IN THE COURT OF APPEALS OF IOWA

No. 1-266 / 00-888
Filed August 29, 2001

IN RE THE MARRIAGE OF SANDRA GOMEZ AND ROBERT GOMEZ

Upon the Petition of
SANDRA GOMEZ,
Petitioner-Appellee,

And Concerning
ROBERT GOMEZ,
Respondent-Appellant.

FILED
AUG 29 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge.

The respondent appeals a district court ruling denying his application for declaratory ruling seeking a credit and satisfaction of his child support obligation.

AFFIRMED.

Eric Borseth of Borseth, Genest & Suddreth Law Office, Altoona, for appellant.

Thomas R. Isaac, New Virginia, for appellee.

Considered by Sackett C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

Robert Gomez, Sr., appeals a district court ruling denying his request for a credit and satisfaction of his child support obligation. He contends he paid more to his former wife Sandra than is reflected in the clerk of court's records. We affirm.

I. Background Facts and Proceedings

Robert and Sandra Gomez married and divorced. Under the divorce decree, Robert was to pay child support for his three children, Robert, Che and Shannon. Subsequently, the child support provisions of the decree were twice modified, the second time to account for a split care arrangement. Pursuant to the second modification order entered in 1996: (1) Robert was to have physical care of the two boys and Sandra was to have physical care of Shannon; (2) neither party was to pay child support to the other; and (3) when the boys became adults or graduated from high school, the parties were authorized to seek reinstatement of support for Shannon.

When the boys graduated from high school, Sandra applied to modify the decree a third time to reinstate Shannon's child support. Robert countered by filing an application for declaratory ruling. He alleged that before 1996, when he owed support, he often paid Sandra directly rather than paying the clerk of court, with the understanding that she would record the payments with the clerk. He claimed that Sandra failed to record some of the payments and, had she done so, his past-due support obligation would have been satisfied. He sought a ruling that his past support obligation was indeed satisfied.

At trial, the parties stipulated to the amount and conditions of support for Shannon, thereby resolving Sandra's modification application. Remaining was the issue of Robert's past support obligation, raised in his petition for declaratory ruling. Sandra conceded the parties had an arrangement under which Robert made support payments to her rather than the clerk of court. She further conceded that Robert paid all the support he owed up to 1994, including a disputed payment in 1989. However, she did not agree that he paid in full for 1994 and 1995. The district court partially granted Robert's application for declaratory ruling, concluding he was entitled to a satisfaction for payments made directly to Sandra in 1989 but not for similar payments made in 1994 and 1995.

Robert then filed a motion for enlarged findings and conclusions pursuant to Iowa Rule of Civil Procedure 179(b), essentially asking the court to give him a credit against his support obligation for a $20 per week child care contribution he was ordered to pay between 1990 and 1995. He claimed Sandra did not incur any child care expenses during this period. Finding evidence that Sandra did incur such expenses, the district court denied the motion.

Robert appeals, raising three issues: 1) whether the district court acted equitably in refusing to credit his child care contribution against his past-due support obligation; 2) whether the court acted equitably in refusing to credit Robert for sums he paid directly to Sandra during 1994 and 1995; and 3) whether the doctrine of equitable estoppel should have operated to bar Sandra from seeking any additional past-due child support.[1] Our review of this equitable

[1] Sandra has not filed a responsive brief.

proceeding is de novo. *In re Marriage of Sylvester*, 412 N.W.2d 624, 626 (Iowa 1987).

II. Child Care Contributions

Robert's argument that he should receive a credit for child care contributions made between 1990 and 1995 is based on the fact Sandra did not claim a child care tax credit from 1989 through 1996. He argues that this fact confirms she did not incur any child care expenses. The district court disagreed, noting Sandra enrolled all three children in an after school care program and at least Shannon would have remained in this program through the 1994-95 school year. Although the evidence to support this finding is sparse, we agree with the district court that one can draw from that evidence "an inference of latch key expenses," warranting denial of Robert's request for a credit.

III. Credit for 1994-95 Payments to Sandra

Robert contends the district court should have credited him for payments he made directly to Sandra in 1994 and 1995. We disagree. Iowa Code section 598.22 mandates support payments be made to the clerk of court and, subject to certain limited exceptions, provides that payments made to other persons "do not satisfy the support obligations created by the orders or judgments." Iowa Code § 598.22. Iowa Code section 598.22A contains one of those exceptions. It provides that a payment not made to the clerk of court may nevertheless be credited toward the support obligation "if its validity is confirmed by the court upon submission of an affidavit by the person entitled to receive the payment, after notice is given to all parties." Iowa Code § 598.22A(1).

The first modified decree required Robert to make his payments through the clerk of court. Both he and Sandra conceded he did not do so. Additionally,

Sandra did not file an affidavit attesting to receipt of all payments and, at trial, disagreed that Robert was entitled to a credit for certain payments made in 1994 and 1995. Therefore, we agree with the district court that Robert could not avail himself of the exception contained in Iowa Code section 598.22A. *See Hurd v. Iowa Dep't. of Human Services*, 580 N.W.2d 383, 386 (1998), *cert. denied,* 525 U.S. 987, 119 S. Ct. 455, 142 L. Ed. 2d 408; *In re Marriage of Caswell*, 480 N.W.2d 38, 40 (Iowa 1992).

IV. Equitable Estoppel

Finally, Robert argues Sandra should be estopped from collecting past-due child support, citing a narrow exception to the child support collection laws recognized by our courts. *See In re Marriage of Harvey*, 523 N.W.2d 755, 756-757 (Iowa 1994); *In re Marriage of Yanda*, 528 N.W.2d 642, 644 (Iowa Ct. App. 1994). We have serious doubts as to whether Robert preserved this issue for review. However, assuming without deciding that he did, we nevertheless reject his assertion.

In *Harvey,* our highest court recognized that, in rare circumstances, the doctrine of equitable estoppel could be invoked to preclude enforcement of a child support obligation. *Harvey,* 523 N.W.2d at 756-7. The court found those rare circumstances present where a mother with physical care of her son sent the son to live with his father for five years, promised to execute a satisfaction of judgment for the father's accruing child support obligation, then disavowed her promise and moved to collect the support arrears. *Id.*

Our court similarly invoked the doctrine in *Yanda* to preclude a mother from enforcing a child support obligation where the father moved in with her after the divorce and supported the family. *Yanda*, 528 N.W.2d at 643.

We see no reason to invoke the doctrine here. First, the arrearage is not for a period when Robert provided all the children's support. *See Harvey*, 523 N.W.2d at 757. Second, although Robert claims he paid more support than he was obligated to pay, he reaches this conclusion by deducting the twenty dollar per week child care payments he claims he should not have had to pay, a deduction that we have disapproved. In contrast, the father in *Harvey* essentially provided double support for his son, making payments to the clerk of court while at the same time assuming physical care of his son. *Id.* Third, although the parties agreed Robert would pay Sandra directly, Sandra did not agree Robert made all the support payments he owed in 1994 and 1995. *Id.* Finally, the support payments did not enure solely to the benefit of Sandra, as she was supporting one or more of the children at all times. *Id.* For these reasons, we decline to apply the equitable estoppel doctrine to the circumstances of this case.

V. Disposition

We affirm the district court's partial denial of Robert's application for declaratory judgment.

AFFIRMED.

000100