

IN THE COURT OF APPEALS OF IOWA

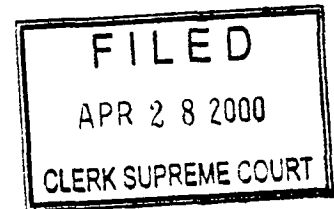
No. 1999-498 (9-755) / 99-0328

Filed April 28, 2000

**GWENDY EHRET, on Behalf of
CAITLIN ELIZABETH ROWELL,**
Petitioner-Appellee,

vs.

TODD BURTON,
Respondent-Appellant.



Appeal from the Iowa District Court for Sac County, Gary L. McMinimee,
Judge.

The respondent appeals a district court judgment entry in petitioner's
paternity action which ordered him to pay \$52,140 in past child support and
maintenance. **AFFIRMED.**

Willis J. Hamilton of Hamilton Law Firm, P.C., Storm Lake, for appellant.

Colin J. McCullough of McCullough Law Firm, Sac City, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

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HECHT, J.

The respondent-appellant, Todd Burton ("Burton"), appeals the district court judgment in his paternity action which ordered him to pay \$52,140 in past child support and maintenance. Burton claims the district court: abused its discretion in failing to make factual findings of the child's needs pursuant to Iowa Code section 600B.25 (1997) prior to calculating past-due child support; and failed to apply the doctrine of laches to preclude the petitioner, Gwendy Ehret ("Ehret"), from raising her eleven-year-old claim for child support. We affirm.

I. Factual Background and Proceedings. In March 1998, Ehret filed a paternity and child support action against Burton, alleging he was the father of her eleven-year-old daughter, Caitlin. Ehret claimed Burton was obligated to pay for the necessary maintenance, education, and support of Caitlin as well as the expenses of pregnancy and confinement under Iowa Code section 600B.25. Testing established Burton was Caitlin's father and he did not contest paternity at trial. Following trial, the district court issued an order setting monthly child support at \$395 under current child support guidelines, and requiring Burton to pay \$52,140 for past child support and maintenance (\$395 x 133 months). The district court denied Burton's 179(b) motion.

On appeal, Burton claims the district court erred in failing to make fact-finders from which it could determine whether the current child support guidelines were the appropriate means of calculating past-due support. Burton argues Iowa Code section 252A.3(9) requires the court to examine the circumstances surrounding the child's birth prior to setting child support. He

argues it is inappropriate for the court to assess a child support liability based on the current child support guidelines when Ehret failed to offer any evidence of her expenses raising Caitlin. Burton also claims the district court erred in failing to apply the doctrine of laches to preclude Ehret from filing such a claim eleven years after Caitlin's birth. He maintains he was prejudiced by Ehret's unreasonable delay in asserting her claim.

Ehret responds Burton did not plead the doctrine of laches as an affirmative defense and should not be allowed to claim the passage of time unduly prejudiced him. Burton responds the issue was raised at trial and ruled upon by the court, even though not pled as an affirmative defense.

II. Standard of Review. Our review of paternity actions under chapter 600B is for errors at law. *Callender v. Skiles*, 591 N.W.2d 182, 184 (Iowa 1999). However, we review decisions ancillary to the question of paternity, such as support, de novo. *Mason v. Hall*, 419 N.W.2d 367, 369 (Iowa 1988) (applying Iowa Code chapter 675 (1981), recodified in 1983 as chapter 600B).

III. Merits. Although Iowa Code section 600B.25 seems to suggest both "accrued and accruing" support are to be calculated with reference to 598.21(4) (the guidelines), our court has affirmed a "below guidelines" child support award retroactive to a date more than six years after a child's birth in a case where the father argued that was the first time he was aware the mother claimed he was the father, and where both parents had financial difficulties. See *State ex rel. Schaaf v. Jones*, 515 N.W.2d 568, 571 (Iowa App. 1994) (the court entered judgment for child support arrearages commencing on the date the action was

filed rather than the child's date of birth because of severe financial problems of the parties). The district court proceedings in the case before us were not reported, so we have no transcript for review. The exhibits offered only relate to the current financial circumstances of the parties. If Burton had presented evidence of financial distress at times between the date of the child's birth and the paternity trial, he might have had a basis to claim support should not commence at the date of birth; and the monthly support obligation should be less than indicated by the current guidelines. Although we are sympathetic to Burton's situation, we have no factual basis on this meager record to conclude the support obligation calculated from the current guidelines is inequitable.

Burton also argues Ehret had the burden to present evidence of the actual costs incurred in raising Caitlin. He bases his argument on two cases from North Carolina, *McCullough v. Johnson*, 454 S.E.2d 697, 698 (N.C. Ct. App. 1995) (holding an award of retroactive child support must include the actual expenditures made on behalf of the child) and *Lawrence v. Tise*, 419 S.E.2d 176, 183 (N.C. Ct. App. 1992) ("The calculation of retroactive child support, . . . focuses on the amount of monies actually expended by the custodial parent on the child."). We decline to adopt North Carolina's approach under the facts of this case because we find no support for it in the applicable Iowa statutes and common law.

Finally, Burton claims laches should bar Ehret's request for support. For purposes of our analysis we assume, without deciding, the district court properly considered Burton's laches claim even though it was not pled as an equitable