

IN THE COURT OF APPEALS OF IOWA

No. 7-668 / 07-0540
Filed October 12, 2007

**IN RE THE MARRIAGE OF WANDA MARIE STREIF
AND STEVEN JOHN STREIF**

**Upon the Petition of
WANDA MARIE STREIF,
n/k/a WANDA MARIE HORN,**
Petitioner-Appellee,

**And Concerning
STEVEN JOHN STREIF,**
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson,
Judge.

Respondent appeals the district court order denying his request to receive
credit for child support payments he made directly to the children's mother.

AFFIRMED.

Stuart G. Hoover of Blair & Fitzsimmons, P.C., Dubuque, for appellant.

Wanda Horn, Bellevue, appellee pro se.

Considered by Sackett, C.J., and Eisenhauer, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

SCHECHTMAN, S.J.**I. Background Facts & Proceedings**

This is an appeal by Steven Streif (Steve) from a limited remand from this court. The remand order directed the district court to “consider the issues raised in Steven’s post-trial brief and enter appropriate findings of fact and conclusions of law in support of any resulting ruling.”

The genesis of these proceedings is a dissolution decree, which awarded the physical care of Steve’s three children to their mother, Wanda Streif, now known as Wanda Horn. The decree directed Steve to pay \$750 in child support per month, payable through the Collection Services Center. The decree provided that “any payments made directly to [Wanda] . . . shall not be credited against [Steve’s] child support obligation and shall not satisfy the support obligation created by this Decree.”

Steve filed a petition for modification. A contested issue was his request for credit and satisfaction of multiple child support payments made directly to his ex-wife. The modification trial was held on February 14, 2006. At the conclusion of the evidence, the trial court gave Steve’s counsel through February 17, 2006, to “offer any authority . . . that Chapter 598 for some reason does not require your client to pay through either the clerk or the Collection Services Center.” The modification decree was filed February 16, 2006, and denied Steve any credit for his payments made directly to Wanda.¹

¹ The modification decree reduced Steve’s child support obligation to \$469 per month, beginning in March 2006.

Steve's counsel filed a memorandum on February 17, referencing authorities and arguments directly to the equitable issues of (1) accord and satisfaction; (2) equitable estoppel; (3) unjust enrichment; and (4) unclean hands. A motion to reconsider was filed, which was overruled. The prior appeal, with remand, followed. See *In re Marriage of Streif*, No. 06-0608 (Iowa Ct. App. Nov. 30, 2006).

The district court, after remand, filed an exhaustive ruling which recited additional findings of fact and conclusions of law addressing four equitable defenses. In its conclusion, the court stated:

The respondent [Steve] objects to the harshness of denying him credit for support payments made out of court. But there is little reason to give him credit and good reasons not to. The choice to make out-of-court payments was his. He should bear the consequences of his acts. Moreover, if an exception to the enforcement of the statute is granted under these circumstances, it's hard to understand when it would be enforced. Such evisceration of a legislative enactment, particularly one that makes sense, shouldn't be lightly undertaken.

The equitable theories offered by [Steve] as justification for failure to pay child support in the manner required by statute and as ordered by the Court are unpersuasive. He is not entitled to avoid the clearly intended consequences of Iowa Code section 598.22.

Hence, this appeal.

II. Standard of Review

Modifications of dissolution decrees arise in equity. *In re Marriage of Wessels*, 542 N.W.2d 486, 490 (Iowa 1995). The doctrines urged by the appellant are equitable in nature. Our review is de novo. Iowa R. App. P. 6.4. We give weight to the fact findings of the district court, especially when

considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

III. Merits

Wanda signed a satisfaction on October 7, 2002, wherein she acknowledged Steve to be current to that date. She admits the receipt since that date of over twenty-five checks or varying amounts, drawn on Steve's bank account and labeled "child support."² Wanda contends Steve owed her \$8000 for side matters.³ Wanda denies the payments were for child support, but were for "other stuff," as Steve said "he wasn't going to pay it." She recollected as follows:

[H]e made some bolder statements that he wasn't going to be paying them his money because . . . And obviously he had his reasons why he wanted – because he always sent it in with the kids. Now, this is the money I'm paying your mom.

Steve contends that Wanda asked him to pay the support directly to her, and she asked him to "trust her." He stated he continued to make support payments directly to her after October 2002, as Wanda had signed a satisfaction without complaint at that time, and he expected her to sign another when asked, which she had since failed to do. The record is barren of any testimony that Wanda promised Steve to sign a receipt and satisfaction, or that she offered him any inducement to make the payments directly to her.

² The trial court found \$16,250 to have been paid to Wanda "unambiguously labeled as being for child support for the period after October 7, 2002." Forty months would have elapsed prior to trial, resulting in \$30,000 due less \$1250 paid to the Collection Services Center in 2005.

³ This was represented by Wanda as \$5000 for the balance owed on their house and \$3000 for a vehicle.

Iowa Code section 598.22 (2005) provides that all orders for permanent child support shall direct payment either to the clerk of the district court or the Collection Services Center.⁴ The section states, “Payments to persons other than the clerk of the district court and the collection services center do not satisfy the support obligations created by the orders or judgments.” Iowa Code § 598.22.

