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Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001202-MR

AMITY BRANNOCK APPELLANT

v.

APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE LISA HART MORGAN, JUDGE
ACTION NO. 17-CI-00156

WILLIAM BRANNOCK APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; NICKELL AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Amity Brannock appeals from two orders of the Scott Circuit Court. The first order held that William Brannock did not owe any child support arrearages because the parties modified their child support agreement. The second order denied Appellant's Kentucky Rules of Civil Procedure (CR) 59.05 motion and CR 60.02 motion. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

The parties were divorced by a decree of dissolution of marriage entered on January 26, 2010. Incorporated into their decree was their marital settlement agreement dated December 29, 2009. The agreement stated that Appellee agreed to pay Appellant $1,000 per month in child support for their two minor children. The agreement also stated that the agreement could not be modified or altered unless done so in writing and signed by both parties. After executing the settlement agreement, but before the divorce decree was entered, the parties attempted to reconcile and began cohabitating in a house they purchased together.[1]

The cohabitation lasted for about six years, with the parties' final date of separation being March 26, 2016. During this six-year time period, Appellee did not pay child support. According to testimony, he instead paid all of the mortgage on the new house and debt incurred during the cohabitation period. Appellant, on the other hand, paid for the household and child-related expenses.

In February of 2017, Appellee filed a motion seeking modification of child support and requested that the court declare he did not owe child support

[1] This new house was not the original marital home.

arrearages.[2] A child support wage withholding order was entered on May 1, 2017, against Appellee. The order directed the withholding of $1,000 per month and named Appellant as the child support recipient. Appellee then again moved to modify his child support and requested the court declare that he did not owe child support arrearages from the period of cohabitation. In response, Appellant maintained that she was entitled to child support during the cohabitation period, which would amount to over $70,000 in arrearages.

Briefs were filed, and a hearing was held regarding the child support arrearage issue.[3] During the hearing, Appellee testified that he and Appellant agreed that he would pay the mortgage and accrued debt and that Appellant would pay the household and child-related expenses. Appellee indicated this arrangement was in lieu of the child support set forth in the marital settlement agreement. Appellee introduced into evidence an email and text messages which memorialize and confirm this arrangement. The email and text messages were dated after the final separation of the parties in 2016. Appellant was not asked any questions during the hearing regarding the email, text messages, or alleged modification of the child support agreement. There is also no affidavit in the record regarding this

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[2] This motion was originally filed in the Bourbon Circuit Court, the circuit court which heard the original dissolution action. The parties later moved for a change of venue to Scott County, which was granted.

[3] Other issues were addressed at this hearing, but only the child support issue is before us.

issue. The only information is a general denial of any agreement set forth in pre- and post-hearing pleadings.

On July 9, 2018, the trial court entered an order regarding the child support arrearage issue. Citing *Whicker v. Whicker*, 711 S.W.2d 857 (Ky. App. 1986), and *Vanover v. Vanover*, No. 2002-CA-001177-MR, 2005 WL 500274 (Ky. App. Mar. 4, 2005),[4] the trial court held that the parties orally modified their child support agreement. The court also held that Appellant should be estopped from recovering child support arrearages because it would be unconscionable to permit her to remain silent on the child support issue and allow Appellee to pay the mortgage in lieu of child support, but then allow her to recover a $70,000 windfall once the relationship ended. The court cited to *Sparks v. Trustguard Ins. Co.*, 389 S.W.3d 121 (Ky. App. 2012), and *Dixon v. Dixon*, No. 2016-CA-001571-ME, 2017 WL 5013538 (Ky. App. Nov. 3, 2017), *disc. rev. denied and opinion ordered not published* (Ky. Apr. 18, 2018), in support of its holding.

On August 8, 2018, Appellant filed a CR 60.02 motion asking that the court vacate the July 9, 2018 order because she did not receive a copy of it. Appellant requested that the court enter a new order and ensure the clerk mailed counsel a copy. The implication of this motion was to allow Appellant to timely file a CR 59.05 motion to alter, amend, or vacate. Because Appellant did not

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[4] CR 76.28(4)(c) states that unpublished opinions are not binding precedent but may be used as persuasive authority.

receive notice of the July order, she was unable to file a motion to alter, amend, or vacate within the ten-day timeframe required by the rule.

