FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

LOIS J. FRANKLIN, a/k/a LOIS J. ECHTINAW,

Plaintiff-Appellee,

vs.

WILLIAM G. ECHTINAW,

Defendant-Appellant.

Filed February 26, 1980

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2-63733

Appeal from Warren District Court - M. C. Herrick, Judge.

Defendant appeals summary judgment for plaintiff in action for recovery of unpaid child support. - Affirmed.

Claire Patin and P. F. Elgin, of Elgin, Hoyman & Clogg, Indianola, for defendant-appellant.

G. Stephen Walters, of Webster, Jordan, Oliver & Walters, Winterset, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, William G. Echtinaw, appeals summary judgment for plaintiff, Lois J. Franklin, in action for recovery of unpaid child support. We affirm.

The parties' marriage was dissolved by a Nebraska decree in 1961. Lois was awarded custody of the couple's three children and William was ordered to pay support of $10 per week per child. Lois brought this action for unpaid support, which the parties agreed was $19,590. The trial court entered summary judgment in that amount and William appeals asserting summary judgment should not have been granted because a material question of fact was raised on the issue of estoppel by acquiescence.

Summary judgment shall be rendered if the pleadings and materials before the court show "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c). The applicable principles relative to summary judgment motions are set forth in Davis v. Comito, 204 N.W.2d 607, 611-12 (Iowa 1973). We find, contrary to William's assertion, Lois met her burden of showing no issue of fact was unresolved.

William's answer raised the affirmative defense of laches and estoppel which he labels "estoppel by acquiescence" on appeal. He based that defense on Lois's "conduct in failing to notify either the Clerk of the District Court of Douglas County, Nebraska, or the defendant of her address during her long absence therefrom, from enforcing said judgment" and also claimed the statute of limitations barred her recovery. Neither of these allegations, however, support William's claim of estoppel by acquiescence. Lois's suit was within the twenty-year statute of limitations. See Bennett v. Tomlinson, 206 Iowa 1075, 1079, 221 N.W. 837, 840 (1928). Furthermore, the facts presented did not support the defense of estoppel by acquiescence.

Estoppel in the context of proceedings for delinquent child support has been the subject of several recent cases. Estoppel by acquiescence is applicable where a person knows of a right that may be enforced and neglects to do so for such a length of time as would imply an intention to abandon or waive the right. Anthony v. Anthony, 204 N.W.2d 829, 834 (Iowa 1973). In Anthony, the court upheld the defense where the wife brought suit for back support only after her husband recontacted his daughter after some seventeen years. Id. Her action was deemed vindictive and the court upheld the estoppel by acquiescence defense because the wife had agreed to waive decretory child

support in return for the husband's surrender of visitation rights. Id. Two years after Anthony, the court rejected an estoppel by acquiescence defense because the wife had attempted to enforce her right to support but "wearied of her collection attempts." Cullinan v. Cullinan, 226 N.W.2d 33, 36 (Iowa 1975). Then in Davidson v. Van Lengen, 266 N.W.2d 436, 439 (Iowa 1978), the court affirmed a finding of estoppel by acquiescence because the defendant wife "by words and actions" led the husband "to believe she intended to waive and abandon her right. Obviously, plaintiff relied on this acquiescence. As requested by defendant, he ceased child visitation which he had previously exercised." Id. at 440. Finally, in Merrifield v. Troutner, 269 N.W.2d 136, 137 (Iowa 1978), the court discussed promissory and equitable estoppel in the child support context. That case, however, is not controlling on the defense of estoppel by acquiescence raised here.

In this case, we find the trial court correctly rejected William's estoppel by acquiescence defense. In the cited cases, the party deemed estopped had taken some affirmative action, by words or conduct, to receive a quid pro quo for release of the support right. This action was in addition to their failure to seek enforcement of the support right. Here, Lois took no affirmative action. William asserts her failure to give notice of her location and her failure to bring suit was sufficient in itself to manifest a relinquishment of support rights. We do not agree. None of the cited cases equated inaction alone with relinquishment. Unlike Anthony, Lois made no agreement with William. Unlike Davidson, Lois did not, by actions or words, lead William to believe she waived or abandoned her rights. Under the facts presented, estoppel by acquiescence was not established.

On her motion for summary judgment, Lois established she was entitled to recovery under the applicable principles of law. Since no genuine issues of fact remained unresolved, summary judgment was the correct means to enter such recovery. Accordingly, we affirm the judgment of the trial court.

AFFIRMED.