IN THE COURT OF APPEALS OF IOWA

No. 0-2002 / 97-1253
Filed June 14, 2000

IN RE THE MATTER OF THE ADOPTION OF MATTHEW CRAIG MALOTTKI

Upon the Petition of
TIMOTHY J. DILLMAN, JR. and
JENNIFER ANN DILLMAN,
Petitioners-Appellants,

And Concerning
CRAIG ALAN MALOTTKI,
Respondent-Appellee.

FILED
JUN 14 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

This is an appeal following an adoption of a minor child. The appellants appeal a post-adoption ruling granting the appellee visitation. **AFFIRMED.**

Andrew Howie and Steven H. Shindler of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney & Shindler, P.C., Des Moines, for appellants.

Craig A. Malottki, Des Moines, pro se.

Heard en banc.

HECHT, J.

The appellants, Tim and Jennifer Dillman, appeal a post-adoption ruling granting the child's natural father, Craig Malottki, visitation. The Dillmans contend the trial court erred in enforcing a visitation agreement executed prior to the adoption. We affirm.

I. Factual Background and Proceedings. Craig Malottki and Jennifer Dillman were married on October 8, 1988. Their son, Matthew Malottki, was born on May 12, 1990. The marriage broke down and a divorce decree was filed December 30, 1992. At the time of the dissolution, Craig was the owner of Malottki Landscaping, a sole proprietorship. Jennifer was a full-time student. The district court granted Craig and Jennifer joint legal custody of Matthew and they agreed Jennifer would provide primary physical care. The decree granted Craig visitation from 9:00 a.m. to 8:00 p.m. every Sunday, from 3:00 p.m. to 8:00 p.m. every Wednesday, and other times agreed upon by the parents. The decree ordered Craig to pay child support in the amount of $500 per month and to provide health insurance for Matthew so long as child support was owed and for Jennifer until she completed her college education in April of 1996.

Jennifer met Tim Dillman in June of 1995, and they were married on December 29 of that year. Matthew developed a good relationship with his stepfather. Jennifer and Tim were expecting a child at the time of trial of this matter.

Jennifer testified Craig made three offers prior to January of 1996 to discontinue visitation if he could be excused from paying child support. The first

of these offers was on February 24, 1994. On May 13, 1994, Craig told Jennifer he was not going to see Matthew any longer and would not be paying future child support. In June of 1994, Jennifer unsuccessfully invoked garnishment procedures to collect a child support arrearage owed to her. On June 16, 1994, Craig again offered to discontinue visitation if Jennifer would excuse him from paying child support. Jennifer testified Craig expressed willingness to sign a document terminating his parental rights if he could avoid making future child support payments.

In January of 1996, the Child Support Recovery Unit in Minnesota brought garnishment proceedings against Craig to recover the child support arrearage of approximately $4200. At that time, Craig was owed in excess of $20,000 for landscaping work he had done in Minnesota.

On January 12, 1996, Jennifer called Craig and requested an opportunity to meet with him. She testified she later visited Craig's home that day and discussed the child support arrearage, Craig's failure to pay for Matthew's health insurance, and the resulting termination of the insurance, and termination of Craig's parental rights in furtherance of Tim's adoption of Matthew. Craig testified to a different version of the conversation during the January 12 meeting. He claimed Jennifer agreed to release the Minnesota garnishment action and to release him from all past and future obligation for child support if he would "sign over custody" of Matthew to her and Tim. Craig further testified Jennifer represented Tim needed to have custody of Matthew in order to provide health insurance coverage and proposed to permit Craig to continue visitation with

Matthew. Craig denied he agreed to termination of his parental rights or adoption during the meeting and claimed Jennifer assured him Matthew's name would not be changed if he agreed to her proposal.

Jennifer testified Craig contacted her within the following week. She claimed Craig disclosed he had spoken to his attorney about their conversation of January 12. Jennifer further testified Craig expressed his willingness to consent to the termination of his parental rights if his child support obligation could be eliminated. Craig admitted calling Jennifer to communicate his willingness to sign over custody but denied he agreed to consent to Tim's adoption of Matthew.

