FILED
MAY 20 1977
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

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| WILLIAM E. MARTIN, | ) | |
| Appellant, | ) | Filed May 20, 1977 |
| v. | ) | |
| ADELE M. MARTIN, | ) | 121 |
| Appellee. | ) | 2-58554 |

Appeal from Wapello District Court - Michael Enich, Judge.

Appeal from declaratory judgment fixing amount of arrearage in payment of child support under decree of divorce and adjudicating validity of levy of execution on joint bank account. Modified, affirmed and remanded.

William E. Martin, pro se.

Max H. Ruschmeyer, of Ottumwa, for appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

This is an appeal from an order and judgment of the trial court in a declaratory judgment proceedings determining the amount in which plaintiff was delinquent in payment of child support under a decree of divorce between the parties to this action. Also determined in the trial court was the extent to which defendant could levy execution on a joint bank account of plaintiff and his wife by a subsequent marriage.

On appeal there are three issues presented: (1) whether plaintiff's weekly child support obligation abated during the time one of the minor children of the parties resided with him during summer visitation periods; (2) whether said obligation abated during a period when one of the minor children resided with plaintiff for a continuous period of 105 weeks; and (3) the extent to which a joint bank account which plaintiff held with his wife by a subsequent marriage could be garnished for delinquent child support judgments. Our review on all issues is de novo.

I. On the first issue we conclude that the trial court correctly concluded that plaintiff's child support obligation did not abate during visitation periods. *See* Pucci v. Pucci, 259 Iowa 427, 432-33, 143 N.W.2d 353 (1966); In re Marriage of Glass, 213 N.W.2d 608 (Iowa 1973).

II. On the second issue we conclude upon our review of the entire record that under established principles of equitable estoppel plaintiff has established a right to a partial satisfaction of defendant's weekly child support judgment during the 105 week period that his daughter Linda resided with him rather than with defendant. *See* Anthony v. Anthony, 204 N.W.2d 829, 831 (Iowa 1973). This conclusion is based upon more than mere passage of time. The record reveals a substantial change of position by

plaintiff in reliance upon the defendant not collecting the child support judgment during this time. Our holding is not a retroactive modification of the decree. It is based upon matters properly shown in discharge of the judgment. *See* rule 256, Rules of Civil Procedure.

In the divorce decree, plaintiff's child support obligation was fixed at $12.50 per week for each of two children. The other child continued to reside with defendant during this 105 week period. Defendant's child rearing expenses did not abate pro rata during this period. *See* In re Marriage of Glass, supra. We believe the proper amount to be credited plaintiff in satisfaction of his total obligation to be the sum of $5 per week for 105 weeks. This has the effect of modifying the trial court's determination of the amount of the delinquency from $1830 to $1305. As so modified this portion of the trial court's order is also affirmed. If the order has resulted in an overpayment by plaintiff this shall first be set off against delinquent child support payments, if any, under the decree and next set off against subsequently accruing child support payments, if any, under the decree. If not exhausted by means of such setoff plaintiff may have judgment against defendant for any remaining overpayment.

III. On the final issue, sections 626.32 and 626.33, The Code, require court to determine the nature and extent of the judgment debtor's interest in jointly held property when the judgment creditor seeks to levy thereon. This was done in the present case and the trial court determined that plaintiff's interest was such that the entire account could be levied upon in satisfaction of defendant's judgment. Nothing in this ruling enabled the defendant to take from plaintiff more than he owed.

If there was any prejudicial error it works only to the disadvantage of plaintiff's wife who plaintiff claims was a joint owner of the account. She is not a party to this proceeding. Iowa law recognizes that conflicting claimants to garnished funds may intervene in the proceedings. *See* section 642.20, The Code; Dolph v. Cross, 153 Iowa 289, 133 N.W. 669 (1911); New Amsterdam Casualty Co. v. Bookhart, 227 Iowa 1150, 290 N.W. 61 (1940). She has not availed herself of this opportunity and plaintiff has no standing to assert her claim. *See* Czajkowski v. Lount, 333 Mich. 156, 52 N.W.2d 642 (1952). We make no determination of the rights, if any, of plaintiff's wife against defendant or the bank. We accordingly do not disturb the trial court's determination of this issue.

Modified, affirmed and remanded.