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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0909**

Richard L. Swanson, petitioner,
Appellant,

vs.

Sheila M. Burke,
Respondent.

**Filed April 7, 2009
Affirmed
Kalitowski, Judge**

Ramsey County District Court
File No. 62-F5-89-518452

Richard L. Swanson, 207 Chestnut Street, Suite 235, P.O. Box 117, Chaska, MN 55318
(attorney pro se)

M. Shannon Peterson, McCollum, Crowley, Moschet & Miller, Ltd., 7900 Xerxes
Avenue South, 700 Wells Fargo Plaza, Minneapolis, MN 55431 (for respondent)

Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and
Crippen, Judge. *

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Richard L. Swanson contends that the district court abused its discretion in refusing to apply the doctrine of laches to prevent respondent from collecting child support arrearages and prejudgment interest. Appellant also argues that the district court's calculation of child support arrearages was erroneous. We affirm.

DECISION

Appellant and respondent Sheila M. Burke are the biological parents of M.B., born September 16, 1986. In September 1995, the Ramsey County District Court ordered appellant to pay child support to respondent in the amount of \$1,063 per month until M.B. reached the age of 18. The record indicates that over the years respondent failed to deposit or cash a number of the child support checks tendered by appellant. Appellant acknowledges that respondent cashed child support checks only intermittently between 1996 and 2004.

On August 18, 2006, respondent moved the district court to order appellant to tender unpaid child support. Following a hearing, the district court dismissed all claims for child support for the time period prior to August 18, 1996, as barred by the ten-year statute of limitations, and granted respondent's motion for child support payments for the period of September 1996 through September 2004, when M.B. turned 18 years old. The district court determined that appellant's tendering of child support checks that were not cashed did not fulfill or terminate his obligation to pay the requisite child support. The court rejected appellant's argument that the doctrines of equitable estoppel and laches

barred respondent's claim. After considering the parties' submissions on the amount of arrearages owed for unpaid child support, the district court concluded that appellant owed respondent \$47,700 in arrearages. The district court also ordered appellant to pay prejudgment interest on the arrearages. Appellant does not challenge the imposition of prejudgment interest on appeal.

Appellant contends that by tendering support checks to respondent, he satisfied his child support obligation and that the district court abused its discretion in refusing to apply the doctrine of laches to prevent respondent from collecting child support arrearages and interest. We disagree.

We will reverse a district court's order regarding child support only if we are convinced that the district court abused its broad discretion. *Butt v. Schmidt*, 747 N.W.2d 566, 574 (Minn. 2008). Similarly, we review the district court's decision on an issue of laches for an abuse of discretion. *In re Marriage of Opp*, 516 N.W.2d 193, 196 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994).

Discharge of Obligation

By law, appellant's underlying obligation to pay child support is unaffected by respondent's failure to cash the support checks. Article 3 of the U.C.C., codified in Minn. Stat. Ch. 336 (1994), includes checks as negotiable instruments. *See Goblirsch v. Heikes*, 547 N.W.2d 89, 92-93 (Minn. App. 1996) (discussing provisions of chapter 336, as applied to an issue involving liability on dishonored checks). The applicable statutory language provides that:

(b) Unless otherwise agreed . . . if . . . an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

Minn. Stat. § 336.3-310 (1994).¹ Although a holder's failure to present a check within a reasonable time relieves the drawer of all liability *on the instrument*, the obligation still exists to make the payment. *Goblirsch*, 547 N.W.2d at 92-93. "There is a presumption that a check is only conditional payment; thus, the underlying debt remains until such time as the check is paid." *Id.* (citation omitted).

We conclude that the district court did not abuse its discretion in determining that appellant's act of tendering child support checks does not discharge his continuing obligation to pay support, despite respondent's failure to deposit or cash the checks within a reasonable time.

Laches

Appellant argues that respondent failed to demonstrate a sufficient reason for not cashing support checks or for her delay in bringing a motion for child support arrearages, and therefore, the district court abused its discretion in refusing to apply the doctrine of laches. We disagree.

¹ Because the transactions began in 1995, we construe the statutory provisions in effect at that time. *See Goblirsch*, 547 N.W.2d at 92 n.1.

The equitable doctrine of laches “provides that, when one sits on one’s rights for too long, that person’s claim should be estopped from continuing because it would be inequitable to require the defendant to fight the suit.” *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). “Equitable defenses are not available in an action for support arrearages brought within the statutory limitation period.” *Benedict v. Benedict*, 361 N.W.2d 429, 432 (Minn. App. 1985) (citing *Ryan v. Ryan*, 300 Minn. 244, 251 n.2, 219 N.W.2d 912, 916 n.2 (1974)) (other citation omitted). And Minnesota has a strong policy against applying laches to preclude collection of child support arrearages. *Opp*, 516 N.W.2d at 196-97; *Vitalis v. Vitalis*, 363 N.W.2d 57, 59-60 (Minn. App. 1985). “A lack of diligence in collection by respondent cannot defeat appellant’s continuing support obligation, since the focus of a support obligation is on the needs of the child, not the diligence of the custodial parent.” *Vitalis*, 363 N.W.2d at 59-60.

Because *Benedict*, *Vitalis*, and *Opp* provide that laches is inapplicable to child-support-arrearage motions, we conclude that the district court did not abuse its discretion by refusing to apply the doctrine of laches here. Respondent’s lack of diligence in collecting child support does not void appellant’s continuing obligation to provide child support because the focus of the support obligation is on the child’s needs, rather than the diligence of the custodial parent.

Appellant contends that he has suffered “substantial prejudice” by respondent’s failure to cash the child support checks. But “substantial prejudice” is not a factor in determining whether the doctrine of laches applies. Appellant also argues that M.B. did not suffer from respondent’s failure to cash the checks, and that because she has reached

the age of majority, there is no longer a need for respondent to collect the support payments. Again, this contention does not affect the inapplicability of laches. The only relevant time periods to be considered in ordering support payments are the ten-year statute of limitations set forth in Minn. Stat. §§ 541.04 and 550.01 (1994), and the dates provided in the original paternity order. Appellant has failed to set forth any authority for the proposition that his obligation to pay support arrearages ceased the day his child turned 18.

Appellant contends that the district court's calculation of child support arrearages was erroneous. But the record shows that the district court examined both parties' submissions and affidavits and determined that respondent's calculation was reasonable and credible. We conclude that because there is support in the record for the district court's determination of support arrearages owed by appellant, the district court's findings are not clearly erroneous.

In sum, the record supports the district court's calculation of support arrearages and interest. And the district court did not abuse its discretion in concluding that appellant's tendering of child support checks does not discharge his support obligation. Nor did the court abuse its discretion in refusing to apply the doctrine of laches to respondent's claim.

Affirmed.