125B.030. And, as previously discussed, the parties also had an agreement setting forth monthly child support, which covered the period of December 2013 through July 2016. Thus, we conclude that the district court did not err in granting Cristiane child support arrears.

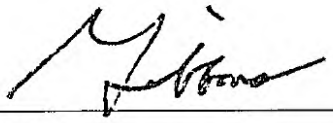
The district court erred in calculating child support arrears and interest

While the district court's conclusion that Cristiane was entitled to arrears was proper, the parties agree that the district court miscalculated the arrears amount and interest owed. Specifically, Alfredo argues, and Cristiane agrees, that the second amended schedule of arrears correctly

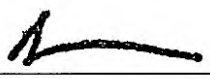
calculated the accumulated arrears at $27,600 and interest at $9,128.41, but the court's order found that the arrears were $47,160 with interest thereon of $24,360. Further, it is unclear from the record whether the $14,890 lump sum amount awarded to Cristiane from Alfredo's America's Got Talent earnings was already paid to Cristiane, such that it should not have been part of the obligation due and owing. Thus, we necessarily reverse and remand in part for the district court to correctly calculate the amounts of child support arrears (taking into account whether Alfredo already made the America's Got Talent lump sum payment) and interest owed.

Therefore 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.[6]



_____, C.J.
Gibbons



_____, J.
Bulla



_____, J.
Westbrook

cc: Hon. Michele Mercer, District Judge, Family Division
Michael J. Harker
Smith Legal Group
Eighth District Court Clerk

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[6]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 further relief.