COURT OF APPEALS
DECISION
DATED AND FILED

June 29, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 99-0242-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE MARRIAGE OF:
PATRICIA E. WALKER N/K/A PATRICIA E. PURVIS,
AND PAUL G. WALKER:

PAUL G. WALKER,

APPELLANT,

V.

EAU CLAIRE COUNTY CHILD SUPPORT AGENCY,

RESPONDENT.

APPEAL from a order of the circuit court for Eau Claire County: GREGORY A. PETERSON, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

HOOVER, J. Paul Walker appeals an order requiring him to pay child support arrears.[1] He contends that his former wife, Patricia Purvis, is equitably estopped from enforcing the arrearage. Although Walker does not dispute the arrearage amount, he contends Purvis's actions amounted to a request he not pay support, a request on which he claims he reasonably relied to his detriment. We disagree and affirm because Walker did not reasonably rely on Purvis's actions.

Walker and Purvis were divorced in 1982. The court awarded Purvis custody of their two daughters and gave Walker visitation rights. Child support was set at $175 per child per month and has not been modified.

After the divorce, Purvis moved to New Jersey with the children without notifying Walker. When he located them, she refused to permit visitation and repeatedly changed her phone number after he called. In October 1982, he asked the Eau Claire County sheriff whether he could discontinue making payments given that "she is not even allowing me telephone contact with my children …." The sheriff responded that Walker needed to continue making payments to the clerk and that the only way to change that arrangement was to get either a court order or a notarized letter from Purvis.[2] The sheriff also indicated that the clerk's office does not actively pursue discontinued payments unless the person entitled to receive them complains. The sheriff concluded by recommending that Walker obtain a court order.

[1] This is an expedited appeal under Rule 809.17, STATS.

[2] The sheriff misinformed Walker in this latter regard.

In 1985, Walker commenced an action in New Jersey to enforce visitation rights. In return, Purvis sought child support arrearages. Walker had stopped paying support prior to that time and had accumulated an $6,235 arrearage. Purvis further responded by threatening Walker's life as well as his wife's. She also had Walker's power, water and telephone disconnected.

The New Jersey action reaffirmed Walker's support amount. It also reestablished visitation and set the amount of Walker's arrearage. By February 1986, Walker had paid the arrearage. Purvis partially complied with the visitation order and then only temporarily. In continued attempts to estrange Walker from his daughters, she withheld his letters, cards and presents. Nevertheless, Walker continued to make some support payments until July of 1992 after his eldest daughter, Bunny, turned eighteen. Walker's support obligation ended in November 1994, thus accounting for the arrearage at issue.

Purvis first pursued the arrearage in 1998 when she contacted the clerk of court. That contact led to the present proceeding. The Eau Claire County corporation counsel filed an order to show cause and motion to enforce the divorce order to collect the arrearage and interest on Purvis's behalf. Walker moved to expunge the arrearages. The court commissioner found that equitable estoppel and laches[3] applied to the claim and expunged the arrearage.

Purvis moved the circuit court for a de novo hearing pursuant to § 767.13(6), STATS.[4] The circuit court held a new hearing, determined that

[3] On appeal, Walker does not contend that the doctrine of laches applies. That doctrine does not apply to actions to enforce a child support order. ***Paterson v. Paterson***, 73 Wis.2d 150, 154, 242 N.W.2d 907, 909 (1976).

[4] Section 767.13(6), STATS., provides:

(continued)

equitable estoppel did not apply, and set the arrearage and interest at $25,034.52. Walker appeals the arrearage order.

Walker contends that equitable estoppel prevents Purvis from collecting the arrearage. In ***Harms v. Harms***, 174 Wis. 2d 780, 785, 498 N.W.2d 229, 231 (1993), our supreme court recognized equitable estoppel as a defense to a claim for child support arrearages. The facts before us are not in dispute. Whether those facts are sufficient to constitute estoppel is a question of law we review de novo. *See* ***Mowers v. City of St. Francis***, 108 Wis.2d 630, 633, 323 N.W.2d 157, 158 (Ct. App. 1982).

To prove equitable estoppel, Walker must show three elements: (1) action or inaction by Purvis inducing (2) reasonable reliance by Walker (3) to Walker's detriment. *See* ***Harms v. Harms***, 174 Wis. 2d 780, 785, 498 N.W.2d 229, 231 (1993). Equitable estoppel must be proven by clear, satisfactory and convincing evidence. ***Gabriel v. Gabriel***, 57 Wis.2d 424, 428, 204 N.W.2d 494, 497 (1973). Walker's failure to prove any one of the elements is fatal to his claim. *See* ***Milas v. Labor Ass'n***, 214 Wis.2d 1, 571 N.W.2d 656 (1997).

