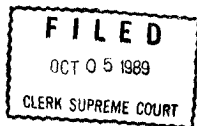


IN THE COURT OF APPEALS OF IOWA

No. 9-185 / 88-1426



JERRY DEAN FLEENER,

Plaintiff-Appellee,

vs.

CATHRYN HICKLIN, f/k/a CATHRYN FLEENER,

Defendant-Appellant.

120

Appeal from the Iowa District Court for Mahaska County,
Richard J. Vogel, Judge.

Defendant appeals from declaratory judgment holding
that appellee owed her no child support and that her child
support liens were null and void. **AFFIRMED.**

Robert A. Hutchison and Robert D. Andeweg of Brown,
Winick, Graves, Donnelly, Baskerville & Schoenebaum, Des
Moines, for defendant-appellant.

Randy S. DeGeest, Oskaloosa, for plaintiff-appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab,
JJ.

HABHAB, J.

Appellant appeals from declaratory judgment holding that appellee, appellant's former husband, owed her no child support and that her child support liens were null and void. We affirm.

The parties were once married to each other and are the parents of two children, born in 1963 and 1967.

The parties' marriage was dissolved in 1974. The 1974 decree placed the children in Cathryn's custody and directed Jerry to pay child support. A 1977 modification transferred the children to Jerry's custody and eliminated his child support obligation. However, in 1978 this court reversed the modification order, returned the children to Cathryn's legal custody, and reinstated Jerry's child support obligation.

Soon thereafter, Cathryn returned the children to Jerry. She expressed her belief that the children would be better off with him and his new wife, Treva. In addition, the children had both wished to continue attending school in Oskaloosa, where Jerry lived.

At the time Cathryn turned physical custody of the children over to Jerry, a conversation occurred between the parties as to whether they should seek out legal counsel. Cathryn stated that she did not think that was necessary. The children lived with Jerry until they reached adulthood, and Jerry paid no child support to Cathryn after 1978.

But, during the time they were with him, he provided for their care, purchased automobiles for them, and contributed to their college education.

In 1987 Jerry discovered there was a lien on his real estate due to unpaid child support. He asked Cathryn to sign a release of the support payments, but Cathryn refused. He then filed the present declaratory judgment action, seeking a declaration that he owed no child support. The district court granted Jerry the relief he sought, discharging all child support after December 1978 and declaring null and void all child support liens accruing after December 1978. The trial court found that when Cathryn relinquished custody of the children, the parties agreed that Jerry would no longer be required to make child support payments.

Cathryn has appealed from the district court's judgment. Cathryn contends the evidence was not sufficient to establish an agreement waiving her right to child support after December 1978. She also contends there is no evidence showing that her right to recover child support is barred by laches or estoppel by acquiescence.

I.

Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). The trial

court determined that at the time Jerry was given physical custody of the children it was implied that he would no longer be required to make child support payments to Cathryn.

From our de novo review of the record, we agree with appellee that Cathryn and Jerry did not have an express agreement terminating the child support obligation. However, as we point out below, we are of the opinion that the child support payments should terminate in the manner decreed by the trial court under the legal doctrines of equitable estoppel by acquiescence and laches.

II.

We find that Cathryn is barred by the doctrine of estoppel by acquiescence from asserting her claim for past-due child support. As the Iowa Supreme Court noted in Davidson v. Van Lengen, 266 N.W.2d 436, 439 (Iowa 1978):

The doctrine [of estoppel by acquiescence] is applicable where a person knows or ought to know that she is entitled to enforce her right or to impeach a transaction and neglects to do so for such a time as would imply that she intended to waive or abandon her right.

This doctrine has been previously interposed in cases where a former spouse has been dilatory in enforcement of a child support judgment. See id.; Anthony v. Anthony, 204 N.W.2d 829, 834 (1975).

Cathryn made no attempt to enforce the child support award for nine years even though she knew where Jerry worked and resided. Indeed, she made absolutely no demands

for child support throughout this period. In addition, Cathryn knew she was entitled to support, but chose instead to "let it ride." When we couple the fact that she relinquished physical custody of the children to Jerry with her own admissions, that Jerry was supplying the majority of the children's support during this period, her inaction clearly implied that she intended to abandon her right to this support. Under the circumstances of this case, we are of the opinion that the application of this remedy is clearly demanded in the interests of justice. Davidson, 266 N.W.2d at 439.

III.

Similarly, we also conclude that the doctrine of laches precludes Cathryn from enforcing her claim for unpaid child support. The distinction between laches and estoppel by acquiescence was discussed in Davidson:

Estoppel by acquiescence is based on examination of the individual's actions who holds the right in order to determine whether that right has been waived. It advances a policy of stability and conclusiveness. The application of laches requires focusing on the defendant's position and determining whether the delay harmed him or resulted in material prejudice. The doctrine is a purely equitable one and applies where there has been an unreasonable delay in asserting a remedy and is clearly demanded in the interests of justice.

266 N.W.2d at 439 (citations omitted). When Jerry suggested that they should consult their respective attorneys concerning the change in physical custody, Cathryn retorted that it wouldn't be necessary. In

addition, Jerry relied on the fact that Cathryn made no demands for child support to conclude that she had waived her right to it. The prejudice to him is obvious; he did not take legal recourse to have the child support payments discontinued upon the change in physical custody. As a result, he is now being called upon to pay Cathryn for support he supplied to the children. In essence, what we are being asked to determine here is whether equity should permit Cathryn to enforce the child support judgment for her own benefit. We categorically reject such a notion.

AFFIRMED.