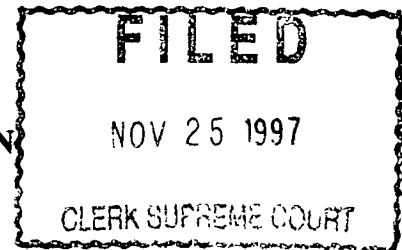


IN THE COURT OF APPEALS OF IOWA

000223

No. 7-546 / 96-1384

**IN RE THE MARRIAGE OF PATRICK MARTIN OGDEN
AND TERESA SUE OGDEN**



Upon the Petition of

PATRICK MARTIN OGDEN,
Appellee/Cross-Appellant,

And Concerning

**TERESA SUE OGDEN n/k/a
TERESA SUE SIMPSON,**
Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Wapello County, Annette J.

Scieszinski, Judge.

Teresa Simpson appeals from a district court order granting Patrick Ogden's application for order of release and satisfaction of child support. **AFFIRMED.**

Michael P. Brice, Oskaloosa, and Martha L. Mertz, Knoxville, for appellant.

Steven Gardner of Kiple, Kiple, Denefe, Beaver & Gardner, Ottumwa, for appellee.

Considered by Cady, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

This is an appeal by Teresa Simpson claiming the district court should not have granted Patrick Ogden's application for order of release and satisfaction of child support. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Patrick and Teresa were previously married. They have two children. The parties' dissolution decree was entered January 14, 1985. Teresa was awarded custody of the children and Patrick was ordered to pay child support of \$50 per week per child. At Teresa's direction, the child support payments were sent directly to her, instead of to the clerk of the district court as required by Iowa Code section 598.22.

In 1995, Teresa asked Patrick to voluntarily terminate his parental rights so her new husband, Richard Simpson, could adopt the children. On August 7, 1995, Patrick signed a consent which provided, "my parental rights and responsibilities will be completely severed, including any and all forms of future financial obligation." Patrick paid no further child support. The adoption was completed in October 1995.

In December 1995, Teresa contacted Patrick and demanded \$9000 for alleged unpaid child support. She stated that unless Patrick paid this amount, she would tell child support collection authorities Patrick had not paid any child support. Patrick refused to pay, and Teresa reported Patrick to the Child Support Recovery Unit (CSRU). CSRU informed Patrick their records showed he owed \$58,150 in unpaid child support.

On May 13, 1996, Patrick filed an application for order of release and satisfaction of child support. Patrick presented evidence to show he had paid all child support due, except for \$4942. Patrick testified he believed he had paid all of his child support obligation, but he did not have records of all payments. Teresa admitted she had no record of her receipts, and did not really know how much Patrick had paid.

The district court determined the doctrine of equitable estoppel prevented Teresa from attempting to collect the allegedly unpaid child support payments. The court ordered Teresa to file an affidavit which confirmed she had received all child support owed by Patrick. She was also ordered to pay \$850 for Patrick's trial attorney fees. Teresa has appealed.

I. Teresa claims the consent to termination of parental rights relieved Patrick of only his future child support obligation, and did not expunge his obligation for past due child support. She asserts Patrick had an arrearage of \$4342 at the time the adoption was filed. She believes it was improper for the district court to direct her to file an affidavit confirming payment of all child support owed by Patrick.

We conclude the doctrine of equitable estoppel should be applied to the facts in this case. There was an oral agreement between the parties to pay child support directly to Teresa. *See In re Marriage of Harvey*, 523 N.W.2d 755, 756 (Iowa 1994).

Patrick relied to his detriment on this agreement. *See Id.* at 757. Patrick's reliance on the parties' agreement compromised his ability to prove his compliance with the ordered support obligation.

The equities entitle Patrick to relief. *See Harvey*, 523 N.W.2d at 757. Patrick presented evidence to show he substantially paid his child support obligation. There was a lack of evidence by Teresa to show nonpayment. The district court had the additional advantage of observing the parties, and by finding the child support had been paid in full, the court obviously concluded Patrick was more credible than Teresa. In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

We determine Teresa is barred by the doctrine of equitable estoppel from pursuing her claims. We determine Teresa is barred from pursuing her claims of unpaid child support by contempt action, civil judgment, execution of liens, or in any other manner. We conclude, however, the requirement she file an affidavit is irrelevant. *See In re Marriage of Yanda*, 528 N.W.2d 642, 643 (Iowa App. 1994). Because we have affirmed the district court decision on the grounds of equitable estoppel, Teresa should not be required to sign an affidavit of satisfaction.

II. Teresa contends the district court abused its discretion by ordering her to pay \$850 for Patrick's trial attorney fees. We find no abuse of discretion under the facts of the case.

III. In a cross-appeal, Patrick seeks appellate attorney fees. We determine each party should pay his or her own attorney fees for this appeal.

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

AFFIRMED.