IN THE COURT OF APPEALS OF IOWA

No. 6-968 / 06-0679
Filed January 18, 2007

IN RE THE MARRIAGE OF LORA J. RUBY AND ROBERT J. RUBY

UPON THE PETITION OF
LORA J. RUBY,
Petitioner-Appellee

And Concerning
ROBERT J. RUBY,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

Father appeals from district court order that found he and mother had entered into an oral agreement regarding child support, and that enforced the agreement on the basis of promissory estoppel. **AFFIRMED.**

Michael B. Oliver of Oliver Law Firm, P.C., Des Moines, for appellant.

Pamela Jo Lewis of Lewis Law Office, Cedar Rapids, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Robert Ruby appeals from the district court order that found he and his former wife, Lora Ruby, had entered into an oral agreement regarding child support, and that enforced the agreement on the basis of promissory estoppel. Robert asserts the doctrine of promissory estoppel should not be applied in this case, and moreover that Lora failed to establish the elements of the doctrine. He also contends the district court erred in ordering him to pay $2000 towards Lora's trial attorney fees. Lora seeks an award of appellate attorney fees. Upon our de novo review, Iowa R. App. P. 6.4, we affirm the district court.

Robert and Lora's marriage was dissolved in 1992. The parties' child, Jordan, was placed in Lora's physical care, and Robert was ordered to pay $450 per month in child support. Robert's child support obligation was modified in 1994 and 1997. The 1997 decree set Robert's obligation at $495 per month.

Lora experienced financial difficulties in 2001 and again in 2002. Robert agreed to and did increase his child support payments, first to $750 per month and then to $1000 per month. Robert paid Lora $1000 per month in child support beginning in June 2002 and up to and including July 2004. Robert reduced his child support payments to $500 per month in August 2004, then ceased paying support all together in November 2004. At the time Robert stopped paying support Jordan was sixteen years old.

Lora filed an "Application for Modification of Dissolution Decree" in January 2005. She alleged Robert had "fraudulent and intentionally" advised her that he would voluntarily increase his child support payments if she would forgo seeking a modification of the dissolution decree, and that, acting in reliance on

his representation, she did not bring an action to modify or increase Robert's child support obligation. She requested that Robert's child support obligation be retroactively increased, commencing the date he perpetrated the alleged fraud.

At the December 2005 trial, Lora testified that Robert voluntarily increased his child support payments in 2001 and 2002 on two conditions: that Lora would not seek a modification of his child support obligation, and that he would be allowed to take the income tax exemptions for Jordan every year rather than every other year as provided by the modified decree. Lora further testified that, when Robert increased his child support payment to $1000 per month, he agreed to pay that amount until Jordan turned eighteen years old. Robert asserted the parties never agreed that he would increase his actual child support obligation. Rather, Robert contended that he had simply prepaid on his established obligation in order to assist Lora through some difficult times.

In its February 2006 decree the district court determined the parties had entered into an oral agreement to modify Robert's child support obligation to $1000 per month, beginning in June 2002 and continuing until Jordan was no longer eligible for support. The court noted the calculation of child support for a person engaged in a small business, such as Robert, was difficult, and determined that

> the parties understood that Robert's income fluctuated and Robert was very concerned that his child support would be set at a high level based on a high income and, therefore, he agreed to pay $1,000 per month in child support if [Lora] would agree not to take him back to court.

Further determining that Lora had accepted Robert's promise to increase his child support obligation and had made changes in reliance on the promise, the

court concluded the elements of promissory estoppel had been shown. The court ordered that Robert pay child support of $1,000 per month beginning in June 2002, and continuing until Jordan turned eighteen or graduated from high school, whichever occurred later, or married, died, or became emancipated, whichever occurred earlier. It further ordered that support continue between Jordan's eighteenth and nineteenth birthdays, provided he was engaged full-time in completing high school or equivalency requirements, as provided for in Iowa Code section 598.1(9) (2005).

Our concern in this appeal is whether the district court appropriately found that the following elements of promissory estoppel had in fact shown:[1]

> (1) a clear and definite oral agreement;
> (2) proof that plaintiff acted to his detriment in reliance thereon; and
> (3) a finding that the equities entitle plaintiff to [the] relief.

In re Marriage of Harvey, 523 N.W.2d 755, 756-57 (Iowa 1994) (citation omitted).

The doctrine of promissory estoppel should be rarely applied in cases of this kind. *Id.* at 756. Here, the district court's decision to apply the doctrine and its conclusion that the foregoing elements were met was supported by detailed fact findings, including implicit credibility findings in favor of Lora. While we are not bound by such findings, we do give them weight, particularly as they relate to witness credibility. Iowa R. App. P. 6.14(6)(*g*). Giving due weight to the court's findings, which are fully supported by the record, we agree the doctrine of promissory estoppel was properly applied in this case, and that the necessary

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[1] In reviewing the district court's decision we note that, while Lora's petition was denominated as an application to modify the dissolution decree, she in effect sought and was granted a declaratory judgment that the parties had entered into an enforceable oral agreement regarding child support. We accordingly find it unnecessary to address Robert's contentions regarding a substantial change in circumstances and retroactive modification of child support obligations.

elements were shown. The district court accordingly did not err in ordering that Robert had an obligation to pay $1000 per month in child support from June 2002 until Jordan was no longer eligible for support.

We therefore turn to the question of trial attorney fees. An award of trial attorney fees is within the considerable discretion of the district court, and will be overturned only if the court abused that discretion. *In re Marriage of Giles*, 338 N.W.2d 544, 546 (Iowa Ct. App. 1983). The amount of fees awarded must be fair and reasonable, *In re Marriage of Willcoxson*, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay, *In re Marriage of Lattig*, 318 N.W.2d 811, 817 (Iowa Ct. App. 1982). We have reviewed the relevant portions of the record, including evidence of the parties' incomes, and find no abuse of discretion in the court's decision to award Lora $2000 in trial attorney fees.

Finally, we address Lora's request for appellate attorney fees. Such an award rests in this court's discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). The factors to be considered include the needs of the party requesting the award, the other party's ability to pay, and the relative merits of the appeal. *Id*. Upon consideration of the foregoing factors, we award Lora $1000 in appellate attorney fees. Costs of this appeal are assessed to Robert.

AFFIRMED.