

IN THE COURT OF APPEALS 10/17/95

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00058 COA

CVESTER BRAND, SR.

APPELLANT

v.

MS DEPARTMENT OF HUMAN SERVICES

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ROBERT L. LANCASTER

COURT FROM WHICH APPEALED: LOWNDES COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

WILLIAM L. BAMBACH

ATTORNEY FOR APPELLEE:

MARGARET STUTTS

NATURE OF THE CASE: CIVIL - CHILD SUPPORT

TRIAL COURT DISPOSITION: BRAND HELD IN ARREARS AND ORDERED TO PAY PAST
DUE SUPPORT

BEFORE THOMAS, P.J., COLEMAN, AND PAYNE, JJ.

THOMAS, P.J., FOR THE COURT:

Mildred Brand Monroe through the Department of Human Services filed a petition for contempt against her husband, Cvester Brand, alleging an arrearage in child support due under an April 16, 1980, judgment divorcing the parties and ordering child support. Brand denied arrearage based on mutual mistake of fact and the doctrine of equitable estoppel. Brand was adjudged in arrears with interest and a withholding order entered. Brand appeals arguing that his ex-wife should be equitably estopped from claiming arrearage.

Finding no error, we affirm.

FACTS

Only a brief synopsis of the facts is necessary to reach the legal issue in this case. Brand and Monroe were divorced by a decree entered April 16, 1980; Brand was ordered to pay child support in the amount of \$300.00 for the couple's two children. On October 21, 1980, Monroe filed a petition to cite Brand for contempt for failure to pay child support. The petition was amended March 10, 1981, to include unpaid support through March 1, 1981. An answer was filed and various orders thereafter entered but no adjudication on the merits of this petition ever occurred.

Nothing further transpired in this matter until June 29, 1993, when Monroe by and through the Department of Human Services filed another petition for contempt. After a hearing, the chancellor rendered a bench opinion finding Brand in arrears in the amount of \$19,900.00 and ordered a withholding of monies. No judgment was entered on this opinion because the attorney representing Monroe left the Department of Human Services. Another petition for contempt was filed by another attorney who took over Monroe's case; this filing occurred October 31, 1994. A hearing was held December 5, 1994, and continued until December 7, 1994. On December 14, 1994, a judgment was entered by the chancellor adjudicating a child support arrearage, including interest thereon, in the sum of \$38,594.00 from the date of divorce through August 31, 1994.

Brand paid no support until the first petition for contempt was filed but thereafter paid \$200.00 a month. Brand claimed not to have knowledge of the \$300.00 actually ordered based on his reliance on conversations with and a letter from his attorney.

LAW

I. IS THE DOCTRINE OF EQUITABLE ESTOPPEL A LEGAL DEFENSE APPLICABLE TO ALL CASES OR IS CHILD SUPPORT EXEMPT FROM THE DEFENSE OF EQUITABLE ESTOPPEL.

We have worded the legal issue as stated in Brand's brief but need only answer the question as it relates solely to child support. Brand argues that Monroe's failure to pursue contempt over such a long period of time, coupled with her acceptance of \$200.00 a month for years should estop her from making a claim at this late date.

The issue here is controlled and governed by *Hailey v. Holden*, 457 So. 2d 947 (Miss. 1984). *Hailey* explicitly held that equitable estoppel is not a defense available for failure to pay child support. *Hailey*, at 951.

THE JUDGMENT OF THE CHANCERY COURT OF LOWNDES COUNTY IS AFFIRMED. COSTS ARE TAXED TO THE APPELLANT. STATUTORY DAMAGES AND INTEREST ARE AWARDED.

FRAISER, C.J., BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.