

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

DARLENE A. LLOYD,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
DONALD J. ADER,	:	
	:	
Appellee	:	No. 934 MDA 2012

Appeal from the Order entered April 12, 2012,
Court of Common Pleas, York County,
Domestic Relations at No. 1818 SA 2009

BEFORE: DONOHUE, ALLEN and OTT, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: March 15, 2013

Darlene A. Lloyd (“Mother”) appeals from the order entered on April 12, 2012, by the Court of Common Pleas, York County, sustaining the challenge brought by Donald J. Ader (“Father”) to Mother’s application under the Uniform Interstate Family Support Act, 23 Pa.C.S.A. § 7101 *et seq.* (“UIFSA”), for registration of a child support order issued in California. After careful review, we affirm.

Father and Mother married on April 15, 1978, while Father was in the Navy and stationed in Hawaii. On March 8, 1980, Mother gave birth to a son, Matthew Charles Ader (“Child”). On December 16, 1980, Father and Mother separated. Mother and Child initially moved to Connecticut, then to California, and finally to Virginia, where they lived with Mother’s second husband, John Lloyd. Father moved around the country because of his

position in the Navy, ultimately settling in York, Pennsylvania. Father also remarried.

On October 18, 1982, the parties filed an "Appearance, Stipulation and Waiver," in San Diego County, California, which provided, *inter alia*, that Father "shall pay as and for child support, \$175 per month, payable directly to [Mother] until the minor child, Matthew Charles Ader, reaches the age of eighteen (18) years, marries, becomes self[-]supporting, is emancipated, dies, enters the military service, or until further order of the court, whichever first occurs." Appearance, Stipulation and Waiver, 10/18/82, at ¶ 6. The Appearance, Stipulation and Waiver was incorporated into the Interlocutory Judgment of Dissolution of Marriage entered on October 25, 1982 in San Diego County. The final judgment dissolving the parties' marriage was entered on January 18, 1983.

Sometime in late 1982 or early 1983, Mother located Father in the Navy, with the help of the Navy's chaplain, for the purpose of collecting outstanding child support owed by Father. Father's command informed him that he was delinquent in his child support obligation. According to Father, he contacted his girlfriend (now wife) and instructed her to withdraw money from his bank account to satisfy his outstanding payments, and he provided that money to Mother in satisfaction of his arrears. Mother gave Father a handwritten receipt for him to provide to his command as proof of payment of child support through April 1983. According to Father, Mother told him

Child would not refer to him as “dad,” but as “Uncle Don,” and that Child recognized Mr. Lloyd as his father. Father also stated that Mother and Mr. Lloyd spoke to him about relinquishing his parental rights to Child so that Mr. Lloyd could adopt him. Father indicated that he was in agreement, and that Mother and Mr. Lloyd provided him another handwritten paper, signed by Father, Mother, and Mr. Lloyd, reflecting that Mr. Lloyd would be adopting Child and that Father agreed, and further providing that Father would not interfere with Child. Father reportedly provided that document – the only copy¹ – to his command, which resulted in the removal of Child as a dependent from his Naval file and his commanding officer cautioning him that he was not permitted to contact Mother or Child again.

Although Mother acknowledged giving Father a receipt for payment of outstanding child support, she denied actually receiving any payment. Rather, according to Mother, Father contacted her and was distraught, stating he would be court-martialed if he did not produce a receipt saying that he paid all of his outstanding child support, as he had been collecting money from the Navy for dependent housing expenses. Not wanting to destroy his career, Mother provided him with the receipt. She denied that she told Father that Child would refer to him as Uncle Don. She further denied that she discussed with Father the possibility of Mr. Lloyd adopting

¹ The signed agreement was not produced at trial, and Father was permitted to testify regarding its contents over Mother’s hearsay and relevancy objections. **See** N.T., 10/14/11, at 13, 14.

Child or that she signed any paper reflecting the same. Although Mother admitted that Mr. Lloyd may have spoken with Father about adopting Child, Mother was not in agreement with this occurring.