Section 598.22A(1) provides the sole statutory exception, as follows:

A statutory exception to the proviso for payments to be made to the clerk of the district court or the collection services center is provided by section 598.22A(1). That section provides for a credit on the official support payment record if a payment is confirmed by the court upon submission of an affidavit by the person entitled to receive the payment. But with this exception, section 598.22 regarding the record keeping for support payments is clear. Payments made to individuals or entities other than the clerk of the court or collection services center will not be deemed a credit on the official support payment record. In accordance with well-established principles of statutory interpretation, a statute must be construed to give effect to its plain language.

In re Marriage of Caswell, 480 N.W.2d 38, 40 (Iowa 1992) (citing *In re Estate of Miller*, 158 N.W.2d 441, 443 (Iowa 1968)).

There was no affidavit submitted in this case. We now turn to any other exceptions in the doctrines set forth in Steve’s post-trial brief, which were each separately addressed by the trial court after remand. However, Steve has not sought to contest the court’s denial of the applications of accord and satisfaction and unclean hands in this appeal. His statement of issues is confined to promissory estoppel and unjust enrichment.

⁴ Section 598.22 was amended effective July 1, 2005, and the pertinent provision of that section is now referred to as section 598.22(1).

A. Promissory Estoppel

There is some confusion here between the doctrines of equitable estoppel and promissory estoppel, which is not rare. See *Merrifield v. Troutner*, 269 N.W.2d 136, 137 (Iowa 1978). The distinction is whether the reliance is upon a promise or a misrepresentation. *Id.* Steve asserts he made the direct payments relying on Wanda's alleged promise to tender a satisfaction to acknowledge their receipt.

The elements of promissory estoppel are: (1) a clear and definite agreement; (2) proof that Steve acted to his detriment in reliance thereon; and (3) a finding that the equities entitle Steve to the relief. See *In re Marriage of Harvey*, 523 N.W.2d 755, 756-57 (Iowa 1994). We have found, as did the trial court, that no agreement existed or was proven. Consequently, the first prong was not proven as there was not any "clear and definite oral agreement." See *id.* at 756. The case of *Harvey*, 523 N.W.2d at 756, says it best:

Strong public policy supports the statute. The courts should be loath to sort through numberless disputed claims of undocumented private agreements concerning support obligations. A matter so important should be clearly fixed and authorized by court order. Only in this way can support be effectively enforced. The statute spares the courts from the impossible task of separating fact from fiction in claims of the parties' private understandings. The legislature had every right to void secret agreements that would obviate court ordered support obligations.

B. Unjust Enrichment

"'Restitution' and 'unjust enrichment' are modern designations for the older doctrine of quasi contracts or contracts implied in law, sometimes called constructive contracts." *Robert's River Rides, Inc. v. Steamboat Dev. Corp.*, 520

N.W.2d 294, 302 (Iowa 1994) (citations omitted). “Unjust enrichment is an equitable principle mandating that one shall not be permitted to unjustly enrich oneself at the expense of another or to receive property or benefits without making compensation for them.” *West Branch State Bank v. Gates*, 477 N.W.2d 848, 851-52 (Iowa 1991) (citing *Johnson v. Dodgen*, 451 N.W.2d 168, 175 (Iowa 1990)). Such implied contracts do not arise from the traditional bargaining setting, but “rest on a legal fiction arising from considerations of justice and the equitable principles of unjust enrichment.” *Hunter v. Union State Bank*, 505 N.W.2d 172, 177 (Iowa 1993).

The case of *State v. Unisys Corp.*, 637 N.W.2d 142, 154-55 (Iowa 2001), lays out three elements of unjust enrichment: (1) the recipient was enriched by the receipt of the benefit; (2) the enrichment was at the expense of the provider; and (3) it is unjust to allow the recipient to retain the benefit under the circumstances.

Assuming the payments were for child support, there was no enrichment as child support was owing to Wanda. Rather, enrichment, if any, arose from the terms of section 598.22, which disallows credit, unless an affidavit is tendered by the person entitled to be paid and confirmed by the court, pursuant to section 598.22A(1). Our legislature anticipated that there may be a double payment when it enacted these statutes. In balancing the interests, it determined that it was more prudent to allow this occurrence in the interest of avoiding the chaos created by these diverse understandings. As the district court stated, “It is a predictable consequence of the statutory prohibition against giving credit towards

the child support obligation for payments made to anyone other than the CSC or the clerk's office."

Nor would injustice arise as Steve was not lured into making the support payments directly to Wanda or threatened in any way. In doing so, he clearly abrogated a court order and a statute for reasons he has been unable to plausibly explain. The statutes were designed to avoid situations similar to this litigation. Unjust enrichment does not lie under these circumstances.⁵

The district court appropriately responded to the order of remand herein. The court's decision denying any credits or satisfaction to the appellant is affirmed.

AFFIRMED.

⁵ Steve's cancelled checks are in varying sums; many are for the correct amount, but three are for \$400, others for \$625. There are no payments, in any amount, for at least eight months between October 7, 2002, and trial. Further, in his petition for modification, dated January 11, 2006, Steve alleges Wanda received direct payments for the child support owed in this matter. That would appear to be incorrect as Steve was in arrears, even if given credit for his direct payments to Wanda.