IN THE COURT OF APPEALS OF IOWA

No. 3-507 / 12-1218
Filed July 10, 2013

IN RE THE MARRIAGE OF PATRICIA JOAN VAN VEEN AND STANLEY EUGENE VAN VEEN JR.

Upon the Petition of
PATRICIA JOAN VAN VEEN,
Petitioner-Appellee,

And Concerning
STANLEY EUGENE VAN VEEN JR.,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Martha L. Mertz, Judge.

Stanley Van Veen appeals an order establishing the amount of arrearage for delinquent payments of child support, medical insurance and expenses, and tuition costs. **AFFIRMED.**

Bryan P. Webber, Des Moines, for appellant.

Michael P. Holzworth, Des Moines, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

Stanley Van Veen appeals the district court order determining the amount of arrearage he owes for child support, tuition costs, health insurance, and medical expenses. He contends the district court mistook his acknowledgement that certain issues were discussed before the hearing as an agreement to the amounts owed for child support and tuition. Stanley also invokes the doctrine of estoppel by acquiescence to allege Patricia waited too long to collect medical insurance premiums and uncovered medical expenses.

Because the record supports the court's finding that Stanley stipulated to the amount of child support and tuition expenses owed, we affirm on that issue. And by raising his estoppel defense for the first time on appeal, Stanley failed to preserve error on his second issue. We award Patricia $1000 in appellate attorney fees.

I. Background Facts and Proceedings

On April 10, 1997, the district court entered its decree dissolving the marriage of Stanley and Patricia Van Veen. The Van Veens are the parents of one daughter who is now twenty-four years old and one son who is twenty-one. The decree granted Patricia physical care of both children and provided Stanley visitation rights. The court ordered Stanley to pay $866 per month in child support, one-half of the children's tuition and book fees at Holy Trinity School and Dowling Catholic High School, and maintain health insurance for the children. The parties were to split any uncovered medical expenses.

Stanley eventually stopped meeting his obligation to pay child support, health insurance, uncovered medical expenses, and tuition costs. Patricia individually financed the children's expenses, including multiple surgeries on their son's ankle, their daughter's emergency appendectomy, and both children's braces and wisdom teeth removal.

On June 22, 2011, Patricia filed an application to set arrearage on Stanley's missed payments. In addition to seeking back payment with interest, she also requested attorney fees. The court held a hearing on September 8, 2011, to determine the amount Stanley owed. Patricia was represented by counsel and Stanley appeared pro se. The transcript of the hearing begins with the court's summary of its lengthy discussion with the parties regarding stipulated amounts owed. The court announced the parties "agreed and stipulated" that Stanley owed $33,000 in back child support and $7000 in tuition costs. The remainder of the hearing focused on arrearage relating to insurance and medical payments, as well as attorney fees.

On September 8, 2011, the district court ordered Stanley to pay the following amounts: $33,000 in back child support; $30,676.03 in insurance premiums and uncovered medical expenses; $7000 for one-half the cost of school expenses; and $900 in Patricia's attorney fees. The court added to the first two amounts a ten-percent interest rate from the hearing date until the arrearage was paid in full, and added to the last two amounts the legal-rate of interest until paid in full.

On September 19, 2011, Stanley filed a pro se motion requesting a new trial, which Patricia resisted. Stanley hired counsel, who filed a response to Patricia's resistance and represented Stanley throughout the remainder of the proceedings. After holding a December 20, 2011 telephone conference on the motion with the parties' counsel, the district court denied Stanley's motion for new trial on June 13, 2012. Stanley timely appealed.

II. Scope and Standard of Review

Because the district court heard this case in equity, our review is de novo. *In re Trust No. T-1 of Trimble*, 826 N.W.2d 474, 482 (Iowa 2013). Under this standard, we defer to the district court's fact-findings, but are not bound by them. *In re Marriage of Kimbro*, 826 N.W.2d 696, 699 (Iowa 2013). We will not disturb the district court's ruling unless "there has been a failure to do equity." *Id.*

III. Analysis

A. Did the District Court Appropriately Determine that Stanley Stipulated to the Child Support and Tuition Expense Amounts?

