

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 15, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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Appeal No. 2005AP2299

Cir. Ct. No. 1997FA788

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

MARY JANE LENHARDT, N/K/A MARY JANE MONTINI,

PETITIONER-APPELLANT,

V.

WILLIAM JOHN LENHARDT,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Waukesha County: J. MAC DAVIS, Judge. *Affirmed.*

Before Brown, Nettesheim and Anderson, JJ.

¶1 ANDERSON, J. Mary Jane Lenhardt, n/k/a Mary Jane Montini, appeals from an order terminating the maintenance obligations of her former

husband, William John Lenhardt, and estopping her from collecting on any accrued arrearages and interest thereon and an order denying her motion for reconsideration. On appeal, Mary Jane challenges only the portion of the orders that estopped her from collecting the arrearages that accrued between when William learned that she had allegedly remarried and ceased making payments and when William filed his motion for termination of maintenance. We hold that the trial court properly applied the estoppel doctrine to bar Mary Jane from claiming, for purposes of collecting the accrued arrearages, that she had not remarried and therefore the court had the discretion to retroactively terminate William's maintenance obligation. We affirm.

FACTS

¶2 William and Mary Jane married in 1963. The parties divorced in September 2000. The judgment of divorce required William to pay Mary Jane \$450 per month in maintenance payments and provided that they would terminate upon Mary Jane's remarriage.

¶3 On October 5, 2002, Mary Jane and Robin Meade exchanged "vows of love" at a party to say that the two are "sharing [their] love together." Mary Jane referred to this gathering as a "love ceremony" and Robin testified that he viewed the gathering as a "ceremony of commitment to one another." (Emphasis omitted.)

¶4 Mary Jane and Robin sent out invitations for the ceremony that stated "a couple in love." The ceremony was held at St. John's United Church, a nondenominational church. The Reverend Gregory Young officiated the ceremony. Mary Jane wore a "champagne beige with silver" dress and held flowers. Robin wore a corsage or boutonniere. Pictures from the ceremony show

Robin and Mary Jane standing arm-in-arm in front of an altar. The pictures further show Mary Jane's sister-in-law holding her flowers and her brother standing next to Robin while she and Robin held hands and exchanged vows expressing their love for one another. According to Mary Jane, her brother and sister-in-law were not the best man and matron of honor. Afterwards Mary Jane and Robin and their approximately thirty guests went to dinner. Mary Jane and Robin sat at a "head table," had a champagne toast and had a cake with a figurine on top depicting two people "hugging each other which are in love."

¶5 Mary Jane testified that she is Catholic and cannot get married again. Robin testified that he did not ask Mary Jane to marry him, he never gave her a ring and they never obtained a marriage license. Both Robin and Mary Jane retained their individual names.

¶6 Mary Jane and Robin began living together at some point prior to the ceremony. In April 2003, Robin purchased a condominium in his name only and the couple has lived there since, sharing expenses. In June 2004, Robin signed a quitclaim deed, which provided that Mary Jane and Robin were "joint tenants."

¶7 In November 2003, William stopped making maintenance payments. He heard from a friend that Mary Jane had remarried and another friend actually attended the wedding. Around September 2004, William saw a picture of the ceremony. William testified that the picture "shows my ex-wife, her brother and her sister-in-law, and another man. It looks like a wedding reception, a wedding picture." He filed a motion to terminate maintenance due to Mary Jane's remarriage on February 11, 2005.

¶8 In his motion, William asked the court to terminate maintenance payments retroactively to the date of the alleged remarriage and to require Mary

Jane to reimburse him for any payments made subsequent to the remarriage. In response, Mary Jane filed a motion with the court asking it to require William to pay all arrearages and the interest accrued thereon and to increase William's monthly maintenance payments.

¶9 Following an April 2005 hearing, the trial court ordered maintenance to be terminated as of February 11, 2005. The court estopped Mary Jane from collecting on any of the arrearages of record, but determined that she did not have to pay back any maintenance she received after the October 2002 ceremony. The trial court explained that Mary Jane “caused reasonable persons to believe that she had been remarried in that she moved into a condominium with [Robin] and then had gone through a wedding like ceremony in October of 2002, with a cake, a minister in vestments, witnesses at the altar and a reception.” The court acknowledged that “there was no license which is a *sine qua non* of a marriage in Wisconsin.” However, the court found that William could, and did, reasonably rely on the representation that Mary Jane had remarried “because of what he heard of the ceremony.” The court rejected Mary Jane's explanation that she did not remarry because she was Catholic, stating that “she had an aura of fraud and manipulation and unclean hands.”

