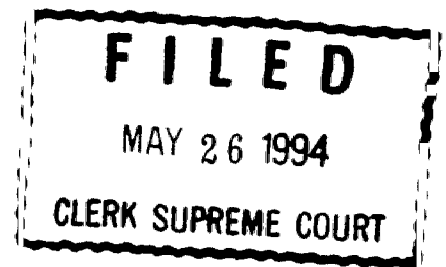


IN THE COURT OF APPEALS OF IOWA

No. 3-382 / 92-1868



IN RE THE MARRIAGE OF BARBARA ANN HARVEY AND
CHARLES NEWELL HARVEY

Upon the Petition of
BARBARA ANN HARVEY,

Appellant,

And Concerning
CHARLES NEWELL HARVEY,

Appellee.

Appeal from the Iowa District Court for Mahaska County,
James P. Rielly, Judge.

Petitioner appeals the district court's decision her
judgment against respondent for accrued child support was
not enforceable. **AFFIRMED.**

Garold F. Heslinga of Heslinga, Heslinga & Dixon,
Oskaloosa, for appellant.

Scott Campbell of Scott Campbell, P.C., Oskaloosa, for
appellee.

Considered by Hayden, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Charles and Barbara Harvey were divorced in 1986. The dissolution decree awarded the parties joint legal custody of their minor child, Jonathan, born on January 18, 1972, with Barbara having primary physical care. Charles was ordered to pay \$433 per month in child support. This support was to continue until Jonathan was twenty-two years of age if he was then in school, as provided for in Iowa Code section 598.1(2).

In January 1989 Jonathan, who was then a junior in high school, asked to live with Charles. The parties agreed Jonathan would move to Texas to live with Charles. Barbara refused to agree to a modification of the dissolution decree. Instead, she agreed to execute a satisfaction of judgment during the time Jonathan was living with Charles. Charles agreed not to make any claim against Barbara for child support unless Jonathan pursued a post-high school education. The parties' agreement is set forth in two letters written by their respective attorneys at that time.

Jonathan attended two years of junior college in Texas. Barbara paid for a portion of his tuition. In July 1992 Jonathan moved back to Iowa in order to attend Cental College in Pella. During the time Jonathan lived with Charles, neither party sought any child support payments from the other. Barbara executed one satisfaction of judgment for the six-month period immediately after Jonathan moved.

In May 1992 Barbara initiated a garnishment action against Charles's wages for the collection of delinquent child support which had accrued during the period of time Jonathan lived with Charles. Charles's objection to the garnishment was overruled. The court determined the issue of the parties' agreement was not appropriately raised in a garnishment proceeding.

Charles filed the present application for a declaratory judgment and a modification of the dissolution decree. At the hearing, Randall Stravers and Allan Orsborn, the parties' attorneys in 1989, testified to their understanding of the agreement, which was that Barbara agreed to file satisfactions of judgment for child support during the period of time Jonathan lived with Charles. Charles testified this was his understanding of the agreement as well. Barbara testified she only agreed to allow Jonathan to live with Charles for six months and she only agreed to waive child support during that period of time. She relied upon a letter she sent to Jonathan's school in Texas in which she stated she was giving Charles temporary custody from January 18, 1989, until the end of the school year.

The district court found Barbara was not credible in stating the agreement was for only six months. The court noted Barbara took no action to collect child support after Jonathan moved to Texas. The court found the parties had entered into an agreement to waive child support for as

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long as Jonathan lived with Charles. The court concluded Charles should not be required to pay child support for the period of time from January 18, 1989, until July 1, 1992. The court reduced the judgment against Charles in the amount of \$17,753, which was the amount of his child support obligation during this period.

Barbara filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). In considering the motion, the court determined the doctrine of equitable estoppel applied to bar Barbara's claims for child support. The court ordered the garnishment be quashed. Barbara has appealed.

Barbara contends the district court improperly gave effect to the parties' informal modification of the dissolution decree. Under section 598.21(8)(1) a modification of a support order is void unless it is approved by the court. She also contends the district court improperly made a retroactive modification of the decree.

Our scope of review in this equity action is de novo. Iowa R. App. P. 4. We conclude the district court did not actually modify the parties' dissolution decree. Instead, the court was addressing the enforcement of a judgment against Charles. In doing so the court considered the parties' agreement concerning the enforceability of the judgment.

We find the parties agreed Barbara would not seek to enforce her judgment against Charles for child support

which accrued during the time Jonathan lived with Charles. We conclude the doctrine of promissory estoppel applies in this case. See Merrifield v. Troutner, 269 N.W.2d 136, 137 (Iowa 1978). Charles relied on the parties' agreement to his detriment because he could have sought a modification of the decree to transfer custody of Jonathan and require Barbara to pay child support. A weighing of all the equities in the case brings us to the conclusion Charles is entitled to equitable relief.

We affirm the decision of the district court. Costs of this appeal are assessed to Barbara.

AFFIRMED.