Relying on ***Harms***, Walker contends he proved all three elements. First, he claims that Purvis's actions of threats, intimidation, refusal to permit contact and her failure to enforce the support order until 1998 sent the message that she would not and could not expect to receive child support, inducing Walker to discontinue his child support payments. Second, Walker contends his reliance

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> (6) REVIEW OF THE DECISIONS OF THE FAMILY COURT COMMISSIONER. Upon the motion of any party any decision of the family court commissioner shall be reviewed by the judge of the branch of the court to which the case has been assigned. Upon the motion of any party any such review shall include a new hearing on the subject of the decision, order or ruling.

was reasonable. Third, he asserts that Purvis's failure to pursue arrearages until 1998 was detrimental to him because the arrearage grew and was subject to interest.[5]

First, we conclude that ***Harms*** is distinguishable and does not support Walker's contention. In ***Harms***, the divorce order prohibited the custodial mother from moving the children from Wisconsin without a court order or written agreement of the parties. ***Id***. at 782, 498 N.W.2d at 230. After she moved the children out of state without an order or agreement, she notified their father in writing, by certified mail, that she no longer expected him to pay child support. ***Id***. The ***Harms*** court concluded that her actions induced him to quit paying because he relied on her written support waiver and stopped making payments. ***Id***. The court further concluded that such reliance was to his detriment because he did not challenge the relocation. ***Id***. at 785, 498 N.W.2d at 231. The ***Harms*** court held that based on the extrajudicial agreement between the mother and father, the mother was equitably estopped from claiming support arrearages accumulating thereafter from the father. ***Id***. at 784-85, 498 N.W.2d at 231.

We agree with the trial court that Walker failed to show reasonable reliance and therefore estoppel did not apply. Walker did not show an action or inaction by Purvis in 1992 that induced him to stop paying child support at that time. For example, there is no indication that Purvis communicated that she did not expect him to pay child support as there was in ***Harms***, 174 Wis.2d at 785, 498 N.W.2d at 231. She did not enter an arrangement with him that she would forego the child support if he would forego visitation and contact with his

[5] Walker made this assertion before the circuit court. Before this court he simply asserts that his reliance on Purvis's actions was detrimental.

children. Therefore, his proof does not show that he reasonably relied on Purvis's action or inaction to stop paying support.

Walker would have us infer that Purvis intended a mutual waiver of rights from her conduct of alienating and isolating him from his daughters. We cannot, for two reasons. First, the time period when Purvis's actions were most egregious was before and during his attempt to enforce his visitation rights in New Jersey. Yet, she sought, and he paid, child support for that period. He continued to make payments for six more years before discontinuing them. Second, when he stopped paying in 1992, his eldest daughter was emancipated, and had initiated a relationship with him. Purvis's actions were largely irrelevant to that relationship.

Walker would also have us infer a mutual waiver of rights from Purvis's failure to seek enforcement of the support order until 1998. We reject that inference. Walker does not explain why such an inference is reasonable given that she now seeks the arrearage. He had been informed in 1982 that to discontinue child support payments, he needed either a notarized statement from Purvis or a court order.[6] He did nothing. The fact that Purvis delayed enforcement of an unmodified order is not a reasonable basis to conclude that support is no longer due. *See* ***Douglas County Child Support Unit v. Fisher***, 185 Wis.2d 662, 671, 517 N.W.2d 700, 704 (Ct. App. 1994).

Walker's argument seems to be that Purvis's conduct in preventing a relationship with his daughters as well as harassing and threatening him is so

[6] We do not suggest that a notarized statement alone would have been sufficient. All elements of equitable estoppel must be met for it to be available as a defense.

outrageous and egregious that the arrearage should be expunged. He requests that we ignore the elements of equitable estoppel and do justice based upon the totality of the circumstances. We sympathize with Walker and agree that, based on the record, Purvis's conduct was deplorable. That does not, however, excuse Walker's failure to support his children. Section 767.25(3), STATS., provides: "Violation of physical placement rights by the custodial parent does not constitute reason for failure to meet child support obligations." *See also* ***Krause v. Krause***, 58 Wis.2d 499, 511, 206 N.W.2d 589, 596 (1973). Walker also does not explain how it is just that he did not provide support for his daughters. When he failed to support them, Purvis had to do it herself. Walker had remedies available to him in the divorce court, and possibly the criminal justice system, but apparently chose not to pursue them because of the cost involved, financial and otherwise. We cannot ratify Walker's "self-help" remedy of ending support upon his unilateral decision that his ex-wife's actions were so egregious that they were tantamount to saying "don't pay support."

Because Walker has not shown that he reasonably relied on Purvis's actions to stop paying support, the defense of equitable estoppel is not available to him. Accordingly, the order is affirmed.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.