¶10 Mary Jane filed a motion for reconsideration. The court denied the motion. The court concluded that “the equities are so strong in [William's] favor” and therefore equitable estoppel was an appropriate remedy.

STANDARDS OF REVIEW

¶11 Whether to apply the estoppel doctrine to a set of facts is a question of law. *Whitford v. Whitford*, 2000 WI App 18, ¶6, 232 Wis. 2d 38, 606 N.W.2d 563. The construction and application of a statute to a set of facts are also

questions of law. *State v. Austin*, 171 Wis. 2d 251, 254, 490 N.W.2d 780 (Ct. App. 1992). We decide questions of law without deference to the trial court's determination. *Id.* at 254-55. Findings of fact, however, are accepted by this court unless clearly erroneous. *Id.* at 255.

DISCUSSION

¶12 Overall, Mary Jane challenges the trial court's decision on two grounds. We will first discuss her arguments pertaining to the trial court's application of the estoppel doctrine and then address her contentions concerning the trial court's authority to retroactively terminate William's maintenance obligation.

Estoppel

¶13 Mary Jane maintains that the trial court erred in applying the estoppel doctrine to bar her from claiming, for purposes of collecting the accrued arrearages, that she had not remarried. Mary Jane argues that there was no evidence suggesting that she and Robin held themselves out to the public as husband and wife. She further claims that William's reliance on a statement by a third party that she had remarried was not reasonable. We conclude that the record supports the trial court's application of the estoppel doctrine.

¶14 Wisconsin has applied the estoppel doctrine in family law cases, including cases involving maintenance.¹ *Whitford*, 232 Wis. 2d 38, ¶¶7, 8. Equitable estoppel requires a showing of three elements: action or inaction, which induces reliance by another, to his or her detriment. *Douglas County Child Support Enforcement Unit v. Fisher*, 185 Wis. 2d 662, 669, 517 N.W.2d 700 (Ct. App. 1994). William has demonstrated the presence of these three elements.

¶15 While Mary Jane and Robin may not be legally married and while they may not use the terms husband and wife to describe their relationship, their actions would lead a reasonable person to conclude that they were married. First, they had a ceremony that had all the trappings of a wedding. The couple sent out invitations. The ceremony was held in a church in front of an altar with a reverend presiding. The couple exchanged vows of love. Mary Jane and Robin had attendants or witnesses at the altar with them. Mary Jane carried a bouquet and wore a champagne-colored dress and Robin wore a boutonniere or corsage. The couple hosted a dinner reception after the ceremony. There was a head table, a cake with figurines hugging on top and a champagne toast. Second, Mary Jane

¹ Mary Jane seems to suggest that the supreme court decisions in *Monicken v. Monicken*, 226 Wis. 2d 119, 593 N.W.2d 509 (Ct. App. 1999), and *Barbara B. v. Dorian H.*, 2005 WI 6, 277 Wis. 2d 378, 690 N.W.2d 849, prevent us from applying equitable estoppel. We do not agree; those cases are distinguishable. *Monicken* and *Barbara B.* involved attempts to obtain equitable credit for payments for child support made in a manner other than that prescribed in the order or judgment. See *Monicken*, 226 Wis. 2d at 121-22, 127; *Barbara B.*, 277 Wis. 2d 378, ¶¶2-4. The courts held that while the doctrine of equitable estoppel had previously been used to hold in favor of the child support payer, estoppel was no longer available as a remedy because the legislature clearly set forth the only circumstances under which credit could be granted to the child support payer in WIS. STAT. § 767.32(1r) (2003-04). *Monicken*, 226 Wis. 2d at 130-32; *Barbara B.*, 277 Wis. 2d 378, ¶¶10-11, 15. This case, on the other hand, involves an action to retroactively terminate maintenance arrearages. There is no statutory counterpart to § 767.32(1r) for such an action.

All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

and Robin have lived together since before the ceremony and share expenses. They moved into a condominium, purchased after the ceremony by Robin, that they now own as joint tenants.

