IN THE COURT OF APPEALS OF IOWA

No. 0-234 / 99-856
Filed July 26, 2000

FILED
JUL 26 2000
CLERK SUPREME COURT

IN RE THE MARRIAGE OF KATHRYN THIES AND GREGORY JOHN THIES

Upon the Petition of
KATHRYN THIES, n/k/a KATHRYN HUNTER,
Petitioner-Appellee/Cross-Appellant,

And Concerning
GREGORY JOHN THIES,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Chickasaw County, Todd A. Geer, Judge.

The respondent appeals, and petitioner cross-appeals, from a district court ruling on petitioner's action to enforce and collect child support ordered by a Minnesota district court, which modified the child support provisions of the parties' original Iowa decree. **AFFIRMED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

Christopher F. O'Donohoe of Elwood, O'Donohoe, O'Connor & Stochl, New Hampton, for appellee.

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

STREIT, J

Gregory Thies appeals the district court order demanding he pay with interest eight years of back child support. He claims his ex-wife should be barred from executing the judgment on equitable grounds as she agreed not to enforce the court's support obligation. Kathryn Hunter, his ex-wife, cross-appeals, claiming the trial court erred in equitably estopping her from receiving a full ten years of owed child support. Finding no merit to either of their claims, we affirm the trial court.

I. Background Facts & Proceedings.

Kathryn and Gregory Thies married in November of 1971 and had two children, Valerie, born December 19, 1975, and Naomi, born May 17, 1978. In 1980 the parties divorced, and Kathryn was awarded primary physical care of the children. In 1983 the dissolution decree was modified granting Gregory primary physical care of the children. In 1984 the decree was modified in Minnesota. The Minnesota modification granted Kathryn primary physical care of the children and ordered Gregory to pay fifty dollars per month per child in child support. At the time of the modification, the parties attempted to include in the decree a provision releasing Gregory from having to pay child support. The Minnesota court, however, refused the provision and ordered nominal child support. It appears Kathryn made some sort of informal statement that she would not enforce the support order given Gregory's poor financial situation.

For the next eight years Gregory paid no child support. In 1992 he began to give the children money in excess of the owed support obligation and

continued to do so until each child reached the age of majority. In 1998 Kathryn filed the modified decree in Iowa. She then sought the total amount of child support and interest under the Minnesota modification Gregory attempted to quash execution of the judgment. The Iowa district court ruled Gregory's claims of laches, waiver, and promissory estoppel were barred as contrary to public policy; awarded interest on the judgment; but prevented Kathryn from receiving back support after May 1992 as Gregory was informally satisfying his child support obligation by sending funds directly to his daughters.

Gregory appeals, claiming the court erred enforcing the judgment and assessing interest. Kathryn cross-appeals, alleging the court erred in finding Gregory's informal payments satisfied his support obligation.

II. Preservation of Error.

Gregory appeals the district court's award of interest dating all the way back to the due date of first child support payment. He claims the Minnesota modification did not become an Iowa judgment until Kathryn filed the modification in 1998. He claims any interest provided for under Iowa law can only accrue from the time the judgment was entered in Iowa and prior to that time any interest assessment would depend upon an interpretation of Minnesota law. Gregory, however, is raising this issue for the first time on appeal. Under Iowa Rule of Civil Procedure 179(b), a party must alert the trial court of its failure to resolve an issue, claim, or other theory properly submitted to preserve error. Iowa R. Civ. P. 179(b); *Witz v. Wapello County Bd. of Supervisors*, 595 N.W.2d 786, (Iowa 1999). The purpose of a rule 179(b) motion is "to advise counsel and the

appellate court of the basis of the trial court's decision in order that counsel may direct his attack upon specific adverse findings or rulings in the event of an appeal." *Berger v. Amana Society*, 254 Iowa 1036, 1040, 120 N.W.2d 465, 467 (1963). In the present case, Gregory did not alert the trial court of his claim regarding the assessment of interest. The issue, therefore, is procedurally barred from review.

III. Standard of Review.

As this action was tried in equity, our review is de novo. Iowa R. App. P. 4.

IV. Promissory Estoppel, Waiver, & Laches.

Gregory first claims Kathryn cannot seek to enforce the judgment under theories of promissory estoppel, waiver, and laches.

Parents may contract between themselves regarding the support of their minor children if the children's best interests are not harmed thereby, "but an agreement which purports to relieve a father entirely and permanently of the duty to support his minor child is against public policy." *In re Marriage of Sundholm*, 448 N.W.2d 688, 690 (Iowa App. 1989). This court has routinely found claims of promissory estoppel, waiver, and laches cannot be used to completely relieve a father of his child support obligations, regardless of some tenuous agreement by the parties to the contrary. *See id.*; *Thum v. Thum*, 310 N.W.2d 539, 540-41 (Iowa App. 1981). We continue to find agreements seeking to completely absolve a parent from a child support obligation, whether rooted in contract or

equitable principles, counter to public policy and bar Gregory's claim for equitable relief.

V. The Duration of Back Support to Be Paid.

Kathryn in her cross-appeal claims the district court erred in limiting the amount of child support she could recover on equitable grounds. Kathryn correctly asserts child support payments must be made to the clerk of the district court or a collection service center in order to satisfy the obligation. *See* Iowa Code § 598.22 (1999). The court, however, has in extremely limited circumstances equitably estopped a parent from receiving child support if the payment has been received by the children. *In re Marriage of Yanda*, 528 N.W.2d 642, 644 (Iowa App. 1994). A court should be loath to deviate from the clear prescriptions of Iowa Code section 598.22, but in unique circumstances such a deviation may be permitted. Such unique circumstances include: (1) the support provided by the parent exceeded the court-ordered amount; (2) the parent agreed or requested the money be sent directly to the child; and (3) the children have become adults, and the payments would not benefit the children but be simply pocketed by the mother. *In re Marriage of Harvey*, 523 N.W.2d 755, 756 (Iowa 1994). In the present case, those same factors are present. Gregory was sending the children one hundred dollars over the amount ordered, the payments were made at the behest of Kathryn, and the children are now grown. Furthermore, the decree ordering child support was from a Minnesota court. That decree did not indicate, nor was there any evidence offered, as to the manner in which child support is to be paid under Minnesota law. That being the

case, we concur with the trial court in finding this to be one of those extremely unique cases where equitable estoppel is appropriate. The district court is affirmed.

AFFIRMED.