IN THE COURT OF APPEALS OF IOWA

No. 4-602 / 94-685

FILED
APR 23 1995
CLERK SUPREME COURT

STATE OF IOWA ex rel., JEREMY CANNY, A Minor by ORVILLE HUCKS Caretaker and Next Friend,

Petitioner-Appellee,

vs.

ARLEY P. PROUGH,

Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, C.H. Pelton, Judge.

Prough appeals the judgment entered against him for reimbursement of child suport owed to the child's custodians. **AFFIRMED.**

Michael J. McCarthy of McCarthy & Lammers, Davenport, for appellant.

Thomas J. Miller, Attorney General, Gordon Allen, Deputy Assistant Attorney General, Michael J. Parker, Assistant Attorney General, William E. Davis, County Attorney, and Jill Cirivello, Assistant County Attorney, for appellee.

Considered by Hayden, P.J., Cady, J., and Schlegel, S.J.*

*Senior judge from the Court of Appeals serving on this court by order of the Iowa Supreme Court.

SCHLEGEL, S.J.

Marcia Litty, formerly known as Marcia Canny, gave birth to Jeremy Canny on May 13, 1977. Marcia named Arley Prough as the father and initiated a paternity proceeding against him in 1977. However, after Arley left the State of Iowa, Marcia did not pursue the action.

When Jeremy was about three months old, Marcia and her parents, Orville and Barbara Hucks, entered into guardianship proceedings to have the Hucks named as Jeremy's guardians. Jeremy has lived with the Hucks since this time and they have provided all of Jeremy's financial support. Sometime after Orville was laid off from his job, the family began to receive public assistance.

On May 27, 1992 the State, on behalf of Jeremy, initiated a petition pursuant to Iowa Code chapter 252A against Arley to establish paternity, current support and accrued support. A blood test revealed the probability of paternity was 99.3%.

The district court entered an order which determined Arley was the father of Jeremy. Arley was then unemployed and received $150 per week in unemployment compensation from the State of Missouri. The court ordered him to pay child support of $33 per week, which is $143 per month. The court reserved the issue of reimbursement to the State for public assistance.

The State later applied for a hearing on the issue of reimbursement. At the hearing the State sought

reimbursement due the Hucks' for their financial support of Jeremy, as well as the amount due the State for public assistance previously paid to the Hucks. Arley raised three defenses. He claimed: (1) the issue of reimbursement to the Hucks was barred by the doctrine of res judicata because the earlier order did not specifically reserve that issue; (2) the State had failed to prove he was responsible for Jeremy's past support; and (3) he should not be responsible for reimbursement prior to the effective date of chapter 252A, October 12, 1989.

Prior to receiving evidence, the court ruled the whole issue of reimbursement was properly before the court. Arley renewed his motion to dismiss based on the doctrine of res judicata at the close of the hearing.

In its written ruling, the court only noted defenses two and three, and ruled against Arley on these issues. The court found Arley was responsible for Jeremy's support since the date of his birth. The court determined the amount of this support should be $33 per week. Arley was ordered to pay the amount of $28,149 for Jeremy's past support. The court did not determine the relative interests of the State and the Hucks in this amount.

No post-trial motions were filed. Arley filed a notice of appeal.

On appeal, Arley contends the State's claim for accrued support for the Hucks was barred by the principles of res judicata. He believes the trial court erred in

granting judgment in excess of the reimbursement claimed by the State. According to Arley, the State's failure to specifically reserve the issue of reimbursement to the Hucks in the first order means there was a bar to future adjudication of that issue. He claims the earlier decision was final as to all issues except reimbursement to the State.

A proceeding under chapter 252A is an equitable proceeding. State ex rel. Phipps v. Phipps, 503 N.W.2d 391, 392 (Iowa 1993). Our review is de novo. Iowa R. App. P. 4.

We first must note that we believe Arley has failed to preserve error on this issue. At the end of the hearing he renewed his motion to dismiss based on his claim the doctrine of res judicata barred consideration of the issue of reimbursement to the Hucks. However, the district court did not rule on this issue in its written decision. Arley did not file a motion pursuant to rule 179(b). A rule 179(b) motion is essential to preservation of error in a ruling when a trial court fails to resolve an issue, claim, defense, or legal theory properly submitted to it for adjudication. Farmers State Bank v. United Central Bank, 463 N.W.2d 69, 72-73 (Iowa 1990).

Furthermore, we believe the whole issue of reimbursement was properly considered by the court. Chapter 252A expressly gives the governmental unit furnishing ADC or other assistance authority to bring an

action under that chapter the same as the dependent may do. Foreman v. Wilcox, 305 N.W.2d 703, 704 (Iowa 1981).

It is well established that both parents have a legal obligation to support their children. Hartman by Hartman v. Stassis, 504 N.W.2d 129, 134 (Iowa App. 1993). Thus, if the parent of a minor child neglects to provide the necessaries for the child, the parent is liable to a stranger furnishing support for the child. State v. Poggenpohl, 522 N.W.2d 118, 119 (Iowa App. 1994). An action for contribution may be maintained for reimbursement of support. Brown v. Brown, 269 N.W.2d 819, 822 (Iowa 1978).

Therefore, because the State under chapter 252A has the authority to bring an action the same as the dependent may do, the State could bring a claim here for reimbursement of support, which would include reimbursement to the State and reimbursement to Jeremy's caretakers.

Child support begins to accrue on the child's date of birth, and this is the logical starting point for reimbursement. State ex rel. Hammons v. Burge, 503 N.W.2d 413, 416 (Iowa 1993). We conclude the district court correctly determined Arley is responsible for Jeremy's support since the date of his birth.

We affirm the decision of the district court.

AFFIRMED.