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Respondent-Appellant.)

Respondent appeals from a district court order pursuant to Iowa Code chapter 252A finding him to be the father of a child and directing him to pay child support in the sum of \$60 per week. **AFFIRMED AS MODIFIED.**

Thomas J. Miller, Attorney General of Iowa, and J. Livingston Dunkle, Assistant Attorney General, for petitioner-appellee.

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

HAYDEN, J.

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Cynthia Faith Connor is the mother of Kiley Elizabeth Connor, a child born May 28, 1978. She supported herself and her child until she lost her job in 1985. She then applied for and received Aid to Dependent Children (ADC).

The State filed the present paternity and child support action against Richard Husted pursuant to Iowa Code chapter 252A. At trial the State's evidence included a blood test result showing a likelihood of 99.991% Husted was the child's father. Although Husted denied paternity, he acknowledged sexual contact with Cynthia Connor on one occasion in 1977.

The trial court found Husted was the child's father and directed him to pay child support of \$60 per week.

On appeal Husted contends the case was not instituted by a proper party. He argues the petition was fatally defective because it was signed by the mother. He relies on language in chapter 252A providing that the parties entitled to bring an action are a petitioner (child) or petitioner's representative.

Husted challenges the admissibility of the blood test results. He claims there was not an adequate foundational showing of the reliability of the tests, the chain of custody of the blood samples, or the qualifications of the person performing the tests. He claims the test results were not adequately explained to permit lay people to

comprehend them. He asserts the test results were hearsay. He also claims a partial deposition by the doctor who performed the blood tests was inadmissible because it did not include the doctor's responses to his cross-interrogatories.

Husted contends if the blood test results were held to be inadmissible, there would be insufficient evidence to support a finding of paternity. He contends the action against him should be barred by the doctrine of laches. Lastly, he claims the amount of the child support obligation imposed on him was excessive, in light of the parties' respective financial conditions.

Our scope of review is de novo. Iowa R. App. P. 4. Moody v. Christiansen, 306 N.W.2d 775, 777 (Iowa 1981).

I.

The petition filed in this case is captioned as follows: State of Iowa, ex rel Cynthia Faith Connor, Mother of Kiley Elizabeth Connor, 5-28-78, Petitioner, vs. Richard Husted, Respondent. The petition was signed by Cynthia Faith Connor, mother of petitioner. Her affidavit as mother of the child named in the petition is attached to the petition.

Husted complains if this action is brought by a minor, Iowa Rule of Civil Procedure 12 requires it must be brought by a guardian or next friend, and it is not properly in this form. He also claims Iowa Code section 252A.6(1)

authorizes a petitioner or petitioner's representative, not the mother of a child, to commence an action under chapter 252A.

In Moody v. Christiansen, 306 N.W.2d 775, 777 (Iowa 1981), the supreme court affirmed the substitution of the child for the mother in an action under chapter 252A. In that case our Iowa Supreme Court held such a mistake, if it was a mistake, will not work to deny the court of subject matter jurisdiction. The court also quoted from Brauer v. J.C. White Concrete Co., 253 Iowa 1304, 1311, 115 N.W.2d 202, 205 (1962), as follows:

We are firmly committed to the rule that the question of the right of a plaintiff to maintain an action in court does not go to the court's jurisdiction to afford relief but only to the merits of the controversy. Jurisdiction of the subject matter is not dependent on who institutes the action.

In the case of State ex rel, Warren vs. Mahan, 329 N.W.2d 673 (Iowa 1983), the supreme court affirmed the trial court's order that "counsel for petitioner shall add the minor child as a petitioner." The court did not require the mother's name to be deleted.

We note Cynthia Faith Connor as mother of Kiley Elizabeth Connor, a child, is also her natural guardian. Here the dependent child is the petitioner. Iowa Rule of Civil Procedure 12 requires a minor child have a guardian or next friend bring the action for him.

The petition in this case was not artfully prepared. We determine the court has subject matter jurisdiction.

II.

