

REPORT

FILED

This opinion is subject to revision before publication in the Pacific Reporter.

MAY 25 1995

IN THE UTAH COURT OF APPEALS

COURT OF APPEALS

-----ooOoo-----

50,769

State of Utah, Department of)
Human Services, ex rel. Cathy)
 A. Parker,)
)
 Plaintiffs and Appellant,)
)
 v.)
)
 Harry D. Irizarry,)
)
 Defendant and Appellee.)

AMENDED OPINION¹
(For Publication)

Case No. 930583-CA

F I L E D
(May 25, 1995)

A
11 p.
101685-8
(11 pp.)

REPORT

Third District, Salt Lake County
The Honorable David E. Roth
The Honorable Tyrone Medley

Attorneys: Linda Luinstra, Billy L. Walker, and Jan Graham, Salt Lake City, for Appellant
Barbara K. Polich and Elisabeth R. Blattner, Salt Lake City, for Appellee

Before Judges Bench, Billings, and Wilkins.

BENCH, Judge:

The Department of Social Services of the State of Utah (the State), on behalf of Cathy Parker, appeals the trial court's application of the doctrine of equitable estoppel to prevent Ms. Parker's recovery of reimbursement for past child support from Harry Irizarry. We affirm.

FACTS

In June 1984, Ms. Parker and Mr. Irizarry met and began dating. Shortly thereafter, Ms. Parker became pregnant. After

1. This Amended Opinion replaces the Opinion in Case No. 930583-CA issued on April 13, 1995. The only modification is found in the first two paragraphs of the concurring opinion.

reimbursement of back child support she has furnished.²
"[E]quitable estoppel is 'a highly fact-dependent question, one that we cannot profitably review de novo in every case because we cannot hope to work out a coherent statement of the law through a course of such decisions.'" Trolley Square Assocs. v. Nielson, 886 P.2d 61, 65 (Utah App. 1994) (quoting State v. Pena, 869 P.2d 932, 938 (Utah 1994)); accord Terry v. Price Mun. Corp., 784 P.2d 146, 148 (Utah 1989). We will not overturn the trial court's application of equitable estoppel absent an abuse of discretion. Trolley Square, 886 P.2d at 65.

In Baggs v. Anderson, 528 P.2d 141 (Utah 1974), the Utah Supreme Court discussed the distinction between reimbursement for past due support and future support:

it is appropriate to point out that support money can fall into two separate categories: First, the current and ongoing right of a child to receive support money from his father (parent); and second, the right to receive reimbursement for support of a child after that has been done. As to the second, suppose a father (parent) fails over a period of time to furnish support of the child, and the mother, or someone else, furnishes it. That person then has the right to claim reimbursement from the parent, the same as any other past debt. The right of reimbursement belongs to whoever furnished the support; and it is subject to negotiation, settlement, satisfaction or discharge in the same manner as any other debt.

Id. at 143. While the court in Baggs ultimately refused to apply the doctrine of equitable estoppel because the claims asserted were for current and future support, it held that the right to reimbursement for past support already furnished was a debt subject to legal and equitable doctrines. Id.; see also Borland v. Chandler, 733 P.2d 144, 146 (Utah 1987) (holding that equitable doctrines, such as estoppel, apply in statutory

2. The issue of whether a mother can relieve a father from current or future support obligations is not before us; nor is the issue presented of whether a mother's statements or acts can prejudice the children's or the State's rights to seek past support from a father. The only issue in this case concerns Ms. Parker's claim for reimbursement of child support she has already provided.

statement, admission, act, or failure to act by one party inconsistent with a later-asserted claim; (2) the other party's reasonable action or inaction based upon the first party's statement, admission, act, or failure to act; and (3) injury to the second party that would result from allowing the first party to contradict or repudiate its statement, admission, act, or failure to act."

Id. at 1048 (quoting Brixen & Christopher, Architects v. Elton, 777 P.2d 1039, 1043-44 (Utah App. 1989) (citations omitted)). This court upheld the trial court's application of equitable estoppel and ruled that the mother's claim for reimbursement of back child support was barred:

First, it is uncontroverted that appellant failed to make any request or to take any action to require respondent to pay back child support for seven years. This was an unreasonable delay. Further, with adequate evidentiary support, the trial court found that appellant made statements to a mutual friend inconsistent with requiring respondent to pay child support, which she knew or should have known would be communicated to respondent and, in fact, were. This behavior is inconsistent with her present claim that respondent owes her \$7,200 for past child support.

Second, respondent failed to pay support for those seven years because he reasonably relied upon both appellant's failure to take any overt action to require him to pay, and upon her communication to the mutual friend that she did not want anything to do with him and that she would handle the rearing of the child herself. Thus, respondent's failure to pay child support was based upon more than mere silence. . . .

