

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LANCE A. DEBOURG,
Appellant,

vs.

JENNIFER SUSAN CARR; AND STATE
OF NEVADA DEPARTMENT OF
FAMILY SERVICES,
Respondents.

No. 71749-COA

FILED

JAN 31 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Lance A. Debourg appeals a district court order affirming a hearing master's decision in a child support matter. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

In 1998, respondent Jennifer Carr initiated child support proceedings through the Clark County District Attorney's Office Family Support Division (DAFS), seeking support for the parties' minor child. The child support hearing master ordered Lance to pay \$337 per month in child support. Lance paid the child support through wage garnishment until 2001, when the wage garnishment stopped and he received a letter from DAFS stating his case was closed as the office was no longer in contact with Jennifer. Lance also received a refund of monies paid to DAFS due to its inability to contact or send the payments to Jennifer.

In 2015, about three years after the child emancipated, the matter was reopened when Jennifer sought to recover child support arrearages that she alleged accrued since the time the case was closed. In response, Lance argued that Jennifer waived her right to the arrearages by


failing to seek enforcement and withholding the child for 14 years, despite knowing she had a right to child support. The hearing master concluded that Jennifer did not waive her right to arrearages, and the district court affirmed that ruling, over Lance's objection. This appeal followed.


This court reviews a child support order for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996); *see also Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013); *Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992) (explaining that in divorce proceedings, this court generally will uphold a district court decision that is supported by substantial evidence). Additionally, the district court must apply the correct legal standard in reaching its conclusion and no deference is owed to legal error. *See Davis v. Ewalefo*, 131 Nev. 445, 450-51, 352 P.3d 1139, 1142-43 (2015); *Williams*, 108 Nev. at 471, 836 P.2d at 617-18.

Based on our review of the record, it appears that the district court failed to apply the correct legal standard. A parent may waive his or her right to child support arrears by express agreement or impliedly, based on "conduct which evidences an intention to waive a right, or by conduct which is inconsistent with any other intention than to waive a right." *Parkinson v. Parkinson*, 106 Nev. 481, 483, 796 P.2d 229, 231 (1990) *overruled in part on other grounds by Rivero v. Rivero*, 125 Nev. 410, 435, 216 P.3d 213, 230 (2009) (internal quotation marks omitted). Here, the child support hearing master and the district court both concluded that Jennifer did not waive her right to child support arrears because Jennifer never explicitly stated she did not want any child support after she stopped

collecting and during the subsequent 14 years that she failed to pursue collection efforts. However, an affirmative statement is not required, as waiver may be evinced by the parent's conduct. *See id.* Additionally, the record indicates that the court may have also improperly based its decision in part on its belief that Lance did not attempt to locate the child or Jennifer to continue making payments directly to her, rather than considering whether Jennifer's conduct indicated an intent to waive her right to child support or whether her conduct was inconsistent with any other intention than to waive her right. *See id.* Because the district court failed to apply the proper standard in considering whether Jennifer's conduct indicated a waiver of her right to child support arrears, we necessarily must reverse and remand this matter.¹ *See Davis*, 131 Nev. at 450-51, 352 P.3d at 1142-43. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

¹We note that Lance argues that the arrearages were released pursuant to the Release of Judgment filed by DAFS on April 17, 2001, but this argument was not raised below and we decline to consider it in the first instance. However, nothing in our order should be construed as precluding Lance from raising this issue with the district court on remand.

²Pursuant to the Nevada Supreme Court's order filed July 25, 2018, this matter was decided without answering briefs.

cc: Hon. William S. Potter, District Judge, Family Court Division
Clear Counsel Law Group
Clark County District Attorney/Family Support Division
JAMS
Jennifer Susan Carr
Eighth District Court Clerk