IN THE SUPREME COURT OF THE STATE OF NEVADA

ESPERANZA MONTANO COBIAN, N/K/A ESPERANZA MONTANO MARTIN,
Appellant,
vs.
ALEJANDRO COBIAN,
Respondent.

No. 37701

FILED

JUN 05 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court judgment holding that appellant Esperanza Montano Cobian, n/k/a Esperanza Montano Martin, had impliedly waived her right to collect child support arrearages from respondent Alejandro Cobian, her ex-husband and the father of their three children.

The defense of waiver may be asserted in an action to collect child support arrearages when there is "an intentional relinquishment of a known right."[1] A waiver may "'be implied from conduct which evidences an intention to waive a right, or by conduct which is inconsistent with any other intention than to waive a right.'"[2] We will not set aside a district court's finding of an implied waiver unless it is not supported by substantial evidence.[3]

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[1]Parkinson v. Parkinson, 106 Nev. 481, 483, 796 P.2d 229, 231 (1990).

[2]Id. (quoting Mahban v. MGM Grand Hotels, 100 Nev. 593, 596, 691 P.2d 421, 423-24 (1984).

[3]See Gepford v. Gepford, 116 Nev. 1033, 1036, 13 P.3d 47, 49 (2000); see also State of Washington v. Leyser, 241 Cal. Rptr. 812, 814 (Ct. App. 1987) (applying substantial evidence standard to the defense of waiver in child support arrearages action).

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Here, the district court found that Esperanza and Alejandro entered into a tacit agreement where they would have no contact with each other and Alejandro would not have to pay child support. Based on this agreement, the district court determined that Esperanza impliedly waived her right to collect child support.

However, evidence in the record shows that at the time of the couple's divorce, Esperanza was a Mexican immigrant and the mother of three children. Alejandro was in a relationship with another woman. Thereafter, Esperanza and the three children received the assistance of government welfare for a period of time. Given these considerations, we conclude it is unreasonable to believe that Esperanza intentionally agreed to waive $300.00 per month in child support payments from Alejandro in exchange for having him out of her and the children's lives.

Although the district court relied on our holding in Parkinson v. Parkinson,[4] the facts in that case are distinguishable from the case at hand. Here, there was evidence that Esperanza attempted to pursue her legal right to collect the child support arrearages by speaking with an attorney during the alleged waiver period. Unfortunately, Esperanza ceased her efforts because she could not afford the attorney.

Delay alone does not constitute an implied waiver.[5] However, other than Esperanza's nearly eighteen year delay in seeking to collect the child support arrearages, we conclude that the record does not support a finding that Esperanza intentionally waived this right.

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[4]106 Nev. 481, 483, 796 P.2d 229, 231 (1990).

[5]See McKellar v. McKellar, 110 Nev. 200, 202, 871 P.2d 296, 297-98 (1994) (holding that a mother did not impliedly waive her right to collect child support arrearages even though she waited nearly fourteen years).

Additionally, we recognize that the Nevada Legislature has declared a state policy encouraging parents to share the responsibilities of child rearing.[6] To this effect, in 1987, the legislature expressly eliminated a six-year statute of limitations to collect child support arrearages so that now there is "no limitation on the time in which an action may be commenced."[7] Based on these legislative actions and statutory provisions, we further conclude that Alejandro has failed to meet his financial obligations toward his three children and no amount of time passed should relieve him of this responsibility.[8] Accordingly, we

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

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

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[6]NRS 125.460(2).

[7]NRS 125B.050(3); State of Washington v. Bagley, 114 Nev. 788, 791, 963 P.2d 498, 500 (1998).

[8]We also note that NRS 125B.065 provides that a district court may not waive child support arrearages when a party has received public assistance without giving the welfare division of the department of human resources "notice and an opportunity to be heard regarding the matter." Here, the record does not reveal that the provisions of NRS 125B.065 have been complied with by the district court.

cc: Hon. Robert W. Lueck, District Judge, Family Court Division
McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP/Las Vegas
Chris T. Rasmussen
Clark County Clerk