Respondent claims the trial court erred in concluding he was not prejudiced by the lapse of time and circumstances in this case. Also the doctrine of laches and equitable estoppel should be held to apply. We disagree. He claims because of the passage of time, he does not know now who the witnesses were or where to locate them. We find it noteworthy respondent testified under oath at trial there were no eyewitnesses to his and Connor's act of intercourse.

Cynthia Connor supported the child since birth, for six years, until she lost her job. In 1985 she applied for ADC. Suit was then commenced against respondent for support of Kiley. He has not been ordered to pay any back support. Only ongoing support has been ordered.

We reject respondent's claim he has been prejudiced in this case by the passage of time. The doctrine of laches and equitable estoppel are not applicable here nor available to the respondent as a viable affirmative defense. Mere lapse of time is not enough to establish a defense of laches. Chadek v. Alberhosky, 253 Iowa 332, 111 N.W.2d 297 (1961).

Iowa Code section 614.8 provides:

The times limited for actions herein, except those brought for penalties and forfeitures, shall be extended in favor of minors and mentally ill persons, so that they shall have one year from and after the termination of such disability within which to commence said action.

The child, Kiley, has a right to paternity determination, pursuant to chapter 252A, at least a year after she attains majority. See Steams v. Kean, 303 N.W.2d 408, 413 (Iowa 1981).

III.

Cynthia Connor testified she stopped using birth control pills at the end of June 1977, and quit having intercourse with anyone because she was afraid she would be fertile and become pregnant. She further testified she had sexual relations with respondent on September 3, 1977. Also, her testimony reveals she had no sexual relations with anyone else in August, September or October of 1977, and that Kiley was a full term baby, born May 28, 1978. She stated she had sex with respondent this one time on September 3, 1977, at her mom and dad's house in Atkins, and no contraceptives were used.

Respondent, Rick Husted, admitted having sexual intercourse with Cynthia Connor at her parents' house in Atkins, Iowa, somewhere between midnight and two in the morning. However, he claimed to have no recollection of the approximate date, month, year, or season it occurred. He remembers they used no contraceptives.

The issue of paternity is factual. The burden of persuasion is on petitioner, by a preponderance of the evidence, and the law does not require corroboration of the mother, although the presence or absence of corroboration

may influence the fact finder in the ultimate finding. Foreman v. Wilcox, 305 N.W.2d 703, 704 (Iowa 1981). Intercourse may be proven by the testimony of the prosecuting witness alone; it need not be corroborated. State ex rel Brown v. Middleton, 259 Iowa 1140, 1142, 147 N.W.2d 40, 41 (1966).

Husted admitted he had intercourse with Connor. The trial court found no reason to question Connor's credibility nor do we. This action is in equity and we find the facts anew; we give weight to the findings of the trial court but are not bound by them. Foreman, 305 N.W.2d at 704. Upon this portion of the record only and under the preponderance of the evidence standard, we find Husted is the father of Kiley Elizabeth Connor. We make this determination and finding without relying upon or referring to the blood test results in any respect. Thus, it is unnecessary for us to address or comment on respondent's attacks upon the admissibility of the blood test.

IV.

Respondent next urges us to reduce the amount of support ordered by the trial court in the event we affirm the finding of paternity. He was ordered to pay \$60 per week support for Kiley. His take home pay is \$1,066.71 per month and his monthly living expenses total \$1,044.65 as shown by his financial affidavit. He has little net worth. Cynthia does not have the financial means to

provide for the needs of Kiley. On balance, we determine respondent's support payments for Kiley shall be \$50 per week and the decree is modified accordingly.

Costs of appeal are taxed to respondent-appellant.

AFFIRMED AS MODIFIED.

Sackett, J., concurs; Habhab, J., concurs in part and dissents in part.

HABHAB, J. (concurring in part and dissenting in part)

I concur in all respects with the results reached by the majority except that part which decreases the weekly child support from \$60 per week to \$50 per week. I dissent as to that part of the ruling.