

IN THE COURT OF APPEALS OF IOWA

No. 3-277 / 92-1606

FILED

DEC 29 1993

CLERK SUPREME COURT

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STATE OF IOWA, ex rel.,
KATHLEEN M. GOESER,

Petitioner-Appellant,
vs.

GEORGE M. GOESER,

Respondent-Appellee.

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

The State appeals a district court's decree suspending
the enforcement of the noncustodial parent's child support
obligation until the custodial parent provides a current
address and phone number. **AFFIRMED.**

Bonnie J. Campbell, Attorney General, John Parmeter,
Special Assistant Attorney General, and Mark Haverkamp,
Assistant Attorney General, for appellant.

C.R. Hannan of Perkins, Sacks, Hannan, Reilly &
Petersen, Council Bluffs, for appellee.

Heard by Oxberger, C.J., Sackett and Habhab, JJ.

SACKETT, J.

Petitioner-appellant State of Iowa ex rel. Kathleen M. Goeser appeals an order suspending enforcement of respondent-appellee George M. Goeser's child support obligation until Kathleen, the custodial parent, provides him with her current address and phone number. The State contends the trial court incorrectly applied the doctrine of State ex rel. Wagner v. Wagner, 480 N.W.2d 883 (Iowa 1992), in suspending the support. The State contends this case is factually distinguishable from Wagner and Wagner should not control. We affirm.

Kathleen was pregnant with the child, Courtnee, when she and George were married in June 1987. Courtnee was born on August 13, 1987. The marriage of the parties was dissolved in New Jersey in February 1989, and George was ordered to pay child support.

In 1990, George was contacted by child support recovery in Iowa and signed an agreement to pay child support of \$116 monthly. In August of that same year, George filed a petition for modification contending he had been kept from contacting his daughter. The trial court ordered the state to provide George with Courtnee's address. When the address was not supplied, the court suspended the enforcement of George's child support obligation. The obligation was subsequently reinstated. George again filed for suspension testifying he was unable to locate his former wife and daughter and the address he had been given

was not accurate. The district court again suspended enforcement of George's child support obligation. This appeal followed.

In Wagner, 480 N.W.2d at 885, the court recognized that generally a noncustodial parent's duty to pay child support is not dependent on the custodial parent complying with visitation provisions. However; in Wagner, the court determined there may be cases where on equitable grounds the court may attach conditions to the use of the summary wage withholding remedy of Iowa Code section 252D.1. Id. The State, while recognizing the holding of Wagner, contends George was aware his former wife and daughter were living in Morris Plains, New Jersey, that he got unwanted mail from his wife and sent correspondence that was not returned to the return address on the envelope which was a post office box in Morris Plains. The fallacy in this argument is that a post office box only shows where a person may get mail not where they may live.

The trial court found George contacted a number of people in an attempt to obtain an address and phone number without success and he worked with the Marine Federal Credit Union and their collection agent to locate Kathleen because she had been given an automobile that was financed with Marine Federal in the dissolution. The recovery company spent \$3000 attempting to locate her without success. The address of 87 West Hanover, Morris Plains, New Jersey, that was given to Transamerican Service and other creditors is not accurate.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). We agree with the trial court's finding that the state has not given George an address and phone number where Kathleen can be located.

The trial court merely suspended the enforcement of George's child support obligation until George got a current street address and phone number where the child is staying. This is clearly reasonable. One wonders if it would not have been more expedient for the state to supply this information than file this appeal. We affirm.

AFFIRMED.