Following the April 1983 interaction, Father made no additional child support payments and did not hear from Mother again. While he never received any paperwork indicating that his parental rights to Child had been terminated, he believed that Mr. Lloyd adopted the child and that he was no longer legally Child's father.

Father retired from the Navy in 1990 and began to work for Epsilon in 1992. In September 2007, Father received correspondence from Child Support Enforcement ("CSE"), an agency located in Austin, Texas, stating that Father owed Mother \$85,331.98, including \$31,850 in back child support plus interest.² Father's employer was sent a similar letter, which resulted in the garnishment of Father's wages for approximately six or eight paychecks, and then ceased thereafter. According to Mother, she had attempted to locate Father prior to 2007, but because she did not know where Father was stationed, the Navy was unable to locate him. She admitted she did not contact the Navy's chaplain for help as she had in the past.

² According to Father, he had his wife contact Mother to inquire about the letter. He listened on the other end of the phone while Mother allegedly told his wife that she learned about CSE while watching Oprah on television.

The Virginia Collections and Enforcement Office contacted Father sometime in 2008, and stated he owed \$30,975 in back child support to Mother. Father retained counsel.

On July 27, 2009, the York County Court of Common Pleas received a request for registration and enforcement of the San Diego child support order from the Virginia Division of Child Support Enforcement. Father, who was a resident of York County at that time, challenged the enforcement of the order and filed a Demand for Hearing on August 26, 2009. The court held argument on Father's request on November 5, 2009. The trial court then scheduled a hearing for July 26, 2010, at which neither Mother nor her counsel appeared. On that basis, the trial court denied Mother's request to register the child support order with prejudice. On September 7, 2010, it denied her motion to reconsider. Mother appealed, and this Court vacated the trial court's order and remanded the case for a hearing, finding that the trial court erred as a matter of law, as Mother, an out-of-state party, was not required to attend the hearing in person, nor was she required to have counsel represent her at the proceeding. *Lloyd v. Ader*, 1574 MDA 2010, 4-5 (Pa. Super. August 16, 2011) (unpublished memorandum) (citing 23 Pa.C.S.A. § 7316).

On remand, the trial court held an evidentiary hearing on October 14, 2011. Finding that Father testified credibly regarding his belief that Mother and Mr. Lloyd intended to have Mr. Lloyd adopt Child, and that Mother's

testimony to the contrary was not worthy of belief, it sustained Father's objections and dismissed Mother's request for registration of the child support order.

Mother filed a timely notice of appeal, followed by a court-ordered concise statement of matters complained of on appeal pursuant to Pa.R.A.P.

1925(b). She raises the following issues for our review:

- A. Whether the lower court erred in failing to consider whether [Father] established the specific enumerated basis to challenge the registration of an order for child support for enforcement under 23 Pa. C.S. Section 7607(a)(1)-(7)?
- B. Whether the lower court erred in imposing a statute of limitations or laches [*sic*] for the collection of child support arrears that does not exist in Pennsylvania and that is contrary to 23 Pa. C.S. Section 7604?
- C. Whether the lower court erred by misapprehending several facts of record in the finding of facts contained in the opinion of the trial court?
- D. Whether the lower court erred in concluding that [Father] established that [Mother] advised [Father] that her current husband adopted or was going to adopt the child?
- E. Whether the lower court erred in concluding that [Mother] concealed the child from [Father] to constitute a defense to challenge registration of the child support order?
- F. Whether the lower court erred in concluding that [Mother] did not take any action to seek child support from [Father] for over 20 years?

G. Whether the lower court erred by in [*sic*] concluding that California Support law in any manner applies to this registration matter, and further finding that Cal. Fam. C. Section 4502, now repealed, in some manner requires the renewal of a child support judgment, when the trial court acknowledges in the opinion that cal. Fam. C. Section 29(b) [*sic*] does not require renewal of a judgment of child support for enforceability?

H. Whether the lower court erred in concluding that there is no enforceable order for child support to register in Pennsylvania?

Mother's Brief at 4-5.

