IN THE COURT OF APPEALS OF IOWA

No. 7-334 / 96-641

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STATE OF IOWA ex rel.,
SHAWN STONEHOCKER,

Petitioner-Appellee,

vs.

RICK D. CONGER,

Respondent-Appellant.

FILED
SEP 24 1997

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Rick Conger appeals from the district court's order finding him to be the father of Shawn Stonehocker, ordering him to pay child support, and ordering him to reimburse the State for accrued assistance provided for Shawn's care. **AFFIRMED AS MODIFIED AND REMANDED.**

Scott M. Wood, Ankeny, for appellant.

Thomas J. Miller, Attorney General, and M. Elise Pippin, Assistant Attorney General, for appellee.

Considered by Cady, P.J., and Streit, and Vogel, JJ.

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CADY, P.J.

Rick Conger appeals from a judgment entered by the district court establishing paternity, imposing child support, establishing the amount of accrued support, and ordering reimbursement. We affirm in part and modify in part.

The Child Support Recovery Unit initiated this action to establish paternity and support on behalf of Shawn Stonehocker. Shawn was born March 14, 1985 to Jana Stonehocker. The case proceeded to trial.

Jana testified she began living with Rick in February 1984 and lived on and off with him until October 1989. She further testified they maintained a sexual relationship, including the month's of May, June and July of 1984. She believed she became pregnant in June 1994. She denied engaging in sexual intercourse with anyone other than Rick during the relevant time frame. Rick denied any sexual relationship with Jana during the months of May through July 1994. He testified he had sexual contact with Jana in September 1994. Shawn was born following a full term pregnancy.

Jana testified Rick visited her in the hospital after Shawn's birth, provided financial support to Shawn, acknowledged Shawn on his birthday and Christmas until 1990, and maintained medical insurance for Shawn for a short period of time. Rick admitted providing Jana financial support during their relationship, but denied acknowledging Shawn was his child. Rick also claims Jana told him Shawn was not his child.

The parties agreed prior to trial to blood testing to determine paternity. The results indicated Rick's chance of paternity was 97.09%. Rick objected to these results and agreed to DNA testing. The DNA tests revealed a probability of paternity of 99.52%.

Rick is a certified welder. He worked at the same job from 1988 until 1995 when his employer left the state. In 1988 he earned $7.87 per hour and by 1995 he was earning $12.62 per hour. Rick had the option of continuing to work for his employer in the new location, but declined. Instead, Rick found work which paid $10.50 per hour. He quit the job, however, after a dispute with a supervisor. After his last job, Rick failed to fill out job applications or pursue interviews. Rick claimed to suffer from tendinitis and arthritis. He nonetheless functions each day. Jana currently earns approximately $492.83 per week. She incurs child care expenses of $400 per month for Shawn.

The trial court found Rick to be Shawn's father, ordered him to pay support of $367 per month, and ordered him to pay accrued support of $23,816.06 payable at the rate of $100 per month. On appeal, Rick disputes the trial court's paternity finding. He also argues the trial court erred in determining the amount of his support obligation, the amount of reimbursement owed to the state for public assistance, and the amount of accrued support.

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I. Paternity

Actions to establish paternity are tried in equity under Iowa Code chapter 252A (1995). We review cases in equity de novo. Iowa R. App. P. 4; *Hartman by Hartman v. Stassis*, 504 N.W.2d 129, 131 (Iowa App. 1993). We examine the entire record and adjudicate anew rights on issues properly presented. *State ex rel. Blackwell v. Blackwell*, 534 N.W.2d 89, 90-91 (Iowa 1995).

To challenge blood and genetic tests, a party must file a notice of challenge with the court within twenty days after the expert's report was filed or, if a court hearing is scheduled to resolve the issue of paternity, no later than thirty days before the original hearing date. Iowa Code § 600B.41(5)(a) (1995). Any challenge filed after the time frame is not acceptable or admissible by the court. *Id.* § 600B.41(5)(a)(2). If a challenge is not timely filed, the test results are to be admitted as evidence of paternity without the need of additional proof of authenticity or accuracy. *Id.* § 600B.41(5)(a)(3). Additionally, if the expert concludes the test results show the alleged father is not excluded and the probability of the alleged father's paternity is ninety-five percent or higher, there is a rebuttable presumption of paternity and this evidence must be admitted. *Id.* § 600B.41(5)(b). A party challenging the presumption of paternity has the burden of proving the alleged father is not the father of the child. *Id.* § 600B.41(5)(b)(2). The presumption of paternity can only be rebutted by clear and convincing evidence. *Id.* § 600B.41(5)(b)(3).

In this case, Rick filed a timely objection to the blood test results, but failed to timely object to the DNA test results. We will therefore consider his challenge to the blood testing, but accept the DNA testing as evidence of paternity without the need of additional proof of authenticity or accuracy pursuant to Iowa Code section 600B.41(5)(a)(3).

The use of blood grouping tests to establish paternity is highly probative *Hartman by Hartman*, 504 N.W.2d at 131; *Little v. Streater*, 452 U.S. 1, 6-7, 101 S.Ct. 2202, 2206, 68 L. Ed.2d 627, 633 (1981). Because sexual activities usually take place in private surroundings, reliable eyewitnesses are seldom found and the self-serving testimony of the parties is of questionable reliability. *Little*, 452 U.S. at 8, 101 S Ct. at 2206, 68 L. Ed.2d at 632-34. Additionally, blood and genetic test results are highly persuasive in paternity proceedings where the results show a high degree of probability the defendant is the father. *State ex rel. Hodges v. Fitzpatrick*, 342 N.W.2d 870, 873 (Iowa App. 1983).

