2016 IL App (2d) 150323-U
No. 2-15-0323
Order filed June 28, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

IN RE MARRIAGE OF GIANNAKOPOULOS, FANI a/k/a Fanee Liakouras,	)	Appeal from the Circuit Court of Du Page County.
Petitioner-Appellant,	)	
and	)	No. 13-MR-868
ANGELO GIANNAKOPOULOS,	)	Honorable Neal W. Cerne,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court erred in finding respondent, who had provided no support for his child, could invoke doctrine of equitable estoppel based on alleged agreement that violated public policy.

¶ 2 I. INTRODUCTION

¶ 3 Petitioner, Fani Giannakopoulos (a/k/a Fanee Liakouras), appeals an order of the circuit court of Du Page County denying her motion for declaratory relief and her petition for indirect civil contempt. The instant litigation arises from the parties' divorce, which took place in 1983. Respondent, Angelo Giannakopoulos, was directed to pay $225 per month for the support of his

child. For the reasons that follow, we reverse in part, vacate in part, and remand for further proceedings.

¶ 4 II. BACKGROUND

¶ 5 The marriage between the parties was dissolved on February 23, 1983. One child was born of the marriage. Respondent's child support obligation was initially set at $225, and, on July 15, 1985, by an agreed order, respondent's child support obligation was modified to $250 per month. The 1985 order also recognized an arrearage of $900. Respondent never sought to modify his obligation. Following the entry of the 1985 order, respondent made no child support payments.

¶ 6 On January 21, 2015, an evidentiary hearing was held on petitioner's motion for indirect civil contempt and petition for a declaratory judgment (in the petition, petitioner sought to consolidate the child support judgments representing each unpaid child-support payment). At the time of the hearing, the child at issue was 37 years of age and emancipated. However, there was no order terminating respondent's support obligation (petitioner stipulated that respondent's obligation terminated when the child was emancipated).

¶ 7 Petitioner first called respondent. He testified that he is the biological father of Anastasia Giannakopoulos, and he denied knowing whether she was subsequently known as Styliani Liakouras. Respondent acknowledged that he signed the 1985 agreed order modifying child support. He was represented by counsel at the time. Respondent further agreed that he made no child-support payments after the entry of the 1985 order.

¶ 8 In 1989, respondent moved from Chicago to Downers Grove. He did not notify petitioner of his move. Respondent is currently employed, earning $46,000 per year, and he lives in a house held in a trust. He also changed employment several times after 1985 without

notifying petitioner. Respondent agreed that the judgment dissolving his marriage to petitioner obligated him to provide proof of income to petitioner on a quarterly basis. He did not provide this proof to petitioner after 1985. Respondent did not recall ever filing a motion to modify his child support obligation.

¶ 9 Respondent, who was proceeding *pro se*, then clarified his answers. He stated the divorce decree was entered in 1982. Visitation occurred for a time after that, and respondent made child-support payments. In 1985, he stopped making payments "because of the conduct of [petitioner]." On redirect examination, the following exchange occurred:

> "Q. So it's your testimony that you stopped paying child support because you didn't have contact with your child; is that your testimony?
>
> A. I was prevented from having a relationship, yes.
>
> Q. So you unilaterally decided to stop paying child support; is that correct?
>
> A. Yes."

¶ 10 Petitioner next testified on her own behalf. She testified that she is the mother of Styliani Liakouras, who was formerly known as Anastasia Giannakopoulos. Following the entry of the 1985 order, she never received any child-support payments from respondent. He never provided her with proof of his income after the 1985 order was entered, and he never notified petitioner when he changed jobs. Petitioner never received any requests from respondent that his child-support obligation be modified. Petitioner and her daughter remained residing at the marital residence for approximately 10 years after the divorce. Petitioner continued working at the same job for about eight years after the divorce. Respondent knew where petitioner worked. Petitioner's daughter remained at the same school following the divorce. Petitioner testified that respondent never tried to contact petitioner. From the time her daughter was five years' old,

respondent contributed nothing to her support. Her daughter went to college, and, again, respondent contributed nothing. Petitioner's daughter currently has a balance of $103,000 on her student loan.