Also, on August 8, 2018, Appellant filed a motion pursuant to CR 59.05 and CR 52.02. She requested that the trial court make additional findings and argued that the court erred in holding that Appellee did not owe past child support. Appellant also filed a notice of appeal and later moved for the Court of Appeals to hold the appeal in abeyance pending the outcome of the trial court's ruling on her motions.

On September 4, 2018, the trial court entered two orders. One order denied Appellant's CR 60.02 and CR 59.05 motions. The other order was an amended order regarding the child support arrearage issue which changed a few clerical errors brought to the court's attention.

On September 10, 2018, Appellant filed an amended notice of appeal. The new notice of appeal listed the amended order and order denying her post-hearing motions as the basis of the appeal. This appeal followed.

ANALYSIS

Appellant's first argument on appeal is that the trial court erred in denying her CR 60.02 motion because the clerk failed to mail a copy of the July 2018 arrearage order to her counsel; therefore, she was unable to timely file her CR 59.05 and CR 52.02 motion. Even though Appellant makes this argument, she also

asks that we decline to review it. The trial court denied Appellant's CR 60.02 motion and declined to take under submission her CR 59.05 and CR 52.02 motion; however, Appellant indicates that the trial court's September 4, 2018 amended order regarding the child support arrearages did take into account her motions and effectively granted her post-hearing motions. Because Appellant asks us to take no action as to this issue, we will move on.

Appellant's second argument on appeal is that the trial court erred when it failed to enforce the terms of the parties' marital settlement agreement, which required all modifications to be in writing and signed by the parties. Appellant cites to *Jaburg v. Jaburg*, 558 S.W.3d 11 (Ky. App. 2018), which holds that a court must adhere to the terms of a settlement agreement if it contains a clause which says that the agreement may not be modified unless in writing. Appellant argues that the settlement agreement executed between the parties in December of 2009 has such a clause; therefore, the child support payments could not be modified orally as between the parties or by the trial court.

We are unable to fully review this issue. CR 52.04 states:

> A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.

Here, the trial court did not specifically rule as to what effect the modification clause in the agreement had on the child support arrearage issue. Also, although Appellant filed a CR 52.02 motion seeking additional findings of fact, she did not request additional findings as to this issue. Without such a request, we cannot reverse the orders on appeal because of this issue.

Alternatively, we could assume that the trial court ruled that there was an oral modification later committed to writing. Even if we did this, we would still be unable to fully review the issue. Appellee presented evidence that the parties orally agreed that he would pay the mortgage, and other expenses, in lieu of child support. He also presented evidence in the form of text messages and an email that indicated that the agreement was later put into writing and that Appellant agreed to the terms. The trial court relied on the text messages and email to support its holding. Unfortunately, the email and text messages are not in the record before us; therefore, we cannot fully examine this issue.

It is the responsibility of the appellant to ensure that this Court receives the complete record. *Gambrel v. Gambrel*, 501 S.W.3d 900, 902 (Ky. App. 2016). We must presume that the missing parts of the record support the findings of the trial court. *Harmon v. Harmon*, 227 Ky. 341, 13 S.W.2d 242, 243 (1928). Because the record is incomplete, we must assume that the email and text messages were sufficient to meet the requirement that modifications be in writing.

Appellant's third argument on appeal is that the trial court erred in relying on the unpublished case of *Vanover v. Vanover*, 2005 WL 500274, when it ruled that the parties orally modified the child support agreement. Citing to CR 76.28(4)(c), she argues that it was error for the trial court to rely on an unpublished case when there were published cases that the trial court could have utilized. She also claims that those published cases would have led the court to conclude there was no modification of child support during their cohabitation. Appellant cites to *Price v. Price*, 912 S.W.2d 44 (Ky. 1995), *Arnold v. Arnold*, 825 S.W.2d 621 (Ky. App. 1992), and *Murphy v. Bowen*, 756 S.W.2d 149 (Ky. App. 1988), to support her argument.

