

IN THE COURT OF APPEALS OF IOWA

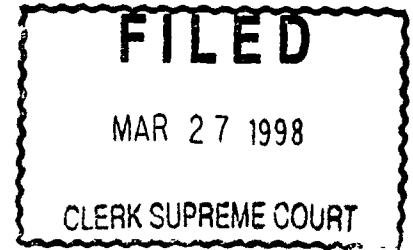
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No. 8-084 / 97-490

CELENA COLLEEN POPE and CHARLES POPE,
Appellants,

vs.

MARK TEYMER, GARY TEYMER and PHYLLIS TEYMER,
Appellees.



Appeal from the Iowa District Court for Jones County, William R. Eads, Judge.

Celena and Charles Pope appeal a judgment entered by the district court on its ruling granting the Teymers' motion to compel a settlement of the Popes' personal injury claims. **AFFIRMED.**

Timothy S. White and Ann M. Cisco of White & Johnson, P.C., Cedar Rapids,
for appellants.

John K. von Lackum of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellees.

Heard by Sackett, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Celena and Charles Pope appeal a judgment entered by the district court on its ruling granting Mark, Gary, and Phyllis Teymer's motion to compel a settlement of the Popes' personal injury claims. The Popes contend the district court erred by finding they had given their attorney authority to accept a settlement offer by the Teymers.

Background facts. The Popes brought a personal injury action against the Teymers as a result of an automobile accident involving Celena and defendant, Mark Teymer. The Popes were represented by attorney Hugh Albrecht; the Teymers were represented by attorney John von Lackum. The Popes initial demand was upwards of \$100,000. Other offers and counteroffers followed.

On May 10, 1996, the morning of the pretrial conference, von Lackum relayed to Albrecht an offer to settle the case for \$43,000. The offer was to expire if not accepted prior to the conference set for that afternoon. Albrecht accepted the offer on behalf of the Popes, purportedly after receiving their authority.

According to the Popes, Albrecht had no authority to accept the settlement. The Popes later refused to accept payment tendered by the Teymers. On October 1, 1996, the Teymers filed a motion to compel, seeking an order enforcing the settlement and dismissal of the case.

The district court granted the motion and entered judgment in favor of the Popes for \$43,000. The Popes appeal from this judgment.

Scope of review. We review a district court's decision in a law action for errors of law. Iowa R. App. P. 4; *Waukon Auto Supply v. Farmers & Merchants Sav. Bank*, 440 N.W.2d 844, 846 (Iowa 1989). We are bound by findings of fact if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Evidence is substantial when a reasonable mind could accept it as adequate to reach the same finding. *Waukon*, 440 N.W.2d at 846.

Authority to settle. The Popes argue there was insufficient evidence to support the court's conclusion. They point to an absence of written documentation in Albrecht's files indicating an authority to accept the settlement.

The attorney-client relationship is fiduciary in nature. The authority of an attorney to act on behalf of a client, is predicated on the doctrine of principal and agent. See *Woodruff & Son v. Rhoton*, 251 Iowa 550, 555, 101 N.W.2d 720, 723-24 (1960); 7 Am.Jur.2d *Attorneys at Law* § 119 (1980). We presume an attorney who dismisses his client's claim or settles his client's claim acted under and pursuant to this authority; this presumption is rebuttable. See *Dillon v. City of Davenport*, 366 N.W.2d 918, 923-24 (Iowa 1985) (citing *Dragstra v. Northwestern State Bank*, 192 N.W.2d 786, 790 (Iowa 1971)).

An attorney cannot settle or compromise a case without authority. *Dillon*, 366 N.W.2d at 924. However, a settlement made with authority is binding on the client. Iowa Code § 610.16(2) (1983); *Tallmon v. Tallmon*, 166 Iowa 370, 379, 147 N.W. 746, 749 (1914). Since an attorney acts in the position of an agent, agency principles guide our determination of authority.

We adhere to a fundamental principle of agency law which provides whatever an agent does, within the scope of his actual authority, binds his principal. *Grismore v. Consolidated Products Co.*, 232 Iowa 328, 335, 5 N.W.2d 646, 651 (1942); 3 Am.Jur.2d *Agency* § 261 (1962); see Restatement (Second) of Agency §§ 144, 145 (1958). Actual authority to act is created when a principal intentionally confers authority on the agent either by writing or through other conduct which, reasonably interpreted, allows the agent to believe that he has the power to act. Restatement (Second) of Agency § 26; 3 Am.Jur.2d *Agency* § 69. Actual authority includes both express and implied authority. *Newberry v. Barth, Inc.*, 252 N.W.2d 711, 714 (Iowa 1977); *Grismore*, 232 Iowa at 335, 5 N.W.2d at 651. Express authority is derived from specific instructions by the principal in setting out duties, *Newberry*, 252 N.W.2d at 714, while implied authority is actual authority circumstantially proved. *Grismore*, 232 Iowa at 335, 5 N.W.2d at 651.

Under the principles of agency law, discussed above, we find there was substantial evidence in the record that Albrecht had the authority of the Popes to

Trevor, the decretal offset operated as a simplified bookkeeping arrangement for the convenience of the parties. Had Trevor never entered foster care, there would have been no assignment of his support to the State, and the offset could have continued to operate as it had previously. However, upon placement of Trevor into foster care, the State acquired a legal right to seek enforcement of the child support, which by statute was automatically assigned to it. *See* Iowa Code §234.39(3).

In general, the State will not interfere with an offset provision of a decree which creates a reciprocal support obligation for each child's care. However, when a child enters a foster care placement while still qualifying for support, the parent to whom the support obligation is owed is deemed to have assigned current and accruing support payments to the State pursuant to statutory mandate. Iowa Code § 234.39(3).

Moreover, contrary to Kip's assertions, the State did not modify the dissolution decree. The underlying support obligations originally set in the decree have not been modified. The only change is the method of accounting for the obligations through the offset. The obligations remain as they were initially calculated.

Therefore, the trial court correctly terminated the offset of child support obligations from the dissolution decree, effective upon the date Trevor entered foster care. Having carefully considered the arguments before us on appeal, we affirm the district court's ruling.

AFFIRMED.

Mahan, J. concurs; Sackett, P.J., specially concurs without opinion.