

NOT DESIGNATED FOR PUBLICATION

No. 103,756

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF

RUSSELL PLASCHKA,
Appellee,

and

REBECCA PLASCHKA,
Appellant.

MEMORANDUM OPINION

Appeal from Allen District Court; DANIEL D. CREITZ, judge. Opinion filed September 3, 2010.
Affirmed.

James E. Rumsey, of Lawrence, for appellant.

Robert L. Farmer, of Fort Scott, for appellee.

Before RULON, C.J., GREENE, J., and KNUDSON, S.J.

Per Curiam: Rebecca Plaschka appeals the district court's order denying her motions under K.S.A. 60-259(a) *First*, K.S.A. 60-259(f), and K.S.A. 60-260(b)(6), challenging a custody modification order awarding Russell Plaschka residential custody of their two children. She contends (1) the district court abused its discretion in denying her relief under the aforementioned statutes and (2) the district court erred in failing to apply the equitable concepts of estoppel and clean hands to grant relief. We affirm under Supreme Court Rule 7.042(c), (e), and (f) (2009 Kan. Ct. R. Annot. 58) but briefly will address Rebecca's equity claims.

Rebecca argues the district court failed to make specific findings of fact or conclusions of law regarding her equity claims to support relief from the order modifying residential custody. She suggests we should remand for further consideration of the district court.

However, there is no indication in the record Rebecca objected to the district court's inadequate findings of fact and conclusions of law to allow the district court an opportunity to correct them. See *Gilkey v. State*, 31 Kan. App. 2d 77, 77-78, 60 P.3d 351, rev. denied 275 Kan. 963 (2003). "Under these circumstances, this court may assume that the trial court made the necessary findings and conclusions to support its decision." *Dragon v. Vanguard Industries*, 282 Kan. 349, 358, 144 P.3d 1279 (2006). Moreover, even if we were to examine Rebecca's claims for equitable estoppel or clean hands, they are without merit.

First, without citing to the record, Rebecca claims Russell "blind-sided" her by initially agreeing with her change of residence after she provided him notice of her intent to move, and then, after she terminated her job and moved to Tonganoxie, filing a motion to modify the shared custody arrangement and requesting primary residential custody. Rebecca claims equitable estoppel should prevent Russell from this kind of "sandbagging."

Equitable estoppel exists when one party, by its acts, representations, admissions, or silence, induces another party to believe certain facts existed upon which the other party detrimentally relies. See *Turon State Bank v. Bozarth*, 235 Kan. 786, Syl. ¶ 2, 684 P.2d 419 (1984). However, the district court alone has complete control to decide issues relating to legal custody, residency, parenting time, support, or education of the divorcing parties' minor children. See K.S.A. 2009 Supp. 60-1610(b)(3). Thus, if Rebecca did rely on any of Russell's alleged representations, she did not rightfully rely on those representations. See *Rockers v. Kansas Turnpike Authority*, 268 Kan. 110, 116, 991 P.2d

889 (1999) (stating the second element of equitable estoppel is when a party "rightfully" relies on another party's representations); *Gillespie v. Seymour*, 250 Kan. 123, 129-30, 823 P.2d 782 (1991) ("There can be no equitable estoppel if any essential element thereof is lacking or is not satisfactorily proved.").

Next, Rebecca claims the district court should have utilized the equitable doctrine of clean hands to deny Russell's motion to modify the shared custody arrangement. The doctrine of "clean hands" is applied sparingly and only to "willful conduct which is fraudulent, illegal or unconscionable" that "shock[s] the moral sensibilities of the judge." *Green v. Higgins*, 217 Kan. 217, 221, 535 P.2d 446 (1975). Here, the district court specifically noted: "The Court cannot find and does not find that the proffer of evidence submitted by [Rebecca] shocks the consciousness of the Court." Additionally, there is no evidence Russell's conduct was fraudulent, illegal, or unconscionable. Thus, the doctrine of clean hands would not grant Rebecca the relief she seeks.

Accordingly, the judgment of the district court is affirmed for the reasons stated and under Supreme Court Rule 7.042(c), (e), and (f).