IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER CHARLES SNOWDEN, Appellant, vs. KATHY IMAGENE SNOWDEN, Respondent.	No. 73355
CHRISTOPHER CHARLES SNOWDEN, Appellant, vs. KATHY IMAGENE SNOWDEN, Respondent.	No. 73356

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

In these consolidated appeals, Christopher Charles Snowden appeals a post-divorce decree order modifying child support. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

The parties were divorced by way of decree of divorce entered in 2009. Pursuant to the terms of the decree, respondent Kathy Snowden was awarded primary physical custody of the parties' minor child and Christopher paid Kathy $200 per month in child support. Christopher's child support payment is deducted from his paycheck by way of a wage garnishment set up by the Clark County District Attorney's Family Support Division. In October 2012, Christopher filed a motion seeking to resolve child custody and support matters. At the hearing, the district court referred the parties to mediation to attempt to resolve the custody dispute and, at first, indicated it was going to defer the child support determination

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until after the parties mediated the custody matter. The district court also ordered the parties to attend a parenting class at UNLV, and upon this requirement, Kathy indicated she could not afford to attend the required class.

Based on this representation, the district court instead chose to modify child support at the hearing, increasing Christopher's child support for two months, from $200 per month to $365, and instructing the parties to pay for the UNLV classes out of the increase in child support. A written order was entered on March 13, 2013, although the written order only indicates that child support was modified to $365 per month and orders the parties to attend the UNLV classes. The order does not mention that the child support change was for two months and does not indicate that the parties were to use the child support funds to pay for the UNLV classes.

Several years later, in January 2017, Christopher filed another motion seeking to resolve child support matters after Kathy initiated proceedings to collect arrearages she alleged Christopher owed. Specifically, between the hearing in October 2012 and when Christopher filed his motion in January 2017, Christopher continued to pay $200 per month in child support via wage garnishment and Kathy asserted that, pursuant to the March 2013 order, Christopher was required to pay $365 per month. Thus, Kathy argued that Christopher owes arrearages in the amount of $165 per month since the October 2012 hearing, plus interest and penalties. In his motion, Christopher asserted that the March 2013 increase in child support to $365 was a temporary order that was to be readdressed after the parties attended mediation. Additionally, Christopher argued that he never received a copy of the March 2013 order, that there was never a notice of entry of the order filed, and despite his

contacting the District Attorney's Family Support Division, only $200 was still being withheld from his paychecks. Thus, Christopher argued that Kathy has waived any right to the increased amount of child support, if any was owed.

The district court referred the matter to a child support hearing master and, after a hearing, the hearing master determined that the March 2013 order was valid, that Christopher owed arrears in an amount to be determined, and that a modification of child support was warranted based on Christopher's current gross monthly income. The hearing master provided a report and recommendation concluding that Christopher's child support would be modified to $640 per month and that Christopher should pay an additional $60 per month towards arrears, for a total monthly payment of $700. Christopher objected to the report and recommendation. The district court denied Christopher's objection and issued an order on June 19, 2017, adopting the hearing master's report and recommendation. 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.

On appeal, Christopher contends that the district court misinterpreted its March 2013 order and that the March 2013 order modifying child support was supposed to be temporary. But this is not what the March 2013 order actually provides. The March 2013 order states that child support was modified and that the parties were to attend parenting classes at UNLV, but it makes no mention of the modification being temporary or that the parties were to pay for the UNLV classes out of the child support funds. And while the district court did make statements in line with Christopher's arguments at the hearing that resulted in the March 2013 order, it is the district court's written order that controls, not its oral ruling from the bench. *See Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) ("An oral pronouncement of judgment is not valid for any purpose . . . therefore, only a written judgment has any effect . . . ."). Thus, based on the written order entered on March 13, 2013, it appears that the district court did modify the child support amount from $200 to $365 per month and that this modification was not temporary. As a result, Christopher's arguments regarding the interpretation of the March 2013 order are without merit.