¶ 11 Petitioner testified that she attempted to contact respondent. She called information several times over the years. She hired attorneys, and they recommended that she hire a private detective. However, she could not afford to do so. Petitioner contacted the Greek diocese, and they placed advertisements in the local newspapers. Petitioner produced one such advertisement from January 1989, which was admitted into evidence. Petitioner visited stores she knew respondent and his parents had shopped at in the past and made inquiries.

¶ 12 Respondent then testified on his own behalf. He stated that he was "consistently denied any kind of access to [his] daughter." When he did come to visit, "it would be a hostile environment towards [him]." His daughter was uncomfortable when petitioner would yell at him. On several occasions when respondent picked up his daughter for visitation, petitioner told him she wanted nothing to do with him and she did not want him having anything to do with their daughter. Respondent "decided since [he would] not have any kind of access to [his] child," he would "seek re-dress by holding the payment." He hoped that by doing so, "maybe the attitude would have changed." Respondent added, "It never did."

¶ 13 Respondent further testified that he never sought to modify the support order because he could not afford a lawyer. He remained at the same residence from 1985 to 1989, and petitioner never attempted to contact him. The next time he saw petitioner was in "a chance meeting in 2012, Christmas, at the Greek church." Shortly thereafter, he was served with papers initiating the present action.

¶ 14 On cross-examination, respondent stated that after July 1985, he never filed a petition to enforce visitation. He explained that he could not afford an attorney. His daughter never lived with him subsequent to July 1985. When asked whether he had an agreement with petitioner that she would not pursue child support if he did not pursue visitation, he replied that there was a "tacit agreement." Respondent testified that he stopped paying child support because he was not allowed to have a relationship with his daughter. By "tacit agreement," respondent explained, he meant that if petitioner did not want respondent to be a part of his child's life, that would entail financial ties as well. The severance of the relationship included financial responsibility. He explained that a relationship with a child "cannot be just financial only." However, respondent acknowledged that petitioner never specifically stated that he did not have to pay child support.

¶ 15 Respondent then called petitioner. She testified that the child's name was changed in August 1989. The child was a minor at the time. The child's last name was changed to Liakouras, which was the name of petitioner's husband. Petitioner's husband never adopted the child.

¶ 16 In rebuttal, petitioner testified that she never entered into an agreement with respondent where he would be excused from paying child support in exchange for giving up his visitation with the child. She denied telling respondent to stay away from the child. On cross-examination, she reiterated that she never stated that she did not want respondent to have a relationship with the child.

¶ 17 The trial court found that petitioner was estopped from enforcing respondent's child-support obligation. The court issued a written decision, in which it found the following. A judgment of dissolution of marriage was entered in December 1982. Petitioner was awarded sole custody of the parties' daughter. Respondent was ordered to pay $225 monthly child support and

awarded visitation. He was further ordered to provide proof of his income on a quarterly basis. On July 15, 1985, the dissolution order was modified through an agreed order. Respondent was ordered to pay $250 per month for the support of his daughter. An arrearage of $900 was recognized, which respondent was to pay at a rate of $75 per month. In July 1985, respondent stopped paying child support, and he also stopped attempting to exercise visitation at that time. The trial court found that the parties agreed to this arrangement. In support, the trial court pointed to the conduct of the parties. It found it significant that neither party sought to enforce the terms of the earlier orders regarding child support or visitation. It also noted that petitioner changed the child's name. Further, there was no contact between the parties after July 1985. Finally, it found that petitioner made no reasonable effort to locate respondent.

¶ 18 The trial court further found that "[t]he financial needs of the minor child were satisfied." Moreover, respondent "did not 'disappear' and did not conceal his whereabouts." The trial court explained that respondent lived in only two residences. It then found that there was no impediment to petitioner pursuing child support, other than the agreement.