Stanley asserts on appeal that he did not endorse any off-the-record stipulations and contends he did nothing more than agree the district court "correctly recited the discussion that had taken place prior to the beginning of the Hearing." He argues the record does not show he provided knowing and informed consent nor was there a "meeting of the minds" because the agreement initialed by parties was stamped "Draft" and did not bear his signature. Aside from reciting the bases upon which he requested a new trial at the district court—Iowa Rules of Civil Procedure 1.1004(1), (2), (4), (6), and (8)—he offers no

authority on appeal to support his argument that we should disregard the apparent stipulation.

Before the hearing, the district court conducted an in-depth conversation with Stanley and Patricia's counsel. Once on record, the court summarized the discussion, encouraging the parties to correct any inaccuracies:

> THE COURT: The parties have agreed and stipulated and provided the Court with a Proposed Order finding that the Respondent has an arrearage due as of May 1, 2011 in the amount of $33,000 plus interest at the rate of ten percent from August 31, 2011 until paid in full for back child support.
>
> The parties agree that the Respondent owes the Petitioner $7,000, representing half the cost of the children attending Dowling High School, with interest at the legal rate until paid in full. And I assume that is also from the State? Is that correct, Mr. Holzworth?
>
> MR. HOLZWORTH: That's right
>
> THE COURT: The parties agree that the Respondent should pay the Court costs.

The court continued, "What they do not agree on are the two following items; one, insurance premiums." After discussing the related details of the decree, the court identified the second item in contention—attorney fees. The judge then asked the parties individually whether she had correctly communicated their pre-hearing discussion:

> Now, with that said, I will ask Petitioner's counsel if I have correctly stated what we discussed off the record and if that's an accurate assessment of the issues before the Court?
>
> MR. HOLZWORTH: Your Honor, I believe that is an accurate assessment of the issues before the Court and we did have an extensive discussion about other things off the record.
>
> We are ready to proceed at this time.
>
> THE COURT: All right.
>
> Mr. Van[ ]Veen, is that an accurate assessment of the issues before the Court and do you wish to add or delete or modify anything I said in terms of discussions off the record?
>
> MR. VAN[ ]VEEN: I believe that's an accurate assessment.

Although the prehearing discussion comes to us second hand, the hearing transcript reflects a clear explanation of the terms of the stipulation. Stanley's contemporaneous agreement with the court's recitation of the stipulation belies his subsequent contention he was unaware the court regarded the amounts owed for child support and tuition as settled issues.

Nor are we persuaded by Stanley's argument that because the terms of the stipulation appeared on a document marked "Draft," they are nonbinding. That document, entitled "order establishing arrearage," included provisions for child support, medical expenses, tuition, and attorney fees. While each provision included blanks where agreed-upon amounts could be entered, only the child support and tuition provisions were filled in, for $33,000 and $7000 respectively. Even more telling of the parties' stipulation, both Stanley and Patricia initialed the two completed provisions.

If Stanley had really believed those two amounts remained in dispute—despite the district court's report they had been resolved—he would have contested the amount during the hearing. But Stanley declined to cross-examine Patricia, passed up the court's invitation to testify on his own behalf, and did not submit any exhibits. He cannot blame his inaction on his choice to proceed without counsel. We do not accord a different standard to self-represented parties. *Kubik v. Burk*, 540 N.W.2d 60, 63 (Iowa Ct. App. 1995). By acting pro se, Stanley took responsibility for litigating his own cause, and no part of his obligation fell to the district court. *See Conkey v. Hoak Motors, Inc.*, 637 N.W.2d 179, 173 (Iowa 2001).

The district court found the stipulated amounts actually underestimated Stanley's back child support: "Using the information admitted into evidence, the court calculated the delinquent child support to be more than the amount Stanley agreed to pay. Under the circumstances, the court concluded the stipulated amount was reasonable and included it in its order." We too are satisfied that Stanley stipulated to amounts owed in child support and tuition costs that are reasonable based on the record.

B. Did the District Court Err in Awarding Medical Insurance Premiums and Uncovered Medical Expenses?

On appeal, Stanley introduces the issue of estoppel by acquiescence. He points to his failure to pay insurance and medical expenses since July 1, 1998, and contends Patricia waived her right to recover by waiting thirteen years to seek reimbursement.

