2015 IL App (3d) 140665-U

Order filed July 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

SHERI TUCKER,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Petitioner-Appellant,	)	Peoria County, Illinois.
	)	
v.	)	Appeal No. 3-14-0665
	)	Circuit No. 01-F-226
ERIC WILLIAMS,	)	
	)	The Honorable
Respondent-Appellee.	)	Katherine Gorman,
	)	Judge, presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Lytton concurring in the judgment

ORDER

¶ 1 *Held*: In a custody case in which the mother was denied recovery on her petition for past child support, the appellate court affirmed the circuit court's judgment that equitable estoppel precluded the mother from collecting on the father's child support arrearage.

¶ 2 The petitioner, Sheri Tucker, obtained an order for child support in 2001 in which the respondent, Eric Williams, was ordered to pay $202.28 per month.

¶ 3 FACTS

¶ 4 On August 24, 2001, the circuit court ordered Eric to pay $202.28 per month in child support to Sheri for their son, Drew. Eric was also given the tax exemption for Drew. Visitation was reserved, and the order was silent with regard to custody. The parties came to their own visitation agreement later.

¶ 5 Eleven years later, on July 31, 2012, Eric filed a petition in which he sought sole custody of his son. Sheri contested Eric's petition, and she also filed a petition to increase Eric's child support obligation and a petition for entry of order to show cause. In the latter petition, Sheri alleged that Eric had a child support arrearage of $23,318.93.

¶ 6 The guardian *ad litem* (GAL) filed two reports with the circuit court in this case. The first report was filed on January 11, 2013, and noted that Drew had lived with his maternal grandmother, Irma, his entire life. While Sheri had claimed to live with them for Drew's entire life, that claim was in dispute. The GAL's report stated that Eric had said since the possibility of litigation arose, Sheri set up a room for herself at Irma's house and started spending more time there, claims which Sheri denied. Eric had visited with Drew since Drew's birth; the visitation schedule was worked out with Irma. Eric had Irma's phone number memorized, but not Sheri's number. In addition, the GAL noted that Drew spent alternating weekends with his maternal aunt, Debbie Gaught.

¶ 7 The GAL met with Sheri's fiancé at his house; during the meeting, Drew referred to the residence as "mom's house." Sheri corrected Drew immediately and an "awkward silence" followed. The GAL also reported that Drew had referred to that house as "mom's house" on another occasion.

¶ 8 Also included in the GAL's report was a statement that Eric had claimed Irma told him to stop paying child support, and that in exchange Sheri was supposed to take the tax exemption for Drew.

¶ 9 In April 2014, the circuit court held a trial on all outstanding issues. Eric testified that Drew lived with Irma, who was Eric's contact for visitation. Sheri did not live with Irma; many times, Eric would not see Sheri during visits with Drew.

¶ 10 With regard to child support, Eric testified he originally paid it through garnished wages. However, after he changed jobs, he began paying it to Irma via money order. In 2003, he had a conversation with Irma which resulted in him ending child support payments. He did not claim the tax exemption for Drew, even though he realized in 2003 after looking at the 2001 court order that he was entitled to do so.

¶ 11 With regard to child support payments to the State Disbursement Unit, Eric stated that he made two payments of $36.64 in 2003 and no payments thereafter. He made no record of the child support payments he made to Irma via money order, which lasted approximately one year and which were each for $202.28.

¶ 12 Sue Williams testified that she lived across the street from Irma. She testified that prior to the last few years, Drew lived with Irma. During a time when she was a stay-at-home mother, she only saw Sheri's vehicles parked at Irma's house for brief periods in the late afternoon or early evening.

¶ 13 Sheri's sister, Lori Maskil, testified that while Sheri did spend two or three nights each week with her boyfriend in another town, Sheri lived with Irma until May 2012. Lori also testified that Drew was close to her and Sheri's other sister, Debbie, and that Drew spent a lot of weekends with Debbie.

¶ 14 Sheri's cousin, Deloris Galindo, also testified that Sheri lived with Drew at Irma's house for the first eight years of Drew's life.

¶ 15 Irma testified that Sheri lived with her and Drew until May 2012. Sheri would spend around one night per week with her boyfriend in another town. Sheri's clothes were at Irma's home until she moved in 2012. Irma also testified that Sheri did Drew's laundry and cooked his meals. She stated that she was the main contact from Drew's school due to Sheri's work schedule.