¶ 19 Next, the trial court found that respondent "detrimentally relied on the agreement." Respondent now "appeared to be in his 60's." He is "well past his primary earning years and never planned for having to pay 30 years of child support with interest" (we note petitioner stipulated that respondent's child-support obligation terminated when the minor became emancipated). Respondent had no relationship with the child after 1985. When respondent tried to visit the child in Greece a few years prior to the hearing, she refused to see him.

¶ 20 The trial court also found that petitioner's "delay in seeking to change her agreement negates [respondent's] ability to seek visitation." Petitioner "abided by the agreement until after the emancipation of" the child. Petitioner could potentially collect 30 years of unpaid child

support; respondent "has no remedy for [petitioner's] disregard of their agreement" since the child is now emancipated.

¶ 21 The court acknowledged that it had "a duty to protect the interests of minor children" and, therefore, "all arrangements regarding children must be approved by the [c]ourt." For this reason, agreements to halt child support and give up visitation are not enforceable. However, citing *Blisset v. Blisset*, 123 Ill. 2d 161, 168-69 (1998)), the trial court stated the defense of equitable estoppel was available. The trial court explained that for equitable estoppel to apply, "the defendant must show that the plaintiff induced the defendant to rely on the plaintiff's statements/conduct to the defendant's detriment."

¶ 22 The trial court then noted that in cases where the estoppel was found to lie, there was typically a change in custody—unapproved by the court—to the spouse that had been ordered to pay child support. In such cases, as the formerly noncustodial spouse was actually providing support for the children by virtue of having custody of them, allowing the formerly custodial spouse to enforce a support order would require the formerly noncustodial spouse to pay twice (once by actually supporting the children and once by making a payment to the spouse that no longer had custody) and result in a windfall to the formerly custodial spouse (who no longer was providing any support to the children after custody had changed). Attempting to apply this rationale, the trial court explained:

> "While [petitioner] and [respondent] did not change custody of their daughter, there was certainly no indication that there was any financial need for the minor child. Further, any support payments made now certainly would be only a windfall to [petitioner] as the minor child is nearly 38 years old."

The court then found that as respondent was passed his prime earning years and since he had "obviously not planned on" supporting his daughter, he had relied on this tacit agreement with petitioner and it was "certainly a detriment." If there is no need for child support, the trial court continued, it should not be paid. Moreover, the trial court found that the parties' tacit agreement resulted in no harm to the child. Finally, the trial court stated, "[I]t seems inherently inequitable that when such an agreement is ignored, only the financial component is enforced, and the lost visitation is forgotten." Petitioner now appeals.

¶ 23 III. ANALYSIS

¶ 24 On appeal, petitioner argues that the trial court erred in denying her motion for a declaratory judgment; the trial court's finding that an agreement existed between the parties concerning child support and visitation is contrary to the manifest weight of the evidence; in the alternative, any such agreement violates public policy; and equitable estoppel does not apply. As the outcome of this appeal depends largely upon the existence and enforceability of the purported agreement, we will begin there. We will assume, *arguendo*, that the agreement existed, and address its enforceability and the related question of estoppel.

¶ 25 Regarding a declaratory judgment, the standard of review depends on the underlying questions presented. *Pekin Insurance Co. v. Hallmark Homes, LLC*, 392 Ill. App. 3d 589, 592-93 (2009); see also *In re Marriage of Rife*, 376 Ill. App. 3d 1050, 1060-61 (2007). To the extent the facts are undisputed, whether a contract exists between the parties is subject to *de novo* review. *Wolf v. Auxxi & Associates, Inc.*, 2011 IL App (2d) 110727, ¶ 12. Factual questions are reviewed using the manifest-weight standard, under which we reverse only if an opposite conclusion is clearly apparent. *Lipschultz v. So-Jess Management Corp.*, 89 Ill. App. 2d 192, 203 (1967). To the extent the facts are undisputed, whether estoppel applies is subject to *de novo*

review (*Williams v. Board of Review*, 241 Ill. 2d 352, 360 (2011); underlying factual issues are, again, reviewed using the manifest-weight standard (see *Morgan Place of Chicago v. City of Chicago*, 2012 IL App (1st) 091240, ¶ 33). Finally, whether a contract or agreement violates public policy presents a question of law, which we review *de novo*. *In re Estate of Feinberg*, 235 Ill. 2d 256, 263 (2009). With these standards in mind, we now turn to the substance of this appeal.