We review a trial court's decision concerning the registration of a foreign support order under UIFSA for a manifest abuse of discretion or error of law. ***Casiano v. Casiano***, 815 A.2d 638, 641 (Pa. Super. 2002). Pursuant to UISFA, an order of support or for withholding income issued by a court in another state may be registered for enforcement in Pennsylvania. 23 Pa.C.S.A. § 7601. If a party contests the validity or enforcement of the order sought to be registered, he or she has the burden of proving one of the statutorily enumerated defenses:

- (1) The issuing tribunal lacked personal jurisdiction over the contesting party.
- (2) The order was obtained by fraud.
- (3) The order has been vacated, suspended or modified by a later order.
- (4) The issuing tribunal has stayed the order pending appeal.

(5) There is a defense under the law of this State to the remedy sought.

(6) Full or partial payment has been made.

(7) The statute of limitation under section 7604 (relating to choice of law) precludes enforcement of some or all of the arrearages.

23 Pa.C.S.A. § 7607(a). "If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order." 23 Pa.C.S.A. § 7607(c).

The issues raised by Mother on appeal challenge both the trial court's factual findings and its legal conclusions. As Mother recognizes, however, her overarching argument is that the trial court erred by finding that Father satisfied any of the enumerated exceptions to registration of a foreign support order under UIFSA.³ Mother's Brief at 17-18.

The trial court, as noted above, found Father's testimony regarding the series of events regarding his failure to pay child support to be credible. Specifically, it found the following facts relevant to our resolution of this appeal: that Mother told Father Mr. Lloyd would be adopting Child; Child was to refer to Father as "Uncle Don," and recognized Mr. Lloyd as his father; and Mother did not make any attempts to obtain child support owed

³ Based upon our resolution of this question and the trial court's attendant factual findings, it is unnecessary for us to review the other issues raised by Mother on appeal.

by Father for more than 20 years, nearly 10 years after Child turned 18. Trial Court Opinion, 4/12/12, at 2-5. Based on its findings of fact, the trial court found, *inter alia*, that Father satisfied his burden under Section 7607(a)(5), proving the defense of “concealment.” *Id.* at 5-6.

We agree with Mother that neither the facts as found by the trial court nor the evidence of record support a finding of concealment. Without citation to authority, the trial court found that, “[a]lthough not physically ‘hiding’ the child, [Mother] undertook to keep [Father] from seeing the child and preventing the child from knowing and seeing his father.” Trial Court Opinion, 4/12/12, at 6. Other than testimony Mother denied Father’s request for a visit in one instance because Child was ill (N.T., 10/14/11, at 55-56), there was no testimony or evidence presented that Mother kept Father from seeing Child. Furthermore, there was no testimony that Father attempted to visit Child after his April 1983 meeting with Mother. Concealment, by its definition, requires a hiding, action to hinder the discovery of something, a failure to disclose (BLACK’S LAW DICTIONARY 306 (8th ed. 2004)) – none of which is supported by the evidence presented.

We disagree, however, with Mother’s assertion that the trial court dismissed her request for registration “without any evidence to support a

defense” under Section 7607(a).⁴ Mother’s Brief at 18. To the contrary, based upon the trial court’s findings of fact, the record reflects that Father presented the defense of estoppel,⁵ a defense recognized in this State to the payment of child support arrears. **See, e.g., Commonwealth ex rel. Crane v. Rosenberger**, 239 A.2d 810, 812 (Pa. Super. 1968); **Commonwealth ex rel. Chila v. Chila**, 313 A.2d 339, 341-42 (Pa. Super. 1973).

