FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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PHYLLIS J. STRUTHERS,)

Plaintiff-Appellee,) Filed February 26, 1980

vs.)

FREDERICK H. STRUTHERS,) 0-8
2-63182

Defendant-Appellant.)

Appeal from Kossuth District Court - James H. Andreasen, Judge.

Defendant appeals from judgment for plaintiff for unpaid portions of the child support obligation imposed upon him by the parties' 1962 divorce decree. AFFIRMED.

H. A. Stoebe of Humboldt, Iowa, for defendant-appellant.

Gregory J. Siemann of Carroll, Iowa, for plaintiff-appellee.

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

PER CURIAM

This action arose from the garnishment of funds in the hands of the personal representative of a decedent's estate which, but for the garnishment, would be distributed to defendant Frederick Struthers. The basis of the execution under which levy was made is an installment judgment for child support entered in 1962 in favor of plaintiff Phyllis Struthers and against defendant Frederick Struthers. The defendant appeared and contested the amount claimed to be owed by him under said judgment. Following trial of the issues, the district court determined plaintiff held a valid and subsisting judgment against defendant in the sum of $60,477.58 and directed that the garnished funds be applied against said obligation. This proceeding, unlike certain other litigated cases raising similar issues, was tried below as a law action. Therefore, our review is only for the correction of errors. Iowa R. App. P. 4. The trial court's findings of fact have the effect of a special verdict. Id. The computation of the accrued monthly child support payments is not in issue. Nor is there any dispute as to the sums paid by defendant against such obligation. Rather, the dispute here involves defendant's claim that such obligation is discharged under doctrines of: (1) promissory estoppel; (2) equitable estoppel; or (3) laches.

I. The trial court carefully adjudicated each of these claims in the alternative. In so doing, it properly applied the legal standards established for such defenses in the cases of Merrifield v. Troutner, 269 N.W.2d 136 (Iowa 1978); Davidson v. VanLengen, 266 N.W.2d 436 (Iowa 1978); Cullinan v. Cullinan, 226 N.W.2d 33 (Iowa 1975); and Anthony v. Anthony, 204 N.W.2d 829 (Iowa 1973). It found that the facts failed to establish any of these asserted defenses under such principles.

On the record, we find that defendant clearly was not entitled to a discharge of his obligation as a matter of law under any of the theories which he advanced. The evidence is susceptible of a determination that while plaintiff found it difficult or impracticable to execute on her judgment at an earlier point in time, she was, at all times, mindful of and planned to assert her claim against defendant's potential inheritance when the same materialized. No evidence compels the conclusion that she acted so as to lead defendant to assume that his obligation was forgiven. The trial court's determination as to each of the theories under which defendant claimed that his obligation should be discharged is supported by substantial evidence. The trial court did not err in rejecting said claim or in establishing the validity of plaintiff's judgment.

II. In addition to his arguments relating to the substantive issues, the defendant separately relies on the provisions of Iowa R. Civ. P. 256 in support of his claim that the judgment was discharged. Such arguments add nothing to the claims otherwise asserted. In order for a judgment to be discharged under rule 256, it would have been necessary for defendant to prevail on one of his substantive theories. His failure to do so precludes the granting of any relief under rule 256.

III. Lastly, we consider defendant's claim that he is entitled to credit against his child support obligations by reason of aid to dependent children payments received by his wife during the period of his child support obligation. The trial court recognized that the authorities from other jurisdictions are divided as to defendant's right to credit for such payments.[1] While no direct authority has been found in this jurisdiction, we believe, as did the trial court, that the rationale of Potts v. Potts, 240 N.W.2d 680 (Iowa 1976), suggests that such credit should not be allowed on the facts of this case because the aid to dependent children payments were not earned by the defendant's efforts or contributions.

We have considered all issues presented and find no basis for reversal.

AFFIRMED.

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[1] See Annot., 77 A.L.R. 3d 1315, 1336-39 (1976).