¶ 16 Irma denied ever telling Eric to stop paying child support or that he did not have to pay child support because Sheri was not living with Drew. She also denied ever getting money orders for child support from Eric. Irma stated that Eric had given Sheri some personal checks, however. Irma also stated that she did not take the tax exemption for Drew.

¶ 17 Sheri's sister, Debbie Gaught, testified that Sheri lived with Drew at Irma's house until May 2012. Debbie stated that she would have Drew at her house at times from Thursday until Sunday due to Sheri's work schedule. Debbie also testified that she had taken Drew as a tax exemption for the past five or six years. She stated that she provided more than half of Drew's support for those five or six years, and had "probably" provided that amount of support since Drew's birth. She took the tax exemption after discussing the matter with Sheri.

¶ 18 Debbie denied telling the GAL that she did not think Sheri lived at Irma's house at the time of Drew's birth and that Sheri was only at Irma's house periodically. Debbie also denied telling the GAL that Sheri did not raise Drew—that it was a five-person cooperative effort.

¶ 19 Sheri testified that she was living with Drew at Irma’s residence until May 2012. She stayed with her paramour one or two times per week during that time. She did Drew’s laundry,

but work kept her from being able to take Drew to doctor's appointments or to make his parent-teacher conferences at school. She also testified that she was Drew's primary caretaker.

¶ 20 Sheri stated that she never told Eric to stop paying child support. She also acknowledged that Drew had not been claimed as a tax exemption for the first five years following the 2001 order. Eventually, Sheri told Debbie she could take the tax exemption because she was providing half of Drew's support. Sheri also testified that Eric never asked her if he could take the tax exemption. In addition, Sheri stated that Eric never gave Irma any money orders.

¶ 21 On cross-examination, Sheri admitted that she told the GAL in July 2012 that she lived with Irma. The GAL added later that Sheri had also said she planned to move in with her fiancé after they got married in March or April 2013. During closing arguments, the GAL referred to her reports and added her belief that neither Sheri, Irma, nor Debbie were credible.

¶ 22 The circuit court issued its ruling in May 2014. The court found that the 2001 order was a judgment granting custody to Sheri, and that between 2001 and 2012, Drew lived with Sheri's mother, Irma. Irma was Drew's caretaker, as well as Drew's contact for school and for Eric. Drew spent alternating weekends with his aunt, Debbie, to whom Drew was close. While Sheri claimed that she lived in Irma's house, the court found that the evidence established otherwise, including the testimony of Irma's neighbor, Sue, and the GAL.

¶ 23 After discussing the evidence related to custody, the court found that a change in circumstances had occurred such that giving Eric custody was in Drew's best interest.

¶ 24 The court then addressed Eric's child support arrearage. The court found that equitable estoppel operated to prevent Sheri from collecting on the arrearage. In support of this finding, the court stated that Irma had told Eric to stop paying child support because Sheri did not live with Irma and Drew, and that Eric relied on this agreement to his detriment in that he did not

claim Drew on his taxes, despite the fact that the 2001 order gave Eric that right. The court also noted that Drew did not reside with Sheri, and that Drew's aunt, Debbie, claimed Drew on her taxes. The court committed its order to writing in July 2014, and Sheri appealed.

¶ 25 ANALYSIS

¶ 26 On appeal, Sheri argues that the circuit court erred when it ruled that she was equitably estopped from collecting on Eric's child support arrearage.

¶ 27 "The standard of review for a current or retroactive child support award in paternity cases is whether the award is an abuse of discretion or the factual predicate for the decision is against the manifest weight of the evidence." *In re Parentage of Janssen*, 292 Ill. App. 3d 219, 223 (1997). A decision is against the manifest weight of the evidence if the opposite conclusion is clearly apparent or if the decision is unreasonable, arbitrary, or contrary to the evidence. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 28 There is no question in this case that any out-of-court agreement regarding Eric's child support obligation is unenforceable. See *Blisset v. Blisset*, 123 Ill. 2d 161, 167-68 (1988) (holding that an agreement regarding child support was unenforceable because it was not judicially approved); see also *In re Marriage of Jungkans*, 364 Ill. App. 3d 582, 584 (2006); *Baker v. Baker*, 193 Ill. App. 3d 294, 300 (1990). The question we must address, as was the case in *Blisset*, is whether equitable estoppel applies to prevent the collection of a child support arrearage. *Blisset*, 123 Ill. 2d at 167.

