IN THE COURT OF APPEALS OF IOWA

No. 4-305 / 93-1603

FILED
OCT 25 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF STEVEN J. STRULOWITZ AND JOAN S. STRULOWITZ

Upon the Petition of
STEVEN J. STRULOWITZ,

Petitioner-Appellant,

And Concerning
JOAN S. STRULOWITZ,

Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

Steven appeals from the district court ruling denying his request for declaratory judgment or, in the alternative, modification of the dissolution decree. **AFFIRMED IN PART AND MODIFIED IN PART.**

Daniel L. Bray, Iowa City, for appellant.

Dennis D. Jasper of Stafne, Lewis, Jasper, Alexander & Preacher, Bettendorf, for appellee.

Heard by Sackett, P.J., and Habhab and Cady, JJ.

SACKETT, P.J.

Respondent-appellant Steven J. Strulowitz appeals from the trial court's refusal to find for him in a petition for declaratory judgment and modify his dissolution decree. Steven contends the trial court should have determined his child support obligation terminated when his children reached age eighteen and graduated from high school, he should have judgment for amounts he paid in excess of what he claims he owed under the dissolution decree, and petitioner-appellee Joan S. Strulowitz should be ordered to pay his attorney fees. We affirm in part and modify in part.

The marriage of Steven and Joan was dissolved in 1989. The physical care of the parties' two daughters, Jennifer, born November 11, 1971, and Megan, born December 14, 1973, was awarded to Joan. There was substantial property which was divided. Steven was ordered to pay child support. The provision of the decree that provided for child support read as follows:

> [R]espondent shall pay to Petitioner, through the Clerk of this Court, for the use and support of the minor children of the parties, the sum of $860 per month per child, and each such payment shall become a judgment as the same becomes due and payable. Said child support payments to continue until each such child becomes 18 and graduates from high school, becomes married or otherwise self-supporting, or is no longer qualified under the provisions of Chapter 598.1 and 598.21, whichever first occurs. (Emphasis supplied).

In a ruling on a 179(b) motion following the filing of the decree, the trial court said:

> Respondent's obligation to pay child college expense was considered by the Court in providing said child support to continue if said children qualified under the provisions of Chapter 598.1 and 598.21, the Code.

An appeal from this decree was taken to this court. In an unpublished decision, In re Marriage of Strulowitz, 474 N.W.2d 288 (Iowa App. 1991), we remanded to the trial court on the issue of child support with directions to apply the child support guidelines. On remand, the trial court amended the decree by adding, "Child support guidelines established by the Supreme Court at $605 per month per child, are inadequate under all the circumstances previously found."

On February 2, 1990, Joan filed an application to modify the decree to assure additional college expenses for Jennifer. By this time, Jennifer was over 18 and had finished high school.

On May 16, 1991, the trial court ordered Steven to pay one-half of Jennifer's college expenses and ordered Steven to reimburse Joan $5306 for college expenses she had paid. In making this ruling, the trial court in dicta said, the child support payments after age 18 continued pursuant to 598.1 and 598.21. See In re Marriage of Strulowitz, No. 92-14/2-516, slip op. at 3 (Iowa App. Mar. 30, 1993).

Then on May 17, 1991, the day after the above ruling, Joan filed another application for modification and asked for child support in accordance with the child support

guidelines. The trial court, on December 10, 1991, ordered the child support previously issued to be $1500 per month per child. Steven appealed to this court contending he should not be paying child support for adult children and he should be paying college expenses to his daughters, not to their mother.

We determined the only issue considered by the trial court in the order appealed from was whether child support should be increased. We said the question of whether child support was to be paid until these children were eighteen and had finished high school or whether child support was to be paid for these children through age twenty-two and single and in college was not an issue before the trial court when the order increasing child support was entered and was not an issue before us. We agreed with Steven that the issue was not one of modifying child support under the child support guidelines except for the four days following the modification before the younger girl became eighteen. We struck any increase in child support that was or may have been made for Megan <u>after</u> she was eighteen and graduated from high school and we struck any increase in child support that was or may have been made for Jennifer.