¶ 26 Child support orders automatically become a series of judgments as the payments become due. 750 ILCS 5/505(d) (West 2014). The legislature has further provided, "Each such judgment shall have the full force, effect and attributes of any other judgment of this State, including the ability to be enforced." *Id*. There is no limitations period after which a child-support judgment may no longer be enforced. 735 ILCS 5/12-108(a) (West 2014); see also *In re Marriage of Davenport*, 388 Ill. App. 3d 988, 992-93 (2009) (holding that any arrearage less than 20 years old (the former limitations period) in 1997, as in this case, when the statute of limitations was abolished on such actions was subject to the current unlimited enforcement period). Furthermore, "past-due installments of child support are the vested right of the designated recipient, [and] a court lacks authority to modify those amounts that have already accrued." *In re Marriage of Popa & Garcia*, 2013 IL App (1st) 130818, ¶ 28.

¶ 27 We next note that any alleged agreement between the parties that petitioner would not enforce the child support order if respondent refrained from exercising visitation is flatly contrary to public policy and is therefore unenforceable. See *Blisset v. Blisset*, 123 Ill. 2d 161, 167-68 (1988). Parents simply may not bargain away their children's interests, and, consequently, the modification of a support order is a judicial function. *In re Marriage of Smith*, 347 Ill. App. 3d 395, 400 (2004). The only way for parents to create an enforceable agreement

regarding a support modification is to petition the court. *Id*. The salient question for a court is whether the agreement is in the child's best interests. *Id*. A court must have a role in determining whether, in light of such an agreement, children will have adequate support and the cessation of visitation by one parent is not detrimental. *Blisset*, 123 Ill. 2d at 168. This is because "[f]ormer spouses might agree to modify child support obligations, benefitting themselves while adversely affecting their children's best interests." *Smith*, 347 Ill. App. 3d at 400. Given that the purported agreement is against public policy and unenforceable and further given that there is no statute of limitations on enforcing child-support judgments, petitioner would prevail unless some other matter precluded her from enforcing the judgments. Here, the trial court held that the doctrine of equitable estoppel barred petitioner's attempt to recover the obligations respondent had incurred on his daughter's behalf.

¶ 28 The elements of equitable estoppel are "(1) the other person misrepresented or concealed material facts; (2) the other person knew at the time he or she made the representations that they were untrue; (3) the party claiming estoppel did not know that the representations were untrue when they were made and when they were acted upon; (4) the other person intended or reasonably expected that the party claiming estoppel would act upon the representations; (5) the party claiming estoppel reasonably relied upon the representations in good faith to his or her detriment; and (6) the party claiming estoppel would be prejudiced by his or her reliance on the representations if the other person is permitted to deny the truth thereof." *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313-14 (2001). Here, the purported misrepresentation is that petitioner would not require respondent to support his daughter if respondent refrained from visiting his daughter. The first element is satisfied where "a fraudulent or unjust effect results from allowing another person to raise a claim inconsistent with his or her former declarations."

Id. at 314. The burden is on the party claiming estoppel to prove it is appropriate by "clear and unequivocal evidence." *Id*.

¶ 29 In the context of child-support, our supreme court rejected an estoppel claim in *Blisset*, 123 Ill. 2d 161. In that case, the father of children agreed to forsake visiting his children in exchange for the mother's promise not to pursue child support. *Blisset* provides sound guidance here. Having noted that an agreement such as the one alleged here is unenforceable, the court noted that estoppel is available as a defense where one person, by words or actions, causes another to rely to his or her detriment, on the position taken by the first person. *Id*. at 169. It added that such reliance must be reasonable. *Id*. The court then noted that the father was aware that he could not simply forsake his visitation rights. *Id.* Here, we note that people are presumed to know the law, and "ignorance of the law excuses no one." *People v. Dean*, 73 Ill. App. 3d 501, 502 (1979); *Kazwell v. Reynolds*, 250 Ill. App. 174, 177 (1928) ("As a general rule it is a well-known maxim that ignorance of law will not furnish an excuse for any person either for a breach or for an omission of duty."). Hence, we have our doubts as to the reasonableness of respondent's reliance on an agreement that is plainly contrary to the law and public policy of this state.