¶16 William reasonably relied upon the statements of an old friend and a picture of the ceremony to determine that Mary Jane had remarried. It does not matter that William did not learn of the ceremony and the circumstances surrounding Mary Jane and Robin's relationship from Mary Jane herself. A casual observer of the ceremony and the couple's living situation could reasonably reach the conclusion that Mary Jane and Robin were married. Further, the picture of the ceremony William relied on showed Mary Jane and Robin dressed in their formal attire standing with Mary Jane's brother and sister-in-law in what appears to be a church.

¶17 William relied upon the couple's representations to his detriment. After learning of Mary Jane's alleged remarriage, William stopped making maintenance payments. A few months after he viewed the picture of the ceremony, William filed the motion to terminate maintenance based on Mary Jane's remarriage. The delay between when William learned of Mary Jane's alleged remarriage and when he filed his motion was around one and one-half years.

¶18 Further, estoppel is an equitable doctrine. The trial court found that Mary Jane’s conduct had an “aura” of fraud, manipulation and unclean hands.² The trial court rejected Mary Jane’s assertion that she did not marry Robin because the Catholic church prevented her from doing so. The court concluded that the “only reasons that there wasn’t an ordinary license[d] legal marriage here was that [Mary Jane] didn’t want to give up her maintenance rights.” We see no reason to disturb that determination. The trial court did not seem to find anything fraudulent or dishonest about William’s conduct and neither do we. Given these circumstances, we uphold the trial court’s application of the estoppel doctrine to prevent Mary Jane from claiming that she had not remarried for purposes of collecting the accrued arrearages.

Statutory Authority

¶19 Mary Jane argues that because she did not enter into a legally valid marriage, WIS. STAT. § 767.32(1m) governs her claim for accrued arrearages. Mary Jane urges us to apply § 767.32(1m) because it prohibits the retroactive revision of maintenance obligations.³ Therefore, pursuant to § 767.32(1m), Mary Jane would be entitled to the arrearages accrued prior to William’s February 11, 2005 motion.

² Mary Jane argues that the trial court’s finding on this point is vague. She points out that the word “aura” has several definitions: (1) “something supposed to come from a person or thing and surround him or it as an atmosphere”; (2) “[a] subtle emanation or exhalation from any substance, as the odor of flowers”; and (3) “a field of ionized air or gas caused by the discharge of electricity from a sharp point.” (Citation omitted.) When read in context, it is clear that the court meant that Mary Jane’s conduct had distinct, but intangible qualities: fraud and manipulation.

³ WISCONSIN STAT. § 767.32(1m) provides in part: “In an action under sub. (1) to revise a judgment or order with respect to ... maintenance payments ... the court may not revise ... an amount of arrearages in ... maintenance payments ... that has accrued, prior to the date that notice of the action is given to the respondent”

¶20 We are not persuaded that WIS. STAT. § 767.32(1m) applies. Section 767.32(1m) limits its application to actions under § 767.32(1).⁴ It does not apply to actions for termination of maintenance due to a payee spouse's remarriage. *See Hansen v. Hansen*, 176 Wis. 2d 327, 337, 500 N.W.2d 357 (Ct. App. 1993). Section 767.32(3) governs actions to terminate maintenance due to the remarriage of the payee spouse. *See Hansen*, 176 Wis. 2d at 337. Because estoppel prevents Mary Jane from claiming that she has not remarried, this case falls within the parameters of § 767.32(3).

¶21 WISCONSIN STAT. § 767.32(3) provides: "After a final judgment requiring maintenance payments has been rendered and the payee has remarried, the court shall, on application of the payer with notice to the payee and upon proof of remarriage, vacate the order requiring such payments." The statute is both substantive and procedural. *Hansen*, 176 Wis. 2d at 333. The substantive portion provides that maintenance may terminate upon remarriage, while the procedural portion requires the payer to apply to the court, give notice to the payee and provide proof of remarriage. *Id.* When the payer spouse meets the procedural requirements of this section, the court must vacate the maintenance order. *Id.* The court then must consider the specific facts and equities of the case in making its discretionary determination of the date when the maintenance portion of the divorce judgment should be vacated. *Id.* at 336. The court, in its discretion, can terminate a maintenance obligation retroactively to the date of remarriage. *See id.* (concluding that judicial interpretation and legislative notes indicate that the

⁴ WISCONSIN STAT. § 767.32(1) provides in part: "After a judgment or order providing for ... maintenance payments ... the court may, from time to time, on the ... motion ... of either of the parties ... and upon notice to the office of family court commissioner, revise and alter such judgment or order respecting the amount of such maintenance"

legislature intended that remarriage of the payee be a stopping point to the payment of maintenance).