Rick argues against some of the basic assumptions underlying the blood and genetic testing. The blood test assumes there is a 50% probability Rick is the father and a 50% probability he is not the father. Rick contends the testing should use calculations of 0% or of 10% probability he is the father. The expert, however, performed the analysis of the blood test administered to Rick in the standard accepted manner and Rick cites no authority to dispute his methodology. Moreover, the 50% probability neither favored nor disfavored Rick as the father.

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Rick also faults the underlying premise used in the analysis that Rick and Jana had sexual intercourse. Substantial evidence in the record exists, however, Rick and Jana had a sexual relationship. Although the parties disagree about dates, times, and the exact nature of their relationship, both admit they had a sexual relationship. After considering the testimony of the parties and the blood and genetic testing, we conclude Rick is Shawn's father. We find no error in the trial court's determination of paternity.

II. Child Support

We review the district court's child support order de novo. *State ex rel. Miles v. Minar*, 540 N.W.2d 462, 464 (Iowa App. 1995); *see also Blackwell*, 534 N W 2d at 90-91.

The child support guidelines are strictly followed in determining a parent's child support obligation. *State ex rel. Reaves v. Kappmeyer*, 514 N.W.2d 101, 104 (Iowa 1994). The scheduled amount, however, may be altered to provide for the needs of the children or do justice between the parties under the special circumstances of the case. *Id.* Each parent must pay in accordance with his or her ability to pay. *Iowa Dept. of Human Serv. ex rel. Gonzales v. Gable*, 474 N.W.2d 581, 583 (Iowa App. 1991). Further, in determining earning capacity, we may disregard a temporary condition such as unemployment, and determine monthly income based upon income prior to unemployment. *In re Marriage of Powell*, 474 N.W.2d 531, 533 (Iowa 1991).

In determining child support or modification of a support order, a party may not claim inability to pay child support when that inability is self-inflicted or voluntary. *In re Marriage of Foley*, 501 N.W.2d 497, 500 (Iowa 1993). This self-infliction rule applies equitable principles to the determination of child support in order to prevent parents from gaining an advantage by decreasing their earning capacity to pay support through improper intent or reckless conduct. *Id.* Conversely, we have recognized situations where the noncustodial parent has experienced a decrease in income which is not self-inflicted. *Id.*, *see In re Marriage of Ober*, 538 N.W.2d 310, 313 (Iowa App. 1995) (husband's voluntary move to another city which resulted in a pay decrease was not a voluntary reduction in income); *In re Marriage of Drury*, 475 N.W.2d 668, 672 (Iowa App. 1991) (court refused to penalize parent who was discharged from the military after refusing to comply with weight limits); *In re Marriage of Fidone*, 462 N.W.2d 710, 712 (Iowa App. 1990) (court did not punish parent who lost his job and refused to move 1,200 miles to take another job with less security).

Rick argues the trial court erred in basing his support calculations on his income at his long-time place of employment where he earned $12.62 per hour. He claims instead the court should have considered his subsequent earnings at $10.50 per hour and his current unemployment status. In *In re Marriage of Fidone*, we did not punish a parent who lost his job and refused to move 1,200 miles to take another job with less security. *In re Marriage of Fidone*, 462 N.W.2d 710, 712 (Iowa App.

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1990). Similarly, in this case we decline to punish Rick for not moving with his former employer to another state. However, after Rick lost his job he gained employment at $10.50 per hour He then lost this job after engaging in an argument with a supervisor and has since failed to apply for any other jobs or procure any other job interviews.

We recognize the loss of a job due to insubordination may not make the loss of income self-inflicted. *In re Marriage of Foley*, 501 N.W.2d 497, 500 (Iowa 1993) The parent in *Foley*, however, diligently began searching for another job after his discharge. *Id.* In the present case, Rick has not diligently pursued employment. To the contrary, he admitted he has not sought any new positions. We find the appropriate basis for determining Rick's support payments to be his salary at the job he quit. We know from his past earnings he can earn at least $10.50 per hour with his skills. Rick's current support payments should therefore be based on the $10 50 per hour wage he earned at his most recent job. We remand to the trial court to determine Rick's net monthly income based on an hourly wage of $10.50 and to apply child support guidelines. Child support as ordered by the trial court shall continue until the modification is made.

III. Accrued Support for Public Assistance

An applicant for assistance under Iowa Code section 239.3(1995) is deemed to have assigned to the department of human services all rights to periodic support payments to the extent of public assistance received by the applicant and other

persons covered by the application When the state gives support to a dependent, it has the right to secure reimbursement for support given. *See State ex rel. Heidick v Balch*, 533 N.W.2d 209, 212 (Iowa 1995) (court recognized State's recouping of AFDC benefits as legitimate); *In re T.Q.*, 519 N.W.2d 105, 107 (Iowa App 1994) (State entitled to recovery of AFDC support payments for child); *State ex rel. South Dakota v Riemenschneider*, 462 N W 2d 686, 688-89 (Iowa App 1990) (State can still seek reimbursement for support when child's grandmother sought ADC support), *Dept. of Human Services v. Arledge*, 445 N W 2d 416, 418 (Iowa App 1989) (father directed to reimburse State for public assistance payments even when child was not residing with mother).

Rick first questions Jana's ability to qualify for public assistance He does not, however, point to any specific facts which would disqualify her. Jana's testimony and her receipt of assistance satisfies us that she qualified for assistance

Rick