IN THE COURT OF APPEALS OF IOWA

No. 7-561 / 96-1592

IN RE THE MARRIAGE OF DEBRA ANN BARKHAUSEN AND ALLEN ALVIN BARKHAUSEN

Upon the Petition of
DEBRA ANN BARKHAUSEN,

Petitioner-Appellant/Cross-Appellee,

And Concerning
ALLEN ALVIN BARKHAUSEN,

Respondent-Appellee/Cross-Appellant.

FILED
JUN 24

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

Debra Barkhausen appeals from the district court's ruling granting Allen Barkhausen's motion to quash/amend a mandatory wage assignment garnishing amounts for child support. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER HEARING.**

Susan Bernau Staudt of Redfern, Mason, Dieter, Larsen & Moore, P.L.C., Cedar Falls, for appellant.

Karen L. Thalacker of Hagemann, Goeke, Egli & Thalacker, Waverly, for appellee.

Considered by Cady, C.J., and Huitink, and Vogel, JJ. Mahan, J., takes no part.

CADY, C.J.

This is an appeal and cross-appeal from a district court order for reimbursement of child support paid under a wage assignment. We affirm in part, reverse in part, and remand for an evidentiary hearing.

Debra and Allen Barkhausen dissolved their marriage in 1990. They had three children: Natonya, born December 19, 1974; Brent, born October 14, 1977; and Laci, born February 20, 1982. Debra was designated the primary caretaker of the children under the dissolution decree and Allen was ordered to pay weekly child support of $61 for each child.

Allen eventually became delinquent in his child support obligation. On September 1, 1993, the district court entered a weekly wage assignment of $183 for the current support obligation and $100 for the past unpaid amount.

On January 29, 1996, Allen filed a motion to quash the wage assignment and for reimbursement of any overpayments. Allen alleged Laci was the only child eligible for support, but his wages had continued to be garnished for all three children. Natonya turned eighteen years old in 1992. Brent turned eighteen years old in 1995.

Debra filed a resistance to the motion. She acknowledged Natonya and Brent had not been eligible for support for some time, but claimed the amount of the garnishment was considered to be support for Laci. She asserted the weekly

garnishment amount was consistent with the amount Allen would be required to pay under the Uniform Child Support Guidelines for one child and she had repeatedly attempted to negotiate a formal modification of the child support provision of the prior dissolution decree.

The motion came before the district court for hearing. No record was made of the hearing and no evidence was presented. The parties stipulated Natonya and Brent were no longer eligible for support, and arguments were presented by counsel. Debra did not resist the request to quash the withholding order pertaining to Natonya and Brent, but asked that the support for Laci be increased to an amount consistent with the child support guidelines.

The district court modified the withholding order by terminating the support obligation for the oldest two children and establishing the weekly support amount for Laci at $61. It concluded Debra's request to increase support for Laci would need to be brought in a separate modification action. Finally, it found Allen was entitled to be reimbursed for the child support he paid for Natonya and Brent from the time they turned eighteen years old.

Debra subsequently sought an enlargement of the court order and requested an evidentiary hearing on the issue of Allen's claim for reimbursement. She alleged Allen was estopped to seek reimbursement based on his inaction and acquiescence over the years. The district court denied the request but indicated Debra could raise

the reimbursement issue and present evidence in support of her claims in a modification action.

Debra appealed. She claims the district court erred in granting reimbursement without considering her equitable claims. She also asserts the district court erred in failing to grant her post-hearing motion to present evidence.

Allen cross-appealed. He claims the district court had no authority to permit Debra to relitigate the reimbursement issue in a modification action. He also maintains Debra failed to raise her equitable claims at the hearing before the district court.

Our review is de novo. Iowa R. App. P. 4. This standard of review, however, does not foreclose review for legal error. *State ex rel. Casas v. Fellmer*, 521 N.W.2d 738, 740 (Iowa 1994). Nevertheless, we exercise our review only on those issues raised and preserved at trial. *Hyler v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996).

Allen claims Debra failed to raise her specific appellate claims of waiver and estoppel at trial. The pleadings reveal Debra responded to Allen's claim for reimbursement in a written resistance. Although she did not identify the terms "waiver" and "estoppel" in her resistance, Debra claimed reimbursement would be improper because the amount of support established in the original decree for all three children was compatible with the amount Allen should be paying under the Uniform Child Support Guidelines for Laci alone. Debra further alleged Allen had been aware

for some time the oldest two children no longer qualified for support and was further aware she considered the support payments he was making to represent the proper amount he should be paying for Laci. Debra also clearly framed her equitable defenses in legal terms in her post-hearing motion. Under these circumstances, we believe Debra sufficiently raised and preserved her claims for appeal. *See Bethards v. Shivvers, Inc.*, 355 N.W.2d 39, 44 (Iowa 1984).

We next consider the circumstances in which the case was submitted in the district court for resolution. Absent the stipulation, neither party presented evidence to the district court. Instead, the district court decided the case on legal arguments of counsel and we have no record to review on appeal. Thus, like the district court, we will consider the pleadings to determine whether Allen was entitled to reimbursement as a matter of law.

We observe this case does not involve an attempt by one parent to recover past child support from the other parent. *See In re Marriage of Harvey*, 523 N.W.2d 755, 756 (Iowa 1994). Instead, we are presented with an attempt by one parent to obtain reimbursement for child support that was paid beyond the terms of the decree.

Although we are slow to look beyond the specific terms of a support order in deciding disputes of this nature, we recognize equitable defenses may be asserted to defeat claims for past support. *See Harvey*, 523 N.W.2d at 756-57. We have also recognized that claims for contribution by a divorced parent who voluntarily

supported a child are subject to such equitable defenses of waiver, laches, and estoppel. *Brown v. Brown*, 269 N.W.2d 819, 822 (Iowa 1978). Similarly, we believe claims for reimbursement based on an overpayment of support under a decree should also be subjected to the scrutiny of equitable defenses. Thus, before awarding reimbursement, courts should balance the equities between the parties. This, of course, can only be done following an evidentiary hearing.

We conclude the district court erred in rejecting Debra's equitable claims as a matter of law and in failing to hold an evidentiary hearing. We reverse that portion of the order granting reimbursement and remand for a further hearing. We otherwise affirm the district court order. We need not address the issue raised on cross-appeal.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER HEARING.