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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

101

ANNIE LEE MORMAN,)

Plaintiff-Appellee,) Filed January 24, 1984

vs.)

O. D. WILLIAMS,) 3-392
83-371

Defendant-Appellant.)

Appeal from the Iowa District Court for Black Hawk County - William G. Klotzbach, Judge.

Defendant in this paternity action has filed a notice of appeal of both the trial court's support order and its denial of his "petition to vacate" the support order, asserting that the trial court failed to question him about his financial status and thus that there was not sufficient evidence to support the trial court's determination of the amount of child support he must pay. AFFIRMED.

Stanford J. Patterson of Patterson Law Firm, Waterloo, for defendant-appellant.

Don E. Gottschalk of Gottschalk, Shinkle & Long, Cedar Falls, for plaintiff-appellee.

Considered by Snell, P.J., and Schlegel and Hayden, JJ.

Plaintiff Annie Lee Morman filed a paternity complaint against defendant O. D. Williams in November 1982. Defendant did not answer the complaint or appear at trial, and a default judgment was entered against him. A separate hearing was held to determine the amount of child support defendant would be required to pay. Defendant appeared at this hearing, but he did not have an attorney and he did not present any evidence or challenge the evidence plaintiff presented. No record was made of the hearing. After the hearing, the district court entered an order directing defendant to pay $75 per week child support.

Eleven days after the support order was entered, defendant filed a petition to vacate the order, citing Iowa Rules of Civil Procedure 236 and 252, and asserting that the district court's support order should be vacated because defendant did not have counsel and "did not understand the situation or the time limits involved." Defendant later amended his petition to vacate to assert that the district court had failed to have defendant present evidence of his financial status and as a result the district court entered an order which was not supported by substantial evidence. Plaintiff resisted defendant's petition to vacate, and a hearing was held. The district court denied the petition to vacate.

On appeal, defendant requests that we reverse and remand the case for a new hearing wherein the trial court should inquire into defendant's financial status before determining the appropriate child support award.

Our review of this matter is upon assigned error. Heyer v. Peterson, 307 N.W.2d 1, 4 (Iowa 1981). We are bound by the trial court's judgment in a paternity action if it is supported by substantial evidence. Moen v. McNamara, 272 N.W.2d 438, 439 (Iowa 1978). "To determine whether there is substantial evidence to support it, the evidence is viewed in the light most favorable to the judgment, although we are not bound by the trial court's determination of law." Id. In determining whether a child support allowance is appropriate:

> [f]actors to be considered are parties' age, health, present earning capacity, future prospects, amount of resources owned by each or both parties, contributions of each to the joint accumulations, the children involved, duration of the marriage, indebtedness of each or both, and any other relevant factors which might assist the trial court in reaching a just and equitable decision.

In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). Accord In re Marriage of Callenius, 309 N.W.2d 510, 516 (Iowa 1981). Of course, some of these factors would not be applicable here.

The Iowa Supreme Court has stated that both parties are liable for support of the child, not necessarily in equal shares but proportionately according to their ability to pay. Brown v. Brown, 269 N.W.2d 819, 822 (Iowa 1978), Wehling v. Rottinghaus, 204 N.W.2d 592, 593 (Iowa 1973). Evidently, no record was made of the hearing at which the trial court made the contested child support award. Although this prevents us from determining whether error was preserved, it also leaves us unable to determine whether there was substantial evidence of defendant's financial status.

Defendant also challenges the trial court's denial of his motion to vacate. Grounds upon which a trial court may vacate a final judgment are set out in Iowa Rule of Civil Procedure 252 (1981). Defendant's reasons for vacating the child support award do not fall within the boundaries of any of the grounds enumerated in Rule 252. We have recognized that the "trial court has considerable discretion in deciding whether to afford relief when a vacation of judgment is sought." In re Marriage of Bauder, 316 N.W.2d 697, 700 (Iowa 1981). The trial court did not abuse its discretion in this case.

The child support award and denial of motion to vacate is affirmed.

AFFIRMED.