On January 22, 1996, Jennifer and Craig met at the office of her attorney, Tim Pearson. Jennifer presented Craig with a "Consent to Termination of Parental Rights and Adoption and a Release and Satisfaction." Craig testified he immediately noticed the consent document referred to adoption and objected. He claimed Jennifer explained "adoption" was merely a legal term; the document did not mean Matthew would be adopted by her husband; and the only purpose of the document was to change custody so Tim could provide insurance for Matthew. Craig also noticed the document did not refer to his continuing right to exercise visitation and objected to this omission as well. Jennifer then prepared and the parties both signed a separate document, which stated as follows:

> I, Jennifer Dillman, will allow Craig Malottki continued visitation with our son, Matthew Malottki. That being Wednesdays 3 pm – 8pm & Sundays 9 am – 8 pm. Overnights to be arranged between parties.

A secretary in Mr. Pearson's office notarized the handwritten document. Craig testified he signed the consent document in reliance upon Jennifer's representations. Jennifer testified she agreed to the post-termination visitation only to give Matthew time to adjust and to allow a "weaning-away period" because she did not know what effect the termination would have on Matthew. She also testified she expected to "cut down" the visitation when she signed the document on January 22, 1996.

A decree of adoption and termination of parental rights was filed in the Polk County District Court on February 23, 1996. Craig received notice of the adoption hearing, but he did not appear. In July of 1996, the Dillmans filed a "Request to Terminate Visitation." Jennifer alleged visitation should be terminated because Craig had been arrested on a drug charge and an OWI charge. She alleged Craig did not regularly exercise his visitation because he was hung over and did not feel like taking care of Matthew. She testified Craig failed to exercise visitation on fifty-five occasions between the date of the divorce and January of 1996; and when he did, he returned Matthew to her home hungry or dirty. Thereafter, Craig filed a petition to vacate the decree of adoption and termination of his parental rights alleging he did not voluntarily give his consent to the termination and the termination and adoption were procured by irregularity or fraud. Craig claimed Jennifer obtained his signature on the consent document by misrepresenting he would be permitted to continue visitation with Matthew in the future.

The district court heard testimony and reviewed the exhibits offered by the parties in support of both Craig's petition and the Dillmans' request to terminate visitation. In its findings of fact, conclusions of law, and order, the court refused to set aside either the termination of Craig's parental rights or the adoption. The court also determined the parties are bound by the visitation agreement entered into on January 22, 1996. Craig appealed and the Dillmans cross-appealed.

Craig's appeal was later dismissed for failure to comply with appellate procedures leaving only the Dillmans' cross-appeal for disposition by this court. The Dillmans contend the district court erred in holding the agreement is binding on the parties because it violates public policy and is not in Matthew's best interests. Craig contends the district court correctly ruled the visitation agreement is binding and ongoing visitation is in Matthew's best interest.

II. Standard of Review. This action was tried on Craig's petition to set aside the termination of his parental rights and the adoption of Matthew by Tim and on the Dillmans' request to terminate visitation. Adoption cases are heard in equity. *See* Iowa Code § 600.12 (1995). Our review of such matters is de novo. *In re Adoption of Ellis*, 260 Iowa 508, 513, 149 N.W.2d 804, 807 (1967). Disputes involving child visitation are tried in equity and our review of such matters is de novo. Iowa R. App. P. 4.

III. The Merits. This appeal presents the question of whether a parent whose rights have been terminated can enforce a pre-termination visitation agreement. Termination of parental rights results in "a complete severance and extinguishment of a parent-child relationship." Iowa Code § 600A.2(17). This

court has previously discussed the effect of termination of parental rights on the parent's right to visitation with the child:

> The general scheme of our statutes regarding termination of parental rights compels us to conclude the termination of one's parental rights causes the immediate cessation of any legal right the parent may have had to visitation (citation omitted) . . . . Public policy requires severing all family ties with respect to a child whose parents have had their parental rights terminated (citation omitted) . . . . Once a court determines the requirements are met to support termination, our legislature has chosen not to allow a parent to have enforceable rights (citation omitted). . . . We conclude [the mother] has no enforceable right to visitation with her children once her parental rights are terminated.

