IN THE COURT OF APPEALS OF IOWA

No. 0-813 / 00-0359
Filed May 9, 2001

IN RE THE MARRIAGE OF DAN W. KRAUTH AND KYM K. KRAUTH

Upon the Petition of
DAN W. KRAUTH,
Petitioner-Appellant,

And Concerning
KYM K. KRAUTH,
Respondent-Appellee.

FILED
MAY 0 9 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll, Judge.

The petitioner appeals a district court order denying his application for credit of child support payments. Petitioner contends the district court erred in denying his application because his mother consistently made payments on his behalf while he was in prison. **AFFIRMED.**

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan, Condon & Frese, Marshalltown, for appellant.

Rolf V. Aronsen, Mason City, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

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MILLER, J.

Petitioner, Dan W. Krauth, appeals from the district court's order denying his application for credit of child support payments. Krauth contends the district court should have sustained his application based upon the payments that were made on his behalf. We affirm.

I. BACKGROUND FACTS

Dan W. Krauth and Kym K. Krauth were married in 1974. They have one daughter, Mary, born July 5, 1976. A decree of dissolution was entered in May 1978 placing custody of Mary with Kym and obligating Dan to pay $175 per month in child support to Kym until Mary's eighteenth birthday. The decree was later modified in December of 1987 reducing Dan's child support obligation to $150 per month starting January 1, 1988. The reduction was to last until sixty days after Dan's release from federal prison.

Kym moved to Illinois with her new husband in July of 1989. Mary returned to Iowa to attend high school in 1990 and lived with her maternal grandfather, Gus Kantaris, from the fall of 1990 through July 1994, excluding a period of time from January 1992 through about October 1992 when she lived with her paternal grandmother, Leah Obrecht. Dan was incarcerated in federal prison from September of 1985 until May of 1996. Leah Obrecht, Dan's mother, began making his monthly child support payments in April 1986.

Ms. Obrecht kept a record of payments she claimed to have made on behalf of Dan for child support. The record shows that while Mary was living with Kym, Ms. Obrecht made the support payments through the clerk of court and later through the collection services center. However, beginning in November of

1990, shortly after Mary returned to Iowa to live with her maternal grandfather, Ms. Obrecht began giving money directly to Mary. Ms. Obrecht continued to give money directly to Mary during her high school years until her eighteenth birthday. During the period from November 1990 through Mary's eighteenth birthday Leah labeled some $4,500 in checks to Mary as "child support."

In February 1999 Dan filed an application for credit on his child support obligation for the amounts given by his mother directly to Mary. The district court denied the application. The court concluded the present case did not fall under any of the exceptions to the statutory requirement that no credit be granted for payments made to anyone other than the clerk of court or the collection services center, as provided in Iowa Code sections 598.22, 598.22A(1), 598.22A(3) and 252B.14(6). Dan filed timely notice of appeal from the district court's denial.

II. SCOPE OF REVIEW

Our review of this equitable action is de novo. Iowa R. App. P. 4. Accordingly, we examine the entire record and adjudicate anew rights on issues properly presented.

III. MERITS

The legislature has made it clear that child support payments made to anyone other than the clerk of court or the collection services center, except in very specific circumstances, cannot be credited toward a child support obligation. Iowa Code §§ 598.22, 598.22A, and 252B.14(6) (1999); *see also Hurd v. Iowa Dept. of Human Services*, 580 N.W.2d 383, 386 (Iowa 1998); *In re Marriage of Caswell*, 480 N.W.2d 38, 39-40 (Iowa 1992). Under the facts of this case the only potentially applicable statutory exception to this requirement is if payment is

confirmed by the court upon submission of an affidavit by the person entitled to receive the support payment. *See* Iowa Code §598.22A(1). Affidavits from anyone other than the person entitled to receive the payments are insufficient to prove this exception. *Id.; Caswell,* 480 N.W.2d at 40.

Kym was the person entitled to receive the support payments under the divorce decree and she has given no such affidavit. Therefore, the exception established by Iowa Code section 598.22A(1) is not applicable here.

The Iowa Supreme Court has recognized a very narrow promissory estoppel exception to the general rule set out in section 598.22, to prevent collection of child support where equitable principles mandate relief. *See In re Marriage of Harvey*, 523 N.W.2d 755 (Iowa 1994); *See also In re Marriage of Yanda*, 528 N.W.2d 642 (Iowa Ct. App. 1994) (same). The elements of promissory estoppel are: (1) a clear and definite oral agreement (2) proof that Dan acted to his detriment in reliance on that agreement; and (3) a finding that the equities entitle Dan to the relief sought. *Harvey*, 523 N.W.2d at 756-57.

We find the facts in the record of the case at hand to be materially different from those which formed the basis for the results in *Harvey* and *Yanda.* First, in this case there was neither an agreement between the parties that child support need not be paid, as in *Harvey,* nor an agreement that child support checks would not be cashed, as in *Yanda.* There is no evidence of an agreement between Kym and Dan (or Kym and Leah) that Dan would not have to pay child support, or that payments could be made to Mary directly.

Second, Dan did not provide the child's sole support during the time period in question (nor did he and Leah together do so), as in *Harvey*, nor did the

parties live together with Dan supporting both the child and his former spouse, as in *Yanda*. There is no substantial evidence that Dan relied to his detriment on any alleged oral agreement.

Finally, the equities do not entitle Dan to the relief sought. The decree clearly required that child support payments be made to the clerk of court. Leah's testimony makes clear she knew any child support payments were to be made through the clerk of court, and later the collection services center, a fact also shown by her making child support payments for Dan in that manner from 1986 to 1990. Dan paid none of the money at issue.

The promissory estoppel exception recognized in *Yanda* and *Harvey* is not applicable under the facts of this case. We agree with the trial court that no basis exists for granting the credit Dan seeks.

AFFIRMED.