

RENDERED: NOVEMBER 3, 2017; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001571-ME

KAREN DIXON

APPELLANT

v. APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE JEFF MOSS, JUDGE
ACTION NO. 10-CI-01384

CHARLES DIXON

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, JOHNSON, AND D. LAMBERT, JUDGES.

JOHNSON, JUDGE: Karen Dixon (“Karen”) appeals the September 12, 2015

Order of the Jessamine Circuit Court, Family Division, denying her claim for past due maintenance and child support. Having reviewed the record and the applicable law, we AFFIRM the decision of the court.

BACKGROUND

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 \$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.

It is from that order that Karen now appeals. On November 10, 2016, we designated this matter an expedited appeal thus no prehearing statement was required.

STANDARD OF REVIEW

We review child support and maintenance decisions only for an abuse of discretion. *Commonwealth, Cabinet for Health and Family Services v. Ivy*, 353 S.W.3d 324, 329 (Ky. 2011). An abuse of discretion occurs where the court's

decision is unreasonable, unfair, or unsupported by sound legal principles.

Commonwealth v. English, 993 S.W.2d 941, 945 (Ky. 1999).

ANALYSIS

The doctrine of laches is based in equity and premised on the question of whether a party has failed or neglected to assert their rights within a reasonable period of time where the delay has acted to the disadvantage of the other party.

Wigginton v. Com. ex rel. Caldwell, 760 S.W.2d 885, 887 (Ky. App. 1988). The court found that Karen had failed to consistently pursue her claim. The court based this finding on the court's order of July 28, 2014, that no arrearages were due noting that Karen did not object; the fact that no request for a hearing on the issue was made until almost two years after the original motion on the issue; and that she failed to bring the issue up until more than a year after Charles stopped making the mortgage payments on the marital residence.

While the court applied the doctrine of laches to this case, we find that the facts of this case more fairly fit an estoppel by acquiescence, but result in the same outcome based upon the same facts. The 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).

When the court applied the doctrine of laches, it found that Karen voiced no objections nor appealed the court's order of July 2014 that modified the

child support amount and found that no support payments were past due. In addition, the court noted that Karen's signed application for child support services in October 2014 stated that Charles had shared in the children's support. The court also found that the issue of arrearages was not pursued by Karen until August 2016, more than two years after the original motion seeking payment and over a year after Charles stopped making the mortgage payments. Karen acknowledges each of these court documents.

Karen benefitted from the payments made by Charles, by relieving her from making the mortgage payment, allowing her and the children to remain in the house, and giving her more spendable income than if Charles paid her directly and she paid the mortgage. Her only argument is that he failed to pay her directly, thus allowing her to decide if the house payment should be made or if the money should be spent elsewhere.

However, her court filings and her failure to pursue any action against Charles for collection of the child support/maintenance payments demonstrated delay and an acquiescence on her part. She continued to accept the additional overpayments, filed court documents indicating that no support was in arrears and that Charles shared in the child support, and stopped demanding the money for all intents and purposes in October 2013.

The court found at the hearing in 2014, noticed by Charles for the purpose of modifying his child support obligation, that no mention was made by Karen of any past due support. Neither did Karen pursue her own motion in

November 2014, asking the court to hold Charles in contempt for failure to pay child support. In fact, Karen took no further action on the maintenance and child support issue until a court hearing in August 2016, two years after the original motion on the issue, and over a year after Charles stopped making mortgage payments on the marital residence for Karen and the children's benefit.

These actions led both Charles and the court to conclude that Karen engaged in conduct, in this case through her silence and inaction, that she was accepting the mortgage payment in lieu of the lesser amount of child support and maintenance. Her current position of demanding payment is inconsistent with her delay and acquiescence in accepting the mortgage payments, statements made to the court, and not seeking to enforce payment. *Hicks v. Combs*, 311 Ky. 149, 223 S.W.2d 379, 381 (1949). Her delay and inaction now make it unconscionable to permit her to collect an additional \$26,214.50 over and above the \$40,000 Charles has already paid to her benefit.

We agree with the court that Karen never suggested Charles stop making mortgage payments, but rather texted that he needed to make additional payments directly to her for child support and maintenance, and then took no additional action. Charles, therefore, continued to make the mortgage payments until June 2015, when the house was sold, resulting in an overage in payments by Charles of approximately \$13,851.00. Karen benefitted from those payments to Charles' financial detriment.

It was based on those findings that the court issued its order of September 12, 2016, barring her from asserting a claim for past maintenance and child support based upon the doctrine of laches. In essence, the court found it unconscionable to enforce the original Agreement when Karen's actions were contrary to her present assertions.

A party may be estopped to insist upon a claim or take a position which is inconsistent with an admission or denial of a fact which he has previously made or with a course of conduct in reliance upon which the other party changed his position to his detriment or prejudice.

Hicks v. Combs, 223 S.W.2d at 381.

We find no fault in the court's ruling, whether the court premised it upon laches or estoppel by acquiescence. We recognize that it is the court which sits as the trier of fact and absent a finding of abuse of discretion finding the court's decision to be unreasonable, unfair, or unsupported by the law, we will not overturn the court's order. The court has broad discretion in the establishment, enforcement, and modification of child support, and we will not substitute our judgment for that of the trial court. *Hawkins v. Hawkins*, 437 S.W.3d 171, 174 (Ky. App. 2014). We are not by this Opinion condoning one party's unilateral choice on how to pay child support and/or maintenance, but the facts of this case demand equity. We find no abuse in the court's discretion and affirm its decision.

CONCLUSION

Based upon the record and the applicable law we AFFIRM the Order of the Jessamine Circuit Court, Family Court Division.

ALL CONCUR.

BRIEF FOR APPELLANT:

M. Shea Chaney
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BRIEF FOR APPELLEE:

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