

Survey of Family Law Cases 2004-2013

2012 Family Law Survey

CHILD SUPPORT DETERMINATION/ MODIFICATION

In re the Marriage Beatty and Turner, 279 P.3d 1225 (Colo. App. 2012), addresses the doctrine of equitable estoppel as it applies to an out of court agreement modifying child support. The parties' marriage was dissolved in 2001, and Father was ordered to pay \$1,155 in monthly child support. In 2009, Father objected to a garnishment of his wages to recover both child support and arrearages, and also requested a modification of child support.

Following an evidentiary hearing on arrearages and child support the Magistrate found that the parties had reached "out-of-court agreements modifying child support and that [Mother was] equitably estopped from collecting the difference between the court-ordered support and the lower amount of support agreed to by the parties."

Mother sought review and the district court affirmed the magistrate's findings. On Mother's appeal this was reversed with a ruling that the lower court erred by applying the **equitable estoppel doctrine** to enforce the parties' oral agreements to reduce child support.

"The parties cannot, by contract, escape their responsibilities to provide adequate child support." *Combs v. Tibbitts*, 148 P.3d 430, 434 (Colo. App. 2006). Any stipulation regarding the amount of child support is not effective unless the court reviews and approves it to ensure the amount's adequacy under statutory guidelines.

Equitable estoppel may allow relief from accrued arrearages. However, the party claiming estoppel must demonstrate both reasonable and detrimental reliance on the other party's acts or representations and a lack of knowledge or convenient means of knowing the facts.

Because Father did not allege, and the record contains no evidence showing, that he was either unaware of his continuing obligation under the original support order or lacked the knowledge and means to seek modification of the order, and, because he does not allege that he took any action in reliance on the reduced support agreement, Father did not meet the requirements for relief based on equitable estoppel.

The Court also ruled on procedural issues, income, and attorney fees.

In re the Marriage of Paige, 282 P.3d 506 (Colo. App. 2012), Father appealed from the denial of his motion to retroactively modify a child support based on a change in physical care of the parties' child.

In 2000, during permanent orders, Father was ordered to pay child support to Mother, who was designated as the primary residential parent. In 2008, Mother filed a motion seeking contempt sanctions for Father's failure to pay child support from July 2000 to April 2005. Father argued that, pursuant to an unwritten agreement between the parties, the child had actually lived with him from July of 2000 until March of 2003, and again from September of 2003 through her emancipation in April 2005. Citing this change in physical care, father asserted that there should be a corresponding retroactive modification of child support during those times, and that this should also be reflected in the court's consideration of the contempt sanctions.

The trial court found, without a hearing, even though father had repeatedly requested one, that without a mutual agreement reduced to writing evidencing the change of physical custody, the court cannot determine whether any such agreement existed. Father contends that the court erred in failing to hold a hearing when it acknowledged there was an issue of fact, and failed in requiring a written agreement. The Court of Appeals agreed.

Under section 14-10-122(1)(a), a modification of child support is generally effective as of the date of filing of a motion to modify. However, pursuant to section 14-10-122(5), "when a **mutually agreed upon change of physical care** occurs, the provisions for child support of the obligor under the existing child support order, if modified pursuant to this section, will be modified as of the date when physical care was changed."

Neither section 14-10-122(5) nor its counterparts, section 14-10-122(1)(c)-(d), specify that the agreement must be in writing. Because no written agreement is required under section 14-10-122(5), the trial court erred and must hold an evidentiary hearing on remand.