In re J.P., 499 N.W.2d 334, 339-40 (Iowa App. 1993). Craig's parental rights were terminated by order of the district court, and his appeal from the order on the grounds of fraud or other irregularity was dismissed. Accordingly, he has no legal right to demand visitation with Matthew unless Jennifer's pre-termination promise to permit continuing visitation is enforceable.

The district court offered no rationale for the enforcement of the pre-termination agreement. We are committed to the rule we must affirm the trial court's decision if any sufficient basis appears in the record, even though the decision was placed upon a different ground. *Stover v. Central Broad. Co.*, 247 Iowa 1325, 1330-31, 78 N.W.2d 1, 4 (1956). We may affirm a ruling on a proper ground urged but not relied upon by the district court. *Krohn v. Judicial Magistrate Appointing Comm'n*, 239 N.W.2d 562, 563 (Iowa 1976).

After a careful review of the record, we conclude the Dillmans are estopped from denying the existence and enforceability of the visitation agreement. "Equitable estoppel is based on the idea that one who has made

certain representations should not thereafter be permitted to change his position to the prejudice of one who has relied thereon." *In re Estate of McAllister,* 214 N.W.2d 142, 146 (Iowa 1974). The elements of equitable estoppel are: (1) the party against whom the doctrine is asserted misrepresented or concealed material facts; (2) the party to whom the representation was made lacked knowledge of the true facts; (3) the party who made the representation or concealed material facts intended the other party to act on the basis of the misrepresentation; and (4) detrimental reliance thereon. *Benton v. Slater,* 605 N.W.2d 3, 5 (Iowa 2000).

A. Misrepresentation or Concealment of Facts. Jennifer expressly promised to permit future visitation. Indeed, the written agreement even held forth the prospect of overnight visits which were to be arranged between Jennifer and Craig. Although she made an unconditional written promise to permit ongoing visitation, Jennifer admitted during trial testimony her intention was not to continue visitation but rather to "wean" Matthew from his relationship with Craig.

B. Craig's Lack of Knowledge of True Facts. The record is abundantly clear Craig would not have signed the consent document if he had known of Jennifer's intention to terminate visitation. Indeed, Jennifer prepared the written visitation agreement because Craig demanded it as a condition of signing the other papers prepared by her attorney. Craig was not aware of Jennifer's intention visitation was only to be enjoyed during a brief "weaning-off period."

We find Craig lacked knowledge of the true facts relating to Jennifer's intention as to the duration of the "continued visitation" promised in the written agreement.

C. Jennifer's Intent That Craig Would Act on the Promise. The evidence is overwhelming Jennifer intended Craig would be persuaded to sign the consent to termination by her promise to permit continued visitation. Craig refused to sign the consent to termination unless he had ongoing visitation with Matthew. Jennifer clearly knew she would not obtain the consent to termination if she disclosed her intention to preclude continuing visitation.

D. Detrimental Reliance by Craig. In reliance upon Jennifer's promise, Craig signed a document that precipitated the termination of his parental rights. We find his reliance was clearly detrimental. Under the particular circumstances of this case, we conclude the doctrine of equitable estoppel precludes Jennifer and Tim from denying Craig visitation as long as visitation is in Matthew's best interests.

Jennifer and Tim contend continuing visitation with Craig is not in Matthew's best interests. The district court made no findings on this issue. We have carefully reviewed the record, and find the Dillmans failed to prove visitation by Craig is not in Matthew's best interests at this time. By our ruling, we do not suggest Craig's ongoing visitation must continue if, at some future time, such contact is no longer in Matthew's best interests. On the record before us, however, we find visitation should continue as agreed by Jennifer and Craig and affirm the order of the district court.

AFFIRMED.