However, we do note that Christopher's confusion as to the temporary nature of the child support modification is understandable. For example, the district court's May 25, 2017, order, which purported to interpret the March 2013 order, states that, at the October 2012 hearing, child support was "unambiguously" set at $365 per month, that the court "never" indicated it was a temporary order, and that "[t]he underlying record is *clear*." Contrary to these conclusions, the underlying record is not

clear and it was implied at the hearing that the change in child support was temporary. Indeed, the record indicates that, at the October 2012 hearing that led to the March 2013 order, in setting child support at $365 per month, the district court stated to Kathy, "So basically what you're getting is . . . **for the next two months** an additional amount of money that will pay for the class, fair?" (emphasis added). To which Kathy responded, "Right." Despite this comment, the district court order entered on March 13, 2013, does not indicate that the additional child support amount was to be paid for only two months, nor does the March 2013 order indicate that the classes were to be paid from the child support.

This confusion was further compounded by the May 2017 order at issue on appeal as it is internally inconsistent. In the May 2017 order, the district court asserts that the March 2013 order was not temporary, but the May 2017 order itself then goes on to state that, "[Christopher] was then to offset the cost of the UNLV class for [Kathy] *for 2 months* by dropping the monthly amount down to $200.00 ***temporarily for 2 months***." This statement, however, is contrary to both the court's initial oral ruling at the October 2012 hearing and the March 2013 order. Indeed, there is nothing in the record suggesting Christopher would be allowed to pay $200 for an additional two months before his child support payments increased to $365 per month. Despite this confusion, as noted above, the district court's written order controls and the March 2013 order unambiguously states that child support was modified, with no mention of that modification being temporary in nature. *See id.* And thus, despite the court's statements at the hearing that yielded the March 2013 order and the issues with the May 2017 order noted above, the district court properly determined that it had

previously set child support at $365 per month in its March 2013 order and we must affirm that determination.

However, we note that the district court's order adopting the master's report and recommendation fails to address Christopher's argument that Kathy waived her right to any increase in child support as she failed to pursue collecting the increased amount for approximately four years. *See Parkinson v. Parkinson*, 106 Nev. 481, 483, 796 P.2d 229, 231 (1990) (holding that equitable defenses such as estoppel or waiver may be asserted in proceedings to reduce child support arrearages to judgment), *abrogated on other grounds by Rivero v. Rivero*, 125 Nev. 410, 435, 216 P.3d 213, 230-31 (2009). Thus, we must remand this matter to the district court for its consideration of this argument in the first instance.

Additionally, the district court abused its discretion in adopting the hearing master's report and recommendation to the extent the hearing master improperly calculated the new child support payment.[1] The hearing master concluded that, based on Christopher's updated gross monthly income, his child support amount would be $730.44 (18% of his gross

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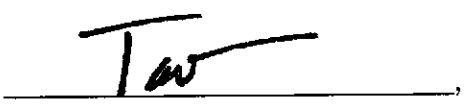
[1]We note that Christopher does not appear to challenge the child support amount calculated by the hearing master and adopted by the district court. However, because the district court is required to apply the proper formula in calculating child support and because the child support calculation in this matter is clearly erroneous, we must remand this matter to the district court. *See* NRS 125B.080(1) (stating that the district court "shall apply the appropriate formula" in determining child support); *Rivero*, 125 Nev. at 435, 216 P.3d at 230 (explaining that the district court is required to apply the statutory formula in calculating child support in discussing modification of child support); *Williams*, 108 Nev. at 471, 836 P.2d at 617-18 ("[I]n reaching a determination, the district court must apply the correct legal standard."); *Davis*, 131 Nev. at 450, 352 P.3d at 1142 (explaining that no deference is owed to legal error).

monthly income), but noted that the statutory cap for child support based on Christopher's income was $681. The hearing master also concluded that Christopher was entitled to a $90 deviation for travel expenses based on the child moving out of town and deducted the $90 from the $730 child support amount to establish a $640 child support payment. However, in setting child support, the statutory cap must be applied prior to applying any deviations. *See Garrett v. Garrett*, 111 Nev. 972, 973–74, 899 P.2d 1112, 1113–14 (1995) (explaining that the statutory cap is the amount that is established by the NRS 125B.070 formula and serves as the starting point from which the court must begin its calculations when allowing any deviations). Thus, the district court abused its discretion in affirming a child support amount that was clearly erroneous and we therefore reverse this decision and remand the ongoing support calculation to the district court for further proceedings.

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.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Mathew Harter, District Judge
Christopher Charles Snowden
Willick Law Group
Eighth District Court Clerk