¶22 William has satisfied the procedural portion of WIS. STAT. § 767.32(3). He has filed a motion to terminate maintenance with the court, given notice to Mary Jane and Mary Jane is estopped from claiming that she is not remarried. *See Hansen*, 176 Wis. 2d at 333. Thus, the trial court had the discretion to retroactively terminate the maintenance obligation.⁵ *See Hansen*, 176 Wis. 2d at 336-37.

¶23 After properly looking at the situations of the parties and weighing the equities of the case, *see id.* at 336, the trial court determined that while Mary Jane was estopped from collecting on the arrearages that had accrued prior to William's filing of his motion for termination of maintenance, she did not have to pay William back for any amounts he paid her after her October 2002 ceremony. The facts of record support the court's discretionary determination.

¶24 First, the equities tip in William's favor. As noted, the record shows that Mary Jane and Robin have held themselves out to the world as married and William relied on the representation. They held a ceremony and reception that mirrored a traditional wedding celebration. As explained, the record further demonstrates that Mary Jane intentionally refrained from legally marrying Robin

⁵ We also note that the judgment of divorce clearly contemplates that the trial court would have the authority to retroactively terminate William's maintenance obligation upon Mary Jane's remarriage. The judgment states: "[William] shall pay the amount of \$450 per month as maintenance payments. Such payments shall ... continue until further order of the court, but *shall terminate* on the death of either party or *the remarriage of [Mary Jane]*." (Emphasis added.)

so that she could continue to receive maintenance payments. Mary Jane's attempted manipulation of the situation leaves her with unclean hands.

¶25 Second, the record supports the court's determination that Mary Jane's financial circumstances have substantially improved since the divorce. Mary Jane and Robin have a strong, stable committed cohabitation relationship that began prior to the October 2002 ceremony and that, at minimum, has allowed her the benefits of economies of scale and shared expenses. The record also shows that Robin essentially gifted to Mary Jane a joint tenancy in the condominium. Further, Mary Jane began drawing from one of William's pension accounts after he retired in November 2003. The trial court found that, as a result, each month Mary Jane receives three times the amount of the original maintenance award. For this reason, it also makes perfect sense for the trial court to have denied Mary Jane arrearages accruing after November 2003, rather than after October 2002 as William requested.

CONCLUSION

¶26 In sum, the doctrine of equitable estoppel prevents Mary Jane from claiming that she has not remarried for purposes of collecting on the accrued arrearages.⁶ The trial court had the authority to retroactively terminate the maintenance obligation. We affirm the orders of the trial court.⁷

⁶ Because we conclude that Mary Jane is not entitled to collect the accrued arrearages, we need not consider her argument that she is entitled to interest on those arrearages.

⁷ In applying the estoppel doctrine and retroactively terminating William's maintenance obligations, the trial court made explicit findings concerning the parties' changed financial situations, the parties' conduct and the equities of the case. These findings are supported by the facts of record and we relied upon them in our analysis.

(continued)

By the Court.—Orders affirmed.

Not recommended for publication in the official reports.

The trial court did not mention that WIS. STAT. § 767.32(3) specifically supplied it with the discretionary authority to retroactively terminate William's obligations. The court also stated that it was terminating William's maintenance obligations as of February 11, 2005. While the trial court did not cite to § 767.32(3), under *Hansen v. Hansen*, 176 Wis. 2d 327, 337, 500 N.W.2d 357 (Ct. App. 1993), if it is an action to terminate maintenance due to the payee spouse's remarriage, it is an action under § 767.32(3). In any event, we may affirm on different grounds than those relied on by the trial court if it reached the correct result. See *Vanstone v. Town of Delafield*, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995). Furthermore, despite the court's statement that it was terminating maintenance as of February 11, 2005, by holding that Mary Jane was estopped from collecting accrued arrearages but was not required to reimburse William for maintenance received, it effectively terminated William's maintenance obligation as of November 2003.

