FILED
JAN 24 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, ex rel. VICTOR L. AYERS,)
Petitioner-Appellee,) Filed January 24, 1984
vs.)
PATRICIA L. SEABURGER,) 3-435 / 83-583
Respondent-Appellant.)

Appeal from the Iowa District Court for Pottawattamie County - Glen M. McGee, Judge.

Respondent appeals from the trial court's order requiring her to pay child support in this action under Iowa Code chapter 252A (Uniform Support of Dependents Law). AFFIRMED.

William M. Murray of Murray & Davoren, Des Moines, Iowa, for respondent-appellant.

Thomas J. Miller, Attorney General, and Mark A. Haverkamp, Assistant Attorney General, for petitioner-appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Respondent appeals from the trial court's order requiring her to pay child support in this action under Iowa Code chapter 252A (Uniform Support of Dependents Law).

The 1978 decree dissolving the marriage of Victor L. Ayers and Patricia L. Seaburger awarded Victor custody of the parties' two children, but did not direct Patricia to pay any child support. In 1982, the State of Iowa filed a petition for child support under Iowa Code chapter 252A on Victor's behalf.

The trial court found: (1) that Patricia was trained as a beautician; (2) that she had remarried and had started a business; (3) that her new husband had worked for a railroad for 26 years but had recently been laid off; (4) that she had not "seriously attempted to find employment to meet her obligation to . . . support her children," and was "hoping to avoid her obligation by not doing so;" (5) that Victor was an unemployed auto mechanic; (6) that his and the children's needs exceeded their income by $156 a month; and (7) that Victor's "unemployment and present situation" were a substantial change of circumstances not contemplated when the decree was entered. Based on these findings, the trial court directed Patricia to pay $150 per month child support. On appeal, Patricia asserts: (1) that several of the trial court's fact findings regarding the parties' income and employment and the children's needs were not supported by the record; and (2) that petitioner was required to but did not show (a) that there has been a substantial change of circumstances since the decree dissolving the parties' marriage, (b) that Victor is unable to support the parties' children, and (c) that Patricia is able to support them.

Our review of this equity action is **de novo**. Iowa Code § 252A.6(1); Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

Patricia's argument that the State failed to meet its burden of showing a substantial change in circumstances not contemplated by the trial court in the dissolution decree is easily answered. The recent case of State ex rel. Blakeman v. Blakeman, 337 N.W.2d 199, 203-04 (Iowa 1983), stated that no showing of a change of circumstances is needed in a chapter 252A action initiated by the State.

Patricia also argues that the State failed to show that Victor is incapable of supporting the children. Iowa Code section 252A.3(2) reads, in part, that "a parent in one state is hereby declared to be liable for the support of his or her child or children under eighteen years of age . . . whenever the father or mother of such child or children is dead, or cannot be found, or is incapable of supporting such child or children . . . ." Neither the definitional section of the act nor any Iowa decision defines the term "incapable" as used in this section. However, the supreme court has indicated that in proceedings under the uniform support act the court is not bound by the language of the statute, but can look to state law generally to determine the duty owed by the parent. See Engelson v. Mallea, 180 N.W.2d 127, 131-32 (Iowa 1970); Davis v. Davis, 246 Iowa 262, 268, 67 N.W.2d 566, 570 (1954). It is clear that apart from the uniform support act, Iowa law imposes upon both parents the duty to support a minor child. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). Therefore, the trial court did not err in finding that Patricia has a duty to help support her minor children.

Patricia contends that even if she has a duty to support the children she is financially unable to comply. The trial court found that Patricia's present unemployment is due more to her own choice than to necessity. This finding is based on an evaluation of the demeanor and credibility of witnesses and, consequently, we give it more weight. The trial court's conclusion is consistent with the evidence presented. Patricia is a trained beautician who has earned as much as $500 per month in the past. She held and quit several jobs before marrying her present husband. Since her remarriage Patricia has been supported

by her husband whose gross income in 1982 was $21,000. Iowa Code section 252A.3(2) states that a parent can be ordered to support a minor child if the parent "is possessed of sufficient means or able to earn such means." We believe that Patricia is able to earn the means to contribute to her children's support if required to do so.

The trial court's finding regarding the employment of Patricia's present husband is also challenged. We do not address this issue, however, since a finding that the trial court erred on this point would not affect our holding in the case. Likewise, we do not find it necessary to belabor Patricia's argument that the trial court miscalculated the amount by which Victor and the children's needs exceed their monthly income. The record makes it clear that the court, in calculating Victor's income, included unemployment benefits which were about to expire at the time of the decree. After our **de novo** review of the facts of the case, we find that $150 per month is a just amount to require Patricia to contribute to the support of her two children.

AFFIRMED.