We further noted the issue of how the discrepancy of the May 17 order and the dissolution decree should be justified was not before us and, while the record did not give us a clear answer to that question, we could on the record that was before us, address the very narrow issue of

whether the child support should have been increased to $1500 per month without determining how long child support was to have been paid under the decree and the first modification. We made it clear our decision in that appeal was not meant to decide that issue. Strulowitz, No. 92-14/2-516, slip op. at 3 (Iowa App. Mar. 30, 1993).

Steven had paid the $1500 per child per month during the appeal, therefore, pursuant to the procedendo, the trial court ordered Joan repay Steven for the child support increases terminated.

Steven then brought this action seeking to recover the monthly payment of $605 per month that he paid Joan after each child reached eighteen years and graduated from high school. Steven asked the trial court apply the original decree and find his child support obligation for each child terminated when the child reached age eighteen and graduated from high school.

In Iowa, a person eighteen years of age or older is considered an adult. Parents in Iowa have no legal duty to support adult children save the provisions of 598.1(2) which imposes a limited duty under certain circumstances for divorced parents of single children under the age of twenty-two years who are in good faith students.

The Iowa court in In re Marriage of Vrban, 293 N.W.2d 198 (Iowa 1980), said:

> It [section 598.1(2)] does not require such support in all cases. It allows the trial court,

> in its discretion, to award support of the children through college under the proper circumstances. Among the factors to be considered are the financial condition of the parent, ability of the child for college work, age of the child, and whether the child is self-sustaining or not.

Id. at 203.

We agree with Steven that the language of the original decree clearly terminates his obligations to pay to Joan for his children's support when they reach eighteen and graduate from high school.

The language is not ambiguous. Should the decree be given a different interpretation by considering the ruling on the 179(b) motion, the dicta in the ruling, and the conduct of the parties?

A judgment is a final adjudication of any of the rights of the parties in an action. Iowa R. Civ. P. 219 (1993). Once a judgment is entered, it, by definition, is a final adjudication of any of the rights of the parties in an action and operates as a judicial act which settles issues and fixes rights and liabilities of the parties. See Giltner v. Stark, 252 N.W.2d 743, 745-46 (Iowa 1977).

The language fixing length of payment of child support was not at issue in any further proceeding or appeal, therefore, it continues to be conclusive until modified or set aside in a proper proceeding. See Delbridge v. Sears, 179 Iowa 526, 532, 160 N.W. 218, 221 (1917). We find Steven's obligation to pay child support ceased for Megan when she finished high school and reached eighteen years of

age and ceased for Jennifer when she finished high school and reached eighteen years of age.

The second question is whether Steven should have a judgment against Joan for amounts he paid after the children reached eighteen years and graduated from high school. Steven paid child support until our opinion of March 30, 1993, which he claims confirmed his suspicion the decree did not provide for child support to continue beyond age eighteen after the child finished high school. Joan contends Steven is estopped from obtaining such judgment. The trial court found Steven paid the amounts without protest and Joan used the money for the children's benefit. We find Steven estopped from obtaining a refund. The doctrine of estoppel by acquiescence bars Steven's claims for a judgment for the money paid. This doctrine is applicable where a person knows or ought to know he or she is entitled to enforce his or her right or to impeach a transaction and neglects to do so for such a time as would imply that he or she intended to waive or abandon his or her right. Davidson v. Van Lengen, 266 N.W.2d 436, 438 (Iowa 1978). An estoppel may arise under certain circumstances from silence or inaction, as well as from words or actions. In re Marriage of Leege, 494 N.W.2d 453, 456 (Iowa App. 1992); Keokuk State Bank v. Eckley, 354 N.W.2d 785, 792 (Iowa App. 1984). The trial court's denial of a judgment for Steven is affirmed.

Joan has requested attorney fees on appeal. The trial court denied her application finding she had sufficient resources to pay her own attorney fees. We agree with the trial court that Joan has sufficient assets to pay her own attorney fees and we order no fees on appeal. The costs of this appeal shall be paid one-half by Steven and one-half by Joan.

AFFIRMED IN PART AND MODIFIED IN PART.