Third, as a result of this reliance, respondent assumed other obligations, both in his personal life and in his business, that would have been tempered had he been aware of the need and obligation to support the child.

Id.

WILKINS, Judge (concurring in the result):

I concur in the result reached by the majority opinion. Unfortunately, I agree that the current state of the law prohibits recovery by Ms. Parker. However, I find this troubling, and believe it is also the policy of the law to hold both parents fully accountable for the support of their children. In my opinion, this policy should especially apply with undiminished force to a casual biological father whose fatherhood resulted from actions in which no contemplation was given to the formation of a family.

Estoppel is "an equitable doctrine which precludes parties from asserting their [own] rights where their [own] actions render it inequitable to allow them to assert those rights." Brixen & Christopher, Architects v. Elton, 777 P.2d 1039, 1043 (Utah App. 1989) (emphasis added). I believe application of this doctrine in a child support context should be more significantly limited than the law now allows.

It has long been recognized that the child's right to receive current or future support is his or her own and "is not subject to being bartered away, or estopped, or in any way defeated by the conduct of the parents or others." Baggs v. Anderson, 528 P.2d 141, 143 (Utah 1974); see also Larsen v. Larsen, 5 Utah 2d 224, 227, 300 P.2d 596, 598 (1956); Price v. Price, 4 Utah 2d 153, 154, 289 P.2d 1044, 1044 (1955) ("Future child support effectively cannot be the subject of bargain and sale. Among other things, the State is an interested party in such matters since a child's welfare is at stake.").

In the case of a child support obligation arising in a paternity context, the interested parties are the child, parents, and the State. The child has a right to support from his or her parents. Utah Code Ann. §§ 78-45-3 (1992) (duty of father to support his child), 78-45-4 (1992) (duty of mother to support her child), 78-45a-1 (1992) (duty of father of child born outside marriage same as father of child born within marriage).

In a paternity action, the claim for past child support is already limited to four years by statute. Utah Code Ann. § 78-45a-3 (1992) ("The father's liability for past education and necessary support are limited to a period of four years next preceding the commencement of a [paternity] action."). In fact, the State argues that this statute provides adequate financial protection for the biological father, and thus should be read to preempt the availability of equitable estoppel as an additional protection.

Unfortunately, current case law prevents us from accepting the State's argument. In Zito v. Butler, 584 P.2d 868 (Utah

question of the specific preemptive power of this legislative limitation, we must infer from Borland that the court views the defense of equitable estoppel as available in an action to recover past child support accruing within the four-year period prior to the filing of the paternity action. This court so relied on Borland in Burrow v. Vrontikis, 788 P.2d 1046 (Utah App. 1990), when it sanctioned the use of equitable estoppel as a defense to a mother's claim for back child support in a paternity action.

Based on Zito, Borland, and Burrow, we are now forced to conclude that the defense of equitable estoppel to a claim for reimbursement of past child support has not been preempted by the four year limitation of section 78-45a-3. There is no clear indication that section 78-45a-3 is intended to be the only possible limitation to any obligation arising from a child support obligation.

The doctrine of equitable estoppel is intended to prevent the sometimes harsh rule of law from working an unfairness between two parties. In a child support context, and as the law now stands, equitable estoppel is applicable between the parents after the child's rights are discharged. The courts are at liberty to use equitable estoppel as a tool to strike what is believed to be a fair balance between the mother and the father. However, the balance struck between the mother and father has a residual effect on the interests of the child and the State. Those interests suggest that the balance should be tilted in favor of the parent who actually furnishes support to the child. So, while equitable estoppel presently has an application in this area, its application should be severely limited and should not be invoked lightly.

In this case, the trial court found that Ms. Parker made statements prior to the birth of the children to the effect that she did not want Mr. Irizarry's money, or to have anything to do with him, but that at the same time she kept money proffered by him.³ At the time she made those statements, Ms. Parker had not

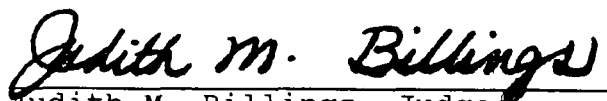
3. The trial court found that Ms. Parker made three statements to Mr. Irizarry: (1) In September 1984, Ms. Parker told Mr. Irizarry over the telephone that "she didn't want any money and would take care of herself." (2) After he sent a letter, Mr. Irizarry made a follow-up call to Ms. Parker in November 1984 and "once again she said she wanted nothing to do with [Mr. Irizarry]." (3) In January 1985, Mr. Irizarry called Ms. Parker and "once again the plaintiff said she wanted nothing to do with him." In April 1985, the twins were born. The findings are
(continued...)

become a public charge. See Utah Code Ann. §§ 62A-11-101, -104 (1992).



Michael J. Wilkins, Judge

I CONCUR IN THE CONCURRING OPINION OF JUDGE WILKINS:



Judith M. Billings, Judge