Patricia argues because Stanley did not raise the estoppel claim before the district court, he failed to preserve error for appeal. Error preservation rules ensure district courts an opportunity to avoid or correct errors and provide appellate courts a record to review. *Veatch v. Bartels Lutheran Home*, 804 N.W.2d 530, 533 (Iowa Ct. App. 2011). A party must alert the district court to the issue at a time when it may take corrective action. *Summy v. City of Des Moines*, 708 N.W.2d 333, 338 (Iowa 2006). If the district court fails to address the issue, a party must find some means to obtain a ruling to preserve error. *Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 670–71 (Iowa 2005).

Estoppel by acquiescence is an affirmative defense against a party who, aware of an enforceable right, neglects to enforce the right for such length of time that the law implies it is waived or abandoned. *In re Estate of Warrington*, 686 N.W.2d 198, 204 (Iowa 2004). Unless a party raises estoppel by acquiescence in the pleadings, it is generally deemed waived. *Holi-Rest, Inc. v. Treloar*, 217 N.W.2d 517, 523 (Iowa 1974) (noting while party need not use precise words, at least allegations to support the theory must appear in pleadings); *see Stew-Mc Development, Inc. v. Fischer*, 770 N.W.2d 839, 848 n.2 (Iowa 2009) (refusing to address whether defendant was barred by laches or estoppel because "these issues were neither presented to nor ruled upon by the district court"). An exception to this general rule exists when a party introduces evidence on an issue without objection, whereby the district court may consider the defense tried by consent and properly at issue in the case. *Dutcher v. Randall Foods*, 546 N.W.2d 889, 893 (Iowa 1996).

During the hearing, the district court recognized the potential of a defense based on laches,[1] but decided Stanley was not asserting it: "on the other hand, if nobody ever asks you for the $20 co-pay, then after the child is 22 you ask for the co-pay, it becomes, I think there is a pretty good laches argument there, but it has not been asserted in this case." Even following the hearing, when represented by counsel, Stanley did not invoke an estoppel-by-acquiescence

[1] While similar to estoppel by acquiescence, laches requires the proponent to show injury or prejudice, which is not required to establish the estoppel defense. *See Thurn v. Thurn*, 310 N.W.2d 539, 541 (Iowa Ct. App. 1981) ("Unlike laches, which focuses on the position of the party against whom the claim is asserted, estoppel by acquiescence is based on an examination of the actions of the individual holding the right in order to determine whether that right has been waived.").

defense. Both the nature of the defense and error preservation principles preclude our review of this issue on appeal.

C. Should We Award Appellate Attorney Fees?

Although Patricia doesn't specify an amount, she requests appellate attorney fees on appeal.

Generally, no claim exists for attorney fees, absent a statutory or contractual provision allowing an award. *In re Marriage of McCurnin*, 681 N.W.2d 322, 332 (Iowa 2004). Iowa Code section 598.24 (2011) allows a party to recoup attorney fees arising from default- or contempt-based actions:

> When an action for a modification, order to show cause, or contempt of a dissolution, annulment, or separate maintenance decree is brought on the grounds that a party to the decree is in default or contempt of the decree, and the court determines that the party is in default or contempt of the decree, the costs of the proceeding, including reasonable attorney's fees, may be taxed against that party.

Patricia filed an action to "set arrearage"—asking the court to determine the extent to which Stanley was in default on his obligations under the decree. We believe Patricia's action is governed by section 598.24. *See McCurnin*, 681 N.W.2d at 332 (finding application to enforce child support, rather than application to modify, was "more akin to an order to show cause or contempt under the provisions of Iowa Code section 598.24").

Because the language of section 598.24 does not limit a party's recovery to attorney fees incurred at the trial, the provision encompasses reasonable attorney fees on appeal. *See Schaffer v. Frank Moyer Const., Inc.*, 628 N.W.2d 11, 23 (Iowa 2001); *see also Bankers Trust Co. v. Woltz*, 326 N.W.2d 274, 278

(Iowa 1982) (holding same rationale justifying reasonable-attorney-fee award statute at trial court "also justifies awarding attorney fees in this appeal").

Section 598.24 affords us with discretion to award attorney fees. *See In re Marriage of Hankenson*, 503 N.W.2d 431, 433 (Iowa Ct. App. 1993). In determining whether an award is appropriate, we consider the needs of the requesting party, the other party's ability to pay, and whether the requesting party was required to defend the trial court's decision on appeal. *Id.* at 433–34. Because Patricia defended each challenged aspect of the trial court's ruling, we find it equitable to award $1000 in appellate attorney fees. The costs of the appeal are taxed to Stanley.

AFFIRMED.