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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Mark Reynolds

**STATE OF NEW MEXICO ex rel.
HUMAN SERVICES DEPARTMENT and
YOLANDA M. ARMIJO,**

Petitioners-Appellees,

v. **No. A-1-CA-43274**

LAZARO LLANES,

Respondent-Appellant.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Amber Chavez Baker, District Court Judge**

Yolanda M. Armijo
Albuquerque, NM

Pro Se Appellee

Lazaro Llanes
Albuquerque, NM

Pro Se Appellant

MEMORANDUM OPINION

BACA, Judge.

{1} Respondent appeals the district court's order that entered judgment for child support arrears and denied Respondent's motion to modify child support. In our notice of proposed summary disposition, we proposed to affirm. Respondent has filed a memorandum in opposition, which we have duly considered. As we are not persuaded by Respondent's arguments, we affirm.

{2} In our notice of proposed summary disposition, we proposed to hold that Respondent had not provided sufficient information to permit this Court to review whether the district court made mistakes in its order. [CN 4] In his memorandum in opposition, Respondent continues to argue that the district court erred by not considering evidence regarding his work with Uber, overruling his objection to conducting the hearing after receiving Petitioner's financial documents two days earlier, and relying on gross-revenue figures from past years rather than his current financial situation. [MIO 2-3]

{3} A district court's decision as to child support is reviewed for an abuse of discretion. *See Klinksiek v. Klinksiek*, 2005-NMCA-008, ¶ 4, 136 N.M. 693, 104 P.3d 559 ("The determination of child support is within the district court's discretion and we review it on appeal only for an abuse of discretion."). "However, that discretion must be exercised in accordance with the child support guidelines." *Id.* A district court abuses its discretion if "it applies an incorrect standard, incorrect substantive law, or its discretionary decision is premised on a misapprehension of the law." *Id.* (internal quotation marks and citation omitted). "An abuse of discretion occurs when a ruling is clearly contrary to the logical conclusions demanded by the facts and circumstances of the case." *Benz v. Town Ctr. Land, LLC*, 2013-NMCA-111, ¶ 11, 314 P.3d 688 (internal quotation marks and citation omitted). To the extent that Respondent challenges the district court's findings that he failed to meet his

burden to establish he was no longer working as a CDL driver, that he did not have an actual financial hardship, or that he was unable to work at the capacity he previously had, we review for substantial evidence. *See Sitterly v. Matthews*, 2000-NMCA-037, ¶ 22, 129 N.M. 134, 2 P.3d 871 ("We review factual questions for substantial evidence.").

{4} "It is well established that child support orders may be modified." *Mintz v. Zoernig*, 2008-NMCA-162, ¶ 18, 145 N.M. 362, 198 P.3d 861. "However, in order to modify such an order, a substantial change in circumstances must be shown." *Id.* "The burden of proof is on the moving party to satisfy the court that the circumstances have so changed as to justify the modification." *Id.* (internal quotation marks and citation omitted). "As to the degree and kind of change in circumstances required, the change must be substantial, materially affecting the existing welfare of the child." *Id.* (internal quotation marks and citation omitted). "Once a substantial change in circumstances is established, the court must then evaluate a modification in accordance with the child support guidelines." *Id.* "[I]n determining whether to modify a support order, the controlling influence should be the welfare and best interests of the children." *Id.* ¶ 20 (alteration, internal quotation marks, and citation omitted).

{5} Pursuant to the child support guidelines, "income" is defined as "actual gross income of a parent if employed to full capacity or potential income if unemployed

or underemployed." NMSA 1978, § 40-4-11.1(C)(1) (2023). Additionally, "[i]f a court finds that a parent has willfully failed to obtain or maintain appropriate employment or is willfully underemployed, the court may impute to that parent an income equal to that parent's earning and employment potential." Section 40-4-11.1(D). To impute a parent's earning potential, the court shall consider the following: "(a) availability of employment opportunities for the parent; (b) the parent's employment history; (c) the parent's income history; (d) the parent's job skills; (e) the parent's education; (f) the parent's age and health; (g) the parent's history of convictions and incarceration; and (h) the parent's ability to obtain or maintain employment due to providing care for a child of the parties who is under the age of six or is disabled." Section 40-4-11.2(D)(1)(a)-(h).

{6} Here, Respondent sought to modify his child support obligations based on the fact that he is no longer working as a CDL driver and that his "income has significantly been reduced and paying the current child support obligation has caused financial hardship" as a result. [2 RP 261-63, 282-84, ¶ 6] Following an evidentiary hearing, the district court made the following findings: "[Respondent] testified that he is no longer working as a CDL driver," that "[h]e reports he is only working for Uber and Lyft and his income has drastically changed," and that "he does not wan[t] to work as a CDL [driver] anymore." [2 RP 376, ¶ 8] Based on evidence presented, the district court determined that "[Respondent] was unable to

prove that a material and substantial change in circumstances occurred, as he failed to provide any of the necessary proof that he is actually no longer working as a CDL [driver], and has an actual financial hardship." [2 RP 376, ¶ 10] The district court additionally determined that "[Respondent] failed to prove that he is unable to work at the capacity he previously had, therefore, imputing him to his prior earnings is appropriate." [2 RP 376, ¶ 11]

{7} The memorandum in opposition supports the district court's conclusion that Respondent failed to meet his burden to modify his child support obligations. Respondent notes that his "Lyft records reflected work hours, while the Uber records reflected earnings but not hours" such that he could only establish part-time work hours. [MIO 1] Respondent further notes that when he attempted to explain his Uber records to the district court, "State's counsel objected to [his] explanation, and the [district] court sustained the objection, instructing [Respondent] not to continue correcting or interrupting the presentation." [Id.] However, Respondent does not provide any information about the basis of the objection or the district court's decision to restrict Respondent's presentation. As we previously explained in our calendar notice, this Court is unable to conduct a meaningful appellate review when an appellant does not provide sufficient information to enable that review. [CN 4] Thus, we decline to further review the propriety of the district court's exclusion of any additional information regarding the Uber records. *See Farmers, Inc. v. Dal*

Mach. & Fabricating, Inc., 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (explaining that the law requires the Court to presume that the district court's rulings are correct); Rule 12-208(D)(3) NMRA (explaining that it is the role of the appellant to explain to this Court how the district court made a mistake). Further, the memorandum in opposition acknowledges that Respondent was unable to present any evidence beyond his testimony "to show that I was no longer performing my prior work as a CDL driver." [MIO 3]

{8} Additionally, as we also explained in our calendar notice, our role as an appellate court is to determine whether the district court made mistakes and, if so, whether those mistakes are important enough to require us to undo the result reached by the district court. [CN 3] Our role is not to redo the litigation that has already taken place. [Id.] Thus, we are not permitted to reweigh the evidence that was presented or otherwise give more weight to Respondent's testimony and evidence than the district court did as the memorandum in opposition appears to request of this Court. [MIO 1, 3-4] *See Jeantete v. Jeantete*, 1990-NMCA-138, ¶¶ 7-8, 111 N.M. 417, 806 P.2d 66 (observing that, on appeal, "the appellate court will not reweigh the findings of the trial court involving disputed testimony or inferences to be drawn therefrom, nor the trial court's determination as to the credibility of the witnesses").

{9} Accordingly, for the reasons stated here and in our notice of proposed summary disposition, we affirm the district court's order that entered judgment for child support arrears and denied Respondent's motion to modify child support.

{10} **IT IS SO ORDERED.**

GERALD E. BACA, Judge

WE CONCUR:

JACQUELINE R. MEDINA, Chief Judge

SHAMMARA H. HENDERSON, Judge