¶ 29 Our supreme court has explained the concept of equitable estoppel as follows:

> "The general rule is that where a person by his or her statements and conduct leads a party to do something that the party would not have done but for such statements and conduct, that

person will not be allowed to deny his or her words or acts to the damage of the other party. [Citation.] Equitable estoppel may be defined as the effect of the person's conduct whereby the person is barred from asserting rights that might otherwise have existed against the other party who, in good faith, relied upon such conduct and has been thereby led to change his or her position for the worse. [Citations.]

To establish equitable estoppel, the party claiming estoppel must demonstrate that: (1) the other person misrepresented or concealed material facts; (2) the other person knew at the time he or she made the representations that they were untrue; (3) the party claiming estoppel did not know that the representations were untrue when they were made and when they were acted upon; (4) the other person intended or reasonably expected that the party claiming estoppel would act upon the representations; (5) the party claiming estoppel reasonably relied upon the representations in good faith to his or her detriment; and (6) the party claiming estoppel would be prejudiced by his or her reliance on the representations if the other person is permitted to deny the truth thereof. [Citation.]" *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 320 (2001).

¶ 30 With regard to the first two elements of equitable estoppel, it is important to note what the *Geddes* court noted: "the representation need not be fraudulent in the strict legal sense or

done with an intent to mislead or deceive. [Citation.] Although fraud is an essential element, it is sufficient that a fraudulent or *unjust effect* results from allowing another person to raise a claim inconsistent with his or her former declarations. [Citation.]" (Emphasis added.) *Id.*

¶ 31 We also note that Sheri does not advance any arguments on appeal that challenge the specific elements of equitable estoppel, including the circuit court's finding that Eric relied on the agreement to his detriment. Rather, Sheri focuses most of her argument on whether an agreement actually existed. Thus, this appeal turns in large part on the credibility of the witnesses, and our review of the record reveals no error in the circuit court's finding that Irma had told Eric to stop paying child support because Sheri was not living with Drew and Irma, and that Eric agreed to forgo claiming Drew as a tax exemption in exchange. We acknowledge that the testimony regarding this agreement was conflicting. Eric testified that he stopped paying child support as a result of a conversation he had with Irma in 2003, and that he did not claim the tax exemption for Drew even though he knew in 2003 that he was obligated to do so. Sheri and Irma testified that no such conversation or agreement existed. The circuit court resolved this conflict in favor of Eric, impliedly finding that Eric was more credible than Sheri or Irma. Witness credibility determinations and weight assessments are within the circuit court's province, and we will not disturb such decisions unless they are against the manifest weight of the evidence. *In re Marriage of Cerven*, 317 Ill. App. 3d 895, 903 (2000); see also *In re Marriage of Jacks*, 200 Ill. App. 3d 112, 119 (1990). We conclude that there is nothing in the record to show that the circuit court's credibility determinations were against the manifest weight of the evidence. See generally *Best*, 223 Ill. 2d at 350 (discussing the manifest weight standard and stating that a reviewing court may not substitute its judgment in place of the circuit court's

judgment). Accordingly, there is no basis to overturn the circuit court's finding that the agreement existed.

¶ 32 In further support of her argument, Sheri contends that equitable estoppel requires that the agreement exist "between the parties," meaning here between Sheri and Eric. While Sheri distinguishes some cases in her discussion of this contention, Sheri cites no case law standing for her contention. "The appellate court is not a repository into which an appellant may foist the burden of argument and research." *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37. Accordingly, under Supreme Court Rule 341(h)(7) (eff. July 1, 2008), Sheri has forfeited this contention on appeal. *Id.*

¶ 33 Sheri also asserts that the circuit court erred by not finding Eric in contempt for failing to pay his child support obligation. Assuming that this issue was properly before the circuit court, Sheri acknowledges that the court never ruled on this issue. Because Sheri did not secure a ruling on any contempt allegation, she has waived this issue. See *Commerce Trust Co. v. Air 1st Aviation Companies, Inc.*, 366 Ill. App. 3d 135, 142 (2006) (noting that it is the moving party's responsibility to obtain a ruling on the motion, and the failure to do so results in waiver).

¶ 34 Lastly, we note two other arguments that Sheri advanced in her appellant's brief: (1) the court lacked jurisdiction to modify Eric's child support obligation; and (2) the court erred when it voided Eric's arrearage. Both of these arguments evince a misunderstanding of the court's order. The court did not modify or void Eric's child support obligation. Rather, the court estopped Sheri from collecting on that obligation. Accordingly, we reject these two arguments.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Peoria County is affirmed.

¶ 37 Affirmed.