In *Price*, David and Janet Price had one minor child. Upon their divorce, Ms. Price was awarded custody of the child and Mr. Price was ordered to pay $1,400 to Ms. Price in child support. Eventually, the parties agreed to change the child's residence from mother to father. This change occurred on October 31, 1990. At that time, Mr. Price stopped paying child support. On February 14, 1992, Ms. Price moved to compel Mr. Price to pay child support arrearages. Four days later, Mr. Price moved to modify his child support obligation.

Mr. Price argued before the trial court that it would be unfair for him to have to pay Ms. Price child support during the time the child was solely in his care. The trial court found in favor of Mr. Price and the Court of Appeals

affirmed. The Kentucky Supreme Court, however, reversed. It held that "the trial judge had no power to relieve Father of his child support obligations which became due between the time Child changed residences and the filing of the motion for a modification of that order." *Price*, 912 S.W.2d at 46. The Court held that parties can agree to modify child support; however, there was no such agreement in *Price*. *Id.*

In *Arnold*, William Arnold was ordered to pay $375 per month to Shirley Arnold in child support. Ms. Arnold was given custody of the parties' three minor children. Mr. Arnold was also ordered to make these payments to the Fayette County Domestic Relations Office for later distribution to Ms. Arnold.

> Disregarding this order, William made these payments directly to Shirley. Further, in June of 1982, when the parties' oldest child reached the age of 18, William reduced the support payment to $301.00 a month. When the second child reached 18, William reduced the support payment to $150.50 per month. William ceased making support payments when the third child attained the age of 18 in June of 1988.

Arnold, 825 S.W.2d at 621.

In July of 1990, Ms. Arnold moved the trial court for child support arrearages. These arrearages signified the amount Mr. Arnold would have owed if he had not unilaterally modified his child support payments. The issue was heard by a domestic relations commissioner. The commissioner held that the parties had agreed to modify the child support obligation as each child turned 18; therefore,

Ms. Arnold was not entitled to arrearages. The trial court affirmed this holding. The Court of Appeals reversed. The Court held that there was no evidence that Ms. Arnold had orally agreed to modify the child support obligation and that Ms. Arnold was entitled to the arrearages she sought. *Id.* at 622.

In *Murphy*, the issues being litigated did not concern child support. *Murphy* dealt with cohabitation and the Court of Appeals held that there were "no contractual rights or obligations" between cohabitating, unmarried persons. *Murphy* 756 S.W.2d at 150.

We will now discuss the *Vanover* case cited by the trial court. In *Vanover*:

> Patricia Vanover and Douglas Vanover were divorced on September 28, 1984, and pursuant to an agreement incorporated into the decree, Patricia was awarded custody of the parties' three minor children, and Douglas was to pay $125 per week child support. Patricia was permitted to retain the marital residence being purchased under a land contract. . . . In 1985, Douglas began living again in the marital residence and continued living there the following fourteen years. During the period of cohabitation, Douglas stopped paying child support[.]

Vanover, 2005 WL 500274, at *1. Mr. Vanover moved from the residence in 2000 and Ms. Vanover filed a motion to hold Mr. Vanover in contempt for failing to pay child support. The trial court held that the parties had agreed that Mr. Vanover would not be responsible for child support payments during their fourteen-year cohabitation.

The Court of Appeals held that parties can agree to orally modify child support obligations. *Id.* at *4. The Court of Appeals agreed with the trial court that such an agreement occurred here. The Court found as persuasive Mr. Vanover's testimony that he and Ms. Vanover agreed he would not need to pay child support if he helped with the household expenses. The Court also found as persuasive the fact that Ms. Vanover did not seek to enforce the child support order for fourteen years.

