COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2810 **Cir. Ct. No. 89-PA-9**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN RE THE PATERNITY OF ISABEL C. RAUGUTH:

STATE OF WISCONSIN AND MARY DIANE RAUGUTH,

PETITIONERS-RESPONDENTS,

V.

BRIAN M. BYRNES,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: KATHRYN W. FOSTER, Judge. *Affirmed*.

Before Brown, Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Brian M. Byrnes appeals from an order holding him liable for a child support arrearage and future child support at the rate of 17% of his gross income. On appeal, he argues that the circuit court erroneously

modified his child support obligation and the State of Wisconsin (through the Waukesha County Child Support Agency) was estopped from seeking an increase in his child support payments or collecting the child support arrearage because he relied on statements from agency employees that he was current in his child support obligation. Neither argument persuades us, and we affirm.

¶2 In 1990, Byrnes was adjudicated the father of Isabel. He and the child's mother, Mary Diane Rauguth, stipulated as follows:

> [Byrnes] shall pay current support for the child on the following terms: $240.00 per month beginning on January 5, 1990 until January 1, 1992; … Commencing January 1, 1992, the support will increase to 17% of gross income until the child shall reach the age of 18 years (or 19 and still in high school), *subject to further review by the court.*

The italicized portion of the stipulation was handwritten and initialed by the parties.

¶3 In December 2000, the child support agency brought an order to show cause and sought a modification of Byrnes's support obligation and an audit of his payment records. The agency alleged that Byrnes had paid $240 per month since 1990. However, since January 1, 1992, Byrnes should have been paying 17% of his gross income, a figure well in excess of the $240 per month payments he had been making. The agency sought a determination of arrears and a modification of future payments to $1700 per month based on Byrnes's current income.

¶4 At the hearing on the order to show cause, Rauguth contended that in 1990, she and Byrnes stipulated that Byrnes would pay $240 per month to permit him to pursue a master's degree, but that child support would increase to 17% of

his gross income once he obtained that degree in roughly two years. The agency contended that the stipulation provided for the determination of child support at 17% of Byrnes's gross income as of 1992, but the agency failed to seek the additional funds from him.

¶5 Byrnes's counsel argued that Byrnes always paid $240 per month and never understood from either Rauguth or the agency that his payments should have changed to an amount representing 17% of his gross income. Byrnes argued that he relied on the agency's assurances that his $240 per month child support payments were appropriate under the 1990 stipulation. Because of this reliance, the agency should be equitably estopped from seeking arrearages from 1992 at the rate of 17% of his gross income.

¶6 The circuit court concluded that the phrase "subject to review by the court" was ambiguous and made it unclear when the 17% of gross income child support obligation took effect. Byrnes interpreted the phrase to mean that the child support obligation remained at $240 per month until a court entered a further order. Rauguth interpreted the phrase to mean that the child support obligation was automatically modified as of January 1, 1992, to 17% of Byrnes's gross income.

¶7 Because the phrase was ambiguous, the court examined evidence of the parties' intent in including the phrase in the original child support provision. The court noted that on previous occasions, the agency informed Byrnes that he was current in his child support obligation even though he continued to pay $240 per month after January 1, 1992. The court noted that in 1996, the agency communicated with the parties about increasing Byrnes's support obligation. If the parties could not reach an agreement, the agency intended to seek court

intervention. However, the agency did not take further action until December 2000, when the agency sought an increase in Byrnes's child support obligation and a determination of his child support arrearage.

¶8 The court found that the parties intended that Byrnes would pay a reduced amount of support of $240 per month while he completed his graduate degree. The court found that at least from 1996, the parties understood that Byrnes's child support had to be redetermined to reflect 17% of his gross income. The court concluded that the stipulation imposed upon Byrnes the obligation to seek court review of his child support obligation after January 1, 1992. The court held Byrnes liable for child support at the rate of 17% of his gross income from January 1, 1992 forward. The court also rejected Byrnes's equitable estoppel defense to the collection of the child support arrearage.

¶9 We first address the parties' 1990 stipulation. With regard to child support, the stipulation provides:

> [Byrnes] shall pay current support for the child on the following terms: $240.00 per month beginning on January 5, 1990 until January 1, 1992; … Commencing January 1, 1992, the support will increase to 17% of gross income until the child shall reach the age of 18 years (or 19 and still in high school), *subject to further review by the court.*

¶10 Stipulations are in the nature of a contract. *Cf.* ***Kastelic v. Kastelic***, 119 Wis. 2d 280, 287, 350 N.W.2d 714 (Ct. App. 1984). Therefore, they are subject to the rules of contract construction. *Cf.* ***Fleming v. Threshermen's Mut. Ins. Co.***, 131 Wis. 2d 123, 132, 388 N.W.2d 908 (1986). When a contract is plain and unambiguous, we construe it as it stands. ***Keller v. Keller***, 214 Wis. 2d 32, 37, 571 N.W.2d 182 (Ct. App. 1997). Whether a contract is ambiguous in the first instance is a question of law which we decide independently of the circuit court. ***Wausau***

Underwriters Ins. Co. v. Dane County, 142 Wis. 2d 315, 322, 417 N.W.2d 914 (Ct. App. 1987). A contract is ambiguous if it is reasonably susceptible to more than one meaning. ***Id***.