In **Crane**, the father was ordered to make child support payments of \$10.00 per month in support of his minor son. **Crane**, 239 A.2d at 811. He subsequently received a letter from the probation office informing him that because the mother was not permitting him to visit with his child, the order requiring him to make child support payments was suspended. **Id.** Ten years later, the mother brought an action for an increase in the support order, and the father filed a petition to remit arrearages. **Id.** The father had not seen the child during that timeframe. **Id.** The trial court, in relevant part, granted the father’s petition for remittance of arrearages. **Id.** The mother appealed and this Court affirmed based upon the father’s

⁴ “[W]e are not bound by the rationale of the trial court and may affirm on any basis.” **Mikhail v. Pennsylvania Org. for Women in Early Recovery**, ___ A.3d ___, 2013 WL 696548, *6 n.2 (Pa. Super. Feb. 27, 2013).

⁵ Estoppel is defined, in relevant part, as “[a]n affirmative defense alleging good-faith reliance on a misleading representation and an injury or detrimental change in position resulting from that reliance.” BLACK’S LAW DICTIONARY 589-90 (8th ed. 2004); **see also Mudd v. Nosker Lumber, Inc.**, 662 A.2d 660, 663 n.4 (Pa. Super. 1995).

justifiable reliance on the letter received from the probation office and the mother's failure to take any action to obtain child support from him for a period of ten years. *Id.* at 812.

Similarly, in *Chila*, the father was ordered to pay \$50.00 per month for the support of his child. *Chila*, 313 A.2d at 340. The order further set forth the procedures for the father to visit with his child. *Id.* The father stopped making payments for a period of time because of his "extreme financial straights [*sic*]," but when he recovered and attempted to give the mother a cash payment of \$75.00, and she refused the money and refused to allow the father to visit with his child. *Id.* The mother and her parents then refused to reveal the location of the child or mother both to the father and the probation office. *Id.* The probation office told the father it did not expect him to make child support payments, as it did not have the mother's address and could not forward his payments to her. *Id.* Fourteen years after the entry of the initial child support order, the mother filed a petition to increase the father's child support payments to \$75.00 per month. *Id.* The father filed a petition for the remittance of arrearages. *Id.* The trial court granted the father's petition and the mother appealed. This Court affirmed, stating:

In the present case, Mrs. Chila not only denied visitation rights but in addition denied the knowledge of her whereabouts and the whereabouts of the child both to [Mr. Chila] and to the Clearfield County probation office responsible for enforcing the order,

both she and her parents knowing full well through the Clearfield County probation office that it could not forward the support money ordered except to the person in whose custody and control the child was being cared for. In effect she and her parents clearly demonstrated that she did not want or expect the support payments and thus effectively refused them just as effectively as she refused the \$75 cash contribution offered by Mr. Chila at an attempted visitation. Thus combining her conduct with the assurances given to Mr. Chila by the Clearfield County probation office, Mr. Chila had every right to understand and expect that he was not accumulating arrearages, except as assessed by the court below.

Id. at 341-42.

As found by the trial court in the case at bar, Father and Mother entered into an agreement that Father would pay Mother \$175.00 per month for the support of Child. Appearance, Stipulation and Waiver, 10/18/82, at ¶ 6. This agreement was signed by the parties respectively in August and September of 1982, and filed of record in San Diego County, California on October 18, 1982.

Sometime in late 1982 or early 1983, Father became aware that he owed Mother outstanding child support after Mother contacted his superiors in the Navy. N.T., 10/14/11, at 9-10, 56. On April 4, 1983, he brought the money owed to Mother, and she issued a handwritten receipt of payment.

Id. at 10-11, 15; Defendant's Exhibit 4. When Father brought the money to Mother, she informed Father that he should not refer to Child as his son and that Child would not call him dad, and that Father should refer to himself as

an uncle. N.T., 10/14/11, at 12. During that meeting, Father, Mother, and Mr. Lloyd discussed Mr. Lloyd adopting Child. *Id.* at 13, 15-16. Father stated that he was in agreement with the adoption and that he would relinquish his parental rights to Child. *Id.* at 13-16. He further agreed that he would not interfere in Child's life thereafter. *Id.* at 16. Mother authored another letter with this information, signed by Father, Mr. Lloyd, and Mother, which Father took to his commanding officer in the Navy. *Id.* at 14. His commanding officer took the letter, and as a result, removed Child as Father's dependent. *Id.* at 14; Defendant's Exhibit 6. His commanding officer further cautioned Father that he could have no contact with Child, as the Navy would consider that "harassment." N.T., 10/14/11, at 14, 20.

Father made no further child support payments after April 4, 1983. *Id.* at 41. He did not hear anything on this issue for 24 years. *Id.* at 19. There was no determination made in the State of California that Father owed Mother child support. *Id.* at 25; Defendant's Exhibit 8. Child turned 18 in 1998. In 2007, Father was contacted by CSE out of Austin, Texas, informing him that he owed over \$30,000 in child support arrears and \$50,000 in interest. Until that time, Father was operating under the assumption that Mr. Lloyd adopted Child and his parental rights were terminated. N.T., 10/14/11, at 25.

As in *Crane* and *Rosenberg*, Father had no reason to believe that he owed child support or that he was accumulating child support arrears.

Father justifiably relied upon the agreement he had with Mother and Mr. Lloyd that Child would be adopted by Mr. Lloyd and that he relinquished his parental rights to Child. Father made no contact or attempt to see Child, believing that the Navy would reprimand him for violating his agreement with Mother and Mr. Lloyd. Mother's verbal and written representation that Mr. Lloyd would adopt Child, Father's agreement with Mother, verbally and in writing, that he would relinquish his parental rights to Child and not contact or interfere with Child, the passage of 24 years with no attempt by Mother to inform Father that he owed child support, that Child had not been adopted, or to file anything in any court to claim child support arrears from Father estops her from now claiming that Father so owes on the 1982 agreement to pay child support in the amount of \$175.00 per month.

Although Mother denies that she ever spoke with Father about Mr. Lloyd adopting Child or that she signed a letter to that effect⁶ (Mother's Brief at 22-24), the trial court found Father's testimony on this issue to be credible. Its factual finding on this issue is supported by not only Father's testimony, but, as noted *supra*, the document produced that reveals the

⁶ Mother also claims that this evidence is irrelevant. Mother's Brief at 22. As is clear from our discussion hereinabove, the parties' 1983 agreement that Mr. Lloyd should adopt Child is highly relevant to the defense of estoppel. **See** Pa.R.E. 401 (Defining "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.").

Navy removed Child as Father's dependent, as the Navy was aware of his court-ordered obligation to make child support payments.

Although, as Mother points out, Father admitted he never received any documentation that confirmed Child was adopted (N.T., 10/14/11, at 40), this does not change the fact that Father, a layperson, relied upon his agreement with Mother and her husband regarding Child's adoption. Father's understanding was that he "sign[ed] the paperwork allowing them to go through with the adoption," and never hearing anything to the contrary, he reasonably believed that Mr. Lloyd had, in fact, adopted Child. *Id.* at 41.

Mother further asserts that she made efforts to locate Father over the years but was unable to do so, and the trial court's finding to the contrary was error. Mother's Brief at 27-28. At the evidentiary hearing, Mother testified that the Navy would not "volunteer" where Father was because she did not know on which "base" or "command" he was stationed, and that she contacted his family sometime in the early 1990s for help, but was unsuccessful. N.T., 10/14/11, at 65, 68. The trial court found her testimony in this regard to lack credibility. Again, the record supports its finding on this issue, as Father remained in the Navy until 1990, and Mother was previously able to locate Father simply by telephoning the Navy's chaplain. *Id.* at 56. It strains credulity that the Navy could not locate one of its

servicemen, especially in light of the Navy's ability to do so previously at her request for the same purpose – the payment of child support owed.

The law is clear that we are bound by the trial court's credibility determinations and its findings of fact that are supported by the record. ***Kraisinger v. Kraisinger***, 928 A.2d 333, 339 (Pa. Super. 2007). The trial court found Father to be credible and the record supports its findings of fact. Finding no abuse of discretion or error of law in the trial court's decision to dismiss Mother's request for registration of the child support order under UIFSA based upon Father's proof of a recognized defense in Pennsylvania, Mother is due no relief.

Order affirmed.