We believe it was prudent for the trial court to cite to *Vanover* because the cases cited by Appellant are distinguishable from *Vanover* and the case at hand. In both *Price* and *Arnold*, the appellate courts held that parties can orally agree to modify child support obligations. In *Price*, the trial court and Court of Appeals held that it would be unfair to require the father to pay back child support since he was the sole guardian of the child. The Kentucky Supreme Court held that unless there was an agreement to modify, the father should pay the past due child support. There was no evidence of an agreement to modify. In *Arnold*, the trial court found that the husband and wife tacitly agreed to modify the child support obligation; however, the Court of Appeals held that the husband provided no evidence that they had agreed to a reduction in child support or that the reduction was reasonable. In the case *sub judice*, as in *Vanover*, the trial court found that an agreement to modify was entered into and evidence was supplied to

support this holding. As for *Murphy*, we agree that cohabitation does not create contractual rights or obligations between nonmarried cohabitators; however, *Murphy* is not truly relevant to the case at hand. Neither party is arguing there should be a child support modification based solely on their cohabitation. The basis of the modification is an oral agreement.

What *Price*, *Arnold*, *Vanover*, and the case at hand all have in common, however, is that they all cite to *Whicker v. Whicker*, 711 S.W.2d 857. We believe *Whicker* is the controlling case for the oral modification of child support.

In *Whicker*:

> Appellant Monica Whicker (now Monica Reynolds) and appellee Don Whicker were divorced in 1975. Pursuant to the divorce decree Don Whicker was ordered to pay $75.00 per month child support for one child, who was at that time four years old. By 1984, however, Don was in arrears in the sum of $7,280.00 and Monica brought a motion in Pike Circuit Court to hold Don in contempt.
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> Don, in his defense, asserted that he and Monica had made an oral agreement whereby Monica would forego all arrearages owed by Don, and Don would increase his child support payments by five dollars per month to a total of $80.00 per month. The trial court found that the parties had, indeed, made such an agreement, and that Monica was not entitled to any arrearages.

Id. at 858. The Court of Appeals affirmed in part and reversed in part. The Court held that:

> oral agreements to modify child support obligations are enforceable, so long as (1) such agreements may be proved with reasonable certainty, and (2) the court finds that the agreement is fair and equitable under the circumstances. In order to enforce such agreements, a court must find that modification might reasonably have been granted, had a proper motion to modify been brought before the court pursuant to [Kentucky Revised Statutes (KRS)] 403.250[5] at the time such oral modification was originally agreed to by the parties. Furthermore, in keeping with prior decisions, such private agreements are enforceable only prospectively, and will not apply to support payments which had already become vested at the time the agreement was made.

Id. at 859 (citation omitted). The Court also considered the following:

> Several policy considerations regarding private modification of child support seem fundamentally clear. First, any agreement between parties to a divorce which avoids the adversarial judicial process is to be encouraged. Second, such agreements, to be enforceable, must be approved by a court of law, which must make its determination according to the existing equities under the circumstances. In enforcing any modification, furthermore, the interests of the children involved must be a major consideration. Finally, a parent's obligation to support a child may not be absolutely waived by any contract between the parties.

Id.

With these issues in mind, we now turn to the trial court's holding to see if it comports with *Whicker*. The court found that Appellee originally agreed to

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[5] This is an old statutory number. The current statute regarding modification of child support is KRS 403.213.

pay Appellant $1,000 per month in child support, but that the parties reconciled and began cohabitating shortly after making the agreement. The court also found that Appellee's testimony of an agreement to modify was persuasive. The court found that the parties agreed that in lieu of Appellee paying $1,000 per month in child support, Appellee would pay the mortgage for the house the family lived in and the credit card debt, which totaled over $1,000 per month. Appellant would then pay the household bills and child-related expenses. Appellee also provided corroborating evidence to this agreement in the form of an email and text messages. The court also found as significant the fact that the parties cohabitated for around six years and Appellant never sought to enforce the child support agreement.

The trial court held that an agreement to modify the child support obligation occurred in this case and that Appellee proved the agreement with reasonable certainty. The court also found that the agreement was fair and equitable to both parties and still ensured that the children's needs were met. The court found that by paying the mortgage on the house, Appellee provided a home for the children. It also found that these payments benefitted Appellant and the children because Appellant did not have housing costs, thereby freeing up more money to provide for the children.

This case involves our review of findings of fact, legal questions, and issues related to child support. We must, therefore, set forth the standards of review for each.

> The Court of Appeals . . . [is] entitled to set aside the trial court's findings only if those findings are clearly erroneous. And, the dispositive question that we must answer, therefore, is whether the trial court's findings of fact are clearly erroneous, i.e., whether or not those findings are supported by substantial evidence. "[S]ubstantial evidence" is "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men." Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses" because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, "[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal," and appellate courts should not disturb trial court findings that are supported by substantial evidence.

Moore v. Asente, 110 S.W.3d 336, 353-54 (Ky. 2003) (footnotes omitted). Legal issues are reviewed *de novo*. *Commonwealth v. Long*, 118 S.W.3d 178, 181 (Ky. App. 2003). Child support issues are reviewed for an abuse of discretion. *Van Meter v. Smith*, 14 S.W.3d 569, 572 (Ky. App. 2000). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair,

or unsupported by sound legal principles." *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky. App. 2001) (footnote omitted).

We believe the trial court did not err in concluding the parties modified their agreement regarding child support. The trial court found the evidence supporting this persuasive and Appellant did not produce any testimony to rebut the existence of the new arrangement. We find the trial court's findings regarding the modified agreement are not clearly erroneous. As for the court's application of *Vanover* and *Whicker*, we find no error in the court's analysis. It is clear that the court followed the requirements of *Whicker*. It considered how much money Appellee was to pay in child support and how much he paid on the mortgage and credit card debt. It also found that the modification was fair and equitable. Appellee provided a home for the parties and the children. Also, Appellant had no housing costs, and this freed up more of her income to provide for the children.

In addition, although not specifically mentioned, we believe the modification would be appropriate under KRS 403.213, the current child support modification statute. KRS 403.213(1) states that child support can be modified if there is "a material change in circumstances that is substantial and continuing." Here, the parties were contemplating a divorce and separation when they entered into the marital settlement agreement. Soon thereafter, the parties reconciled and

began cohabitating. We believe this cohabitation allowed for an equal sharing of time and resources as it related to the children. An equal division of time with the children and an equal division of expenses is grounds for deviating from the child support guidelines. *Dudgeon v. Dudgeon*, 318 S.W.3d 106, 111 (Ky. App. 2010); *Plattner v. Plattner*, 228 S.W.3d 577, 579 (Ky. App. 2007). We would also consider this a substantial and continuing material change sufficient to modify a child support obligation, especially since this went on for six years.

Finally, we do not believe this outcome is an abuse of discretion because it is reasonable and supported by sound legal principles.

Appellant's final argument on appeal is that the trial court erred in relying on the unpublished case of *Dixon v. Dixon*, 2017 WL 5013538. Again, she cites to CR 76.28(4)(c) in support of her argument. She also claims that the estoppel argument from *Dixon* that the trial court relied on is not applicable. The relevant facts in *Dixon* are as follows:

> On February 18, 2013, the parties were granted a Decree of Dissolution of Marriage, which adopted their Marital Settlement Agreement ("Agreement"). As part of the Agreement, Charles Dixon ("Charles") agreed to pay Karen [Dixon] $1189.60 per month for child support. In addition, he was to pay $800 per month spousal support until May 1, 2016. The Agreement provided that Karen was responsible for payment of the mortgage, but provided that the house was to be immediately listed for sale with Karen to receive any surplus in the house sale.

Beginning in March 2013, rather than pay Karen directly, Charles began paying the mortgage on the house. While both parties acknowledge that the mortgage payments were more than the child support and maintenance payments combined, Karen initially objected to this payment arrangement. Regardless, Charles continued making mortgage payments in lieu of paying her child support and maintenance directly until July 2015, when the marital residence was sold.