¶11 We conclude that "subject to further review by the court" is not ambiguous. In stating that as of "January 1, 1992, the support will increase to 17% of gross income until the child shall reach the age of 18 years (or 19 and still in high school), *subject to further review by the court*," the stipulation merely incorporates what the law already provides: changes in child support are subject to review by a court. A child support obligor may seek court review of a child support obligation. WIS. STAT. § 767.32(1)(a) (2001-02).[1] It is not unusual for a stipulation to incorporate what the law provides. The stipulation clearly anticipated a change of circumstances on January 1, 1992, when support was to increase to 17% of Byrnes's gross income. Byrnes had the burden to seek relief from the post-1992 obligation. He did not.

¶12 We turn to the circuit court's rejection of Byrnes's equitable estoppel argument. The equitable estoppel defense to a child support arrearage requires the obligor to establish "action or inaction, which induces reliance by another, to his or her detriment." ***Douglas County Child Support Unit v. Fisher***, 185 Wis. 2d 662, 669, 517 N.W.2d 700 (Ct. App. 1994). The party's reliance must have been reasonable. ***Id.*** at 671. Byrnes had the burden to establish this defense by clear and convincing evidence. ***St. Paul Ramsey Med. Ctr. v. DHSS***, 186 Wis. 2d 37, 47, 519 N.W.2d 681 (Ct. App. 1994). We review the circuit

[1] All further references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

court's findings of fact to determine if they are clearly erroneous. WIS. STAT. § 805.17(2). Whether the facts permit application of the equitable estoppel doctrine presents a question of law which we decide independently of the circuit court. ***Harms v. Harms***, 174 Wis. 2d 780, 784, 498 N.W.2d 229 (1993). However, once the elements of equitable estoppel have been established as a matter of law, the decision to actually apply the doctrine to provide relief is a matter of circuit court discretion. ***Nugent v. Slaght***, 2001 WI App 282, ¶30, 249 Wis. 2d 220, 638 N.W.2d 594.

¶13 With regard to Byrnes's equitable estoppel claim, the circuit court found that in the early 1990s, Rauguth attempted to seek additional child support but had neither the financial resources to do so nor a response from the agency to her requests for the agency's assistance. The court found that when the agency determined in 1996 that Byrnes was paying well below what he should have been paying, the agency then failed to pursue the matter. The court concluded that Rauguth's failure to enforce the child support stipulation did not provide Byrnes with a reasonable basis for believing that he did not owe support in an amount equal to 17% of his gross income after January 1, 1992.

¶14 The circuit court also considered and distinguished ***Harms***. Because Rauguth never agreed to reduce child support or to let child support remain at $240 per month past January 1, 1992, the court found that there was no agreement between the parties for child support to remain at that level. This was so particularly because Byrnes never updated his income information. Therefore, Rauguth never had all of the information which would have been necessary to decide whether to pursue child support at 17% of Byrnes's gross income. Although Byrnes may have relied upon the fact that no one objected to his $240

child support payments between January 1, 1992, and July 1996, that reliance was not justified.

¶15 The circuit court's findings of fact are not clearly erroneous. Byrnes's arguments about action and inaction by Rauguth and the agency overlook that he did not provide the information required by the stipulation which would have permitted the parties to assess his child support obligation after January 1, 1992. The 1990 stipulation required Byrnes to provide his federal and state income tax returns to the case investigator at the Waukesha county child support division by June 1 of each year. The stipulation also required Byrnes to give written notice of any change in his income, address or employment to the case investigator. At the hearing in this matter, Byrnes conceded that he did not comply with these requirements of the stipulation.

¶16 It is disingenuous for Byrnes to contend that he should be absolved of the child support arrearage because he relied on the fact that neither Rauguth nor the child support agency sought child support at the 17% level. Byrnes did not provide the child support agency with the information needed to determine his income, and he cannot now reap the benefit of this conduct by invoking the doctrine of equitable estoppel as a defense to the arrearage which began accruing at 17% of his gross income after January 1, 1992. Because Byrnes did not provide this information, statements by the agency that he was current in his support obligation were not based on full information. Byrnes did not reasonably rely upon the agency's statement regarding his child support obligation or Rauguth's alleged failure to seek enforcement of the stipulation because Byrnes did not comply with the financial disclosure requirements of the stipulation.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.