¶ 30 Moreover, the *Blisset* court also stated, "We do not believe that forfeiting visitation rights and failing to anticipate unpaid support payments can constitute the detriment required to establish an equitable estoppel claim." *Blisset*, 123 Ill. 2d at 168. Similarly, discussing the doctrine of *laches*, the court reiterated, " 'a spouse is not injured because he is forced to pay the accumulated support in one lump sum as opposed to weekly payments as ordered.' "[1] *Id*. at 170

[1] For this reason, the defense of *laches* would not be available to respondent. *Blisset*, 123 Ill. 2d at 170.

(citing *Finley v. Finley*, 81 Ill. 2d 317, 330 (1980)). Thus, the fact that respondent would now have to pay his obligation in a lump sum is not prejudice. Indeed, respondent received the use and enjoyment of those funds during the years he declined to make the child support payments. In light of *Blisset* and contrary to the trial court's finding, the fact that respondent is now subject to a large, lump-sum arrearage is not a detriment as a matter of law. We note that the trial court cited the dissent in *Blisset*, which found such an arrearage to be a detriment. Of course, both we and the trial court are bound to follow the majority opinion, regardless of whether we agree with the dissent. *In re Isaiah D.*, 2015 IL App (1st) 143507, ¶¶ 44-45.

¶ 31 We also question the trial court's finding that allowing petitioner to enforce the child-support judgments would be a windfall to her. A "windfall" is "[a]n unanticipated benefit, [usually] in the form of a profit *and not caused by the recipient*." (Emphasis added.) Black's Law Dictionary 1594 (7th ed. 1999). Here, the lump sum accrued because petitioner provided the entirety of support for the parties' daughter after 1985 while respondent provided no payments after that date (having the use and enjoyment of the money in the meantime). Indeed, had respondent been paying his obligation to his daughter, petitioner and the daughter would have surely enjoyed a higher standard of living. There was testimony presented that the parties' daughter now has substantial student loans, exceeding $100,000. Placing petitioner and the daughter in the position they would have been had respondent fulfilled his obligations surely cannot constitute a windfall. *Wilson v. DiCosola*, 352 Ill. App. 3d 223, 225 (2004) ("When a defendant breaches a contract, the plaintiff is entitled to be placed in the same position he would have been in had the contract been performed."). In fact, not allowing petitioner to enforce the child-support judgments would allow respondent to avoid his obligation to his child and be a windfall to him. Such a result would be both inappropriate and inequitable. *Cf. Arthur v.*

Catour, 216 Ill. 2d 72, 79 (2005) (citing Restatement (Second) of Torts § 920A, Comment *b*, at 514 (1979)) ("But it is the position of the law that a benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor.").

¶ 32 The trial court made findings to the effect that there was no impediment to petitioner enforcing the judgment at an earlier time. As previously noted, there is no statute of limitations on enforcing a child-support judgment. *Davenport*, 388 Ill. App. 3d at 992-93. Moreover, as explained above, as respondent has suffered no legally cognizable detriment, *laches* does not apply. Thus, the pertinence of this finding is unclear to us.

¶ 33 We are cognizant that a number of cases do allow estoppel to be applied in *somewhat* similar circumstances. Ultimately, however, these cases are distinguishable. For example, in *Johnston v Johnston*, 196 Ill. App. 3d 101 (1990), following the dissolution of the parties' marriage, custody of their five children was awarded to the mother. The father was ordered to pay child support for the three youngest children (the older two were emancipated). One child was subsequently committed to the Illinois Department of Corrections, where he remained until he was emancipated, leaving two children in the mother's custody. However, about three years after the dissolution, one child went to live with the father. The parties signed a written agreement stating that so long as the child remained with the father, the father would not have to pay support for the child. The child remained with the father until he was emancipated.

¶ 34 The *Johnston* court found that the mother was equitably estopped from seeking child support for the period after the child went to live with the father. It noted: "Visitation was not frustrated in any way. [The child's] rights of support were not bargained away, as his father actually supported him." *Id*. at 105. Moreover, as the mother had not provided support for the child in the father's custody, she "would be getting a windfall for support she did not actually

furnish." *Id*. at 105-06. A number of cases come to similar results following changes in custody. *E.g.*, *In re Marriage of Duerr*, 250 Ill. App. 3d 232, 237 (1993) ("Further, under these circumstances, a finding of equitable estoppel precludes the petitioner from receiving an unwarranted benefit; the windfall of support payments for support she or he has not actually furnished.").

¶ 35 The instant case is easily distinguishable. The key point in this line of cases is that due to a change in custody, the formerly noncustodial parent who had been ordered to pay child support was providing actual support for the child after the change. Therefore, if the other parent were allowed to enforce the child-support order, the originally noncustodial spouse would, in essence, have to pay support twice—once by actually supporting the child now living with him or her and a second time by paying child support to the spouse who no longer had custody. Further, the original custodial spouse would receive a windfall by receiving support payments despite not having supported the child. This is plainly inequitable. See *In re Marriage of Webber*, 191 Ill. App. 3d 327, 331 (1989).

¶ 36 In this case, conversely, respondent would not be forced to pay twice for his obligations to his daughter. As respondent never provided any support payments after 1985, allowing the child-support judgments to be enforced would simply require him to do what he should have been doing from the beginning. Indeed, it seems to us that allowing respondent to escape his obligation would be a windfall to him.

¶ 37 Finally, we note the trial court's concern that while it could order a remedy for petitioner (child support), it could not do so for respondent because, since the daughter was now emancipated, it could not order visitation. We do not believe this is a valid consideration. First, cases like *Blisset*, 123 Ill. 2d at 168, teach that child support is not a *quid pro quo* with visitation.

Second, and more importantly, respondent could have sought to enforce his right to visit his child in the wake of the dissolution proceedings. It is respondent's own inaction that led to the relinquishment of that right. Third, from a court's perspective, the main consideration is the best interest of a child. *Id.* at 167-68. The *Blisset* court recognized that terminating visitation could be detrimental to a child. *Id.* at 168. To allow respondent to benefit from attempting to use his right to visitation as a bargaining chip to avoid his duty to pay his child support obligation would be unconscionable. See *Long v. Kemper Life Insurance Co.*, 196 Ill. App. 3d 216, 219 (1990) (In equity, "[t]he doctrine of 'unclean hands' precludes a party from taking advantage of his own wrong."); see also *Blisset*, 123 Ill. 2d at 168 ("Parents may not bargain away their children's interests.").

¶ 38 In sum, respondent failed to carry his burden of establishing that he suffered a detriment as contemplated by the case law such that estoppel would lie. Our review of the record further leads us to conclude that the equities of the situation certainly do not favor respondent, particularly with regard to his daughter's interests.

¶ 39 We vacate the trial court's denial of petitioner's motion for declaratory judgment. In this motion, petitioner sought to consolidate the past child-support judgments (the unpaid support payments which became a series of judgments by operation of law). The trial court believed that if it granted the motion, it would be precluding respondent from presenting his equitable estoppel defense. The trial court should have simply refrained from ruling on the motion until after the evidentiary hearing. On remand, the trial court may address this motion again in light of all that has transpired since the trial court first ruled on this motion.

¶ 40 In light of the foregoing, we reverse the trial court's determination that petitioner is equitably estopped from enforcing the child-support judgments, and we vacate its order denying

petitioner's motion for a declaratory judgment. Petitioner asks that we find respondent in indirect civil contempt and set forth respondent's obligation; however, those issues would be better addressed by the trial court on remand.

¶ 41 Reversed in part, vacated in part; cause remanded.