In July 2014, the oldest child reached majority and the court issued an Order Modifying Child Support reducing the total amount of child support due Karen. The Order also states, "There exists no past due support from Respondent to Petitioner." In October 2014, Karen submitted an application for child support services with the Cabinet for Health and Family Services seeking a garnishment of Charles' wages. On the attached Income Withholding for Support form, the form states there is no past-due child support arrears. On October 7, 2014, the county attorney filed an action in the Jessamine Circuit Court for the purpose of protecting its interest in receiving child support arrearages in the amount of $19,458.49 as requested by Karen. The matter was subsequently transferred to the family court division and no further action was taken. In July 2015, the house was sold and Charles stopped making mortgage payments. Per court order, Karen vacated the marital residence and signed a quit claim deed transferring her interest in the property to Charles, who now resides in the home. Both children have now reached the age of emancipation and no further child support is due, and as of May 1, 2016, maintenance payments ended pursuant to the terms of the Agreement.

The issue of child support arrearages was not addressed by either party until the August 23, 2016 hearing before the court and in the court's subsequent order of September 12, 2016. In the order, the court found that Charles was not entitled to any offset for

> amounts he paid for the obligation of the wife on the mortgage; that there was no maintenance or child support arrearage owed by Charles to Karen; and that Karen is barred by the doctrine of laches from asserting a claim for past due maintenance and child support.

Id. at *1.

The Court of Appeals then took up the arrearages issue. The Court held that the doctrine of laches claim was suitable for the issue, but that the doctrine of estoppel by acquiescence was more fitting. The Court stated that "[t]he doctrine of estoppel by acquiescence is applied to transactions in which it would be unconscionable to permit a person to maintain a position which is inconsistent with one in which he has previously acquiesced. *Sparks v. Trustguard Ins. Co.*, 389 S.W.3d 121, 126-27 (Ky. App. 2012)."[6] *Dixon*, 2017 WL 5013538, at *2. The *Dixon* Court held that Ms. Dixon was estopped from seeking child support arrearages because she allowed Mr. Dixon to continue paying the mortgage in lieu of child support and did not timely motion the court for the collection of arrearages. In addition, she did not object to an earlier finding of the trial court that Mr. Dixon owed no child support arrearage. Finally, a signed application for child support services indicated that Mr. Dixon had been paying child support. The Court held that Ms. Dixon's silence and inaction indicated she agreed to accept the mortgage payments in lieu of child support. *Id.* at *3.

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[6] It is worth reiterating that the trial court in this case also cited to *Sparks* as support for its holding that estoppel by acquiescence applies in the case at hand.

Dixon and the trial court in this case both cited to *Sparks*; therefore, we will look to it for further guidance. *Sparks* indicates that estoppel by acquiescence is also called equitable estoppel. *Sparks*, 389 S.W.3d at 126-27. We will therefore examine this issue as one of equitable estoppel as that is the more common name. "[E]quitable estoppel requires both a material misrepresentation by one party and reliance by the other party[.]" *Bridgefield Cas. Ins. Co., Inc. v. Yamaha Motor Mfg. Corp. of Am.*, 385 S.W.3d 430, 433 (Ky. App. 2012) (citation and internal quotation marks omitted).

We believe equitable estoppel also applies to this case. Here, the trial court found that the parties agreed that Appellee would pay the mortgage in lieu of paying child support directly to Appellant. The house was owned by both parties and Appellee's paying of the mortgage kept a roof over the heads of the entire family unit. Appellee paid the mortgage for six years and Appellee never sought the court's assistance in obtaining child support payments made directly to her. Appellee relied on this agreement and, if Appellant's arguments are to be given credence, racked up a $70,000 child support debt, plus interest.[7] Appellant acquiesced to this arrangement until the parties finally separated. We believe it would be unconscionable for Appellant to now recover tens of thousands of dollars when she allowed Appellee to believe he was meeting his child support obligation.

[7] By the time of the hearing in this case, the debt had risen to over $85,000.

The trial court did not err in relying on *Dixon* as persuasive authority because it also relied on *Sparks*, a published opinion. Additionally, the court did not err in applying estoppel by acquiescence, or equitable estoppel, to this case.

CONCLUSION

Based on the foregoing, we affirm the judgment of the trial court. Appellee's child support obligation was orally modified; therefore, he does not owe an arrearage. In addition, Appellant is equitably estopped from claiming an arrearage is owed because Appellee believed he was paying his child support obligation by paying the mortgage and Appellant did not correct this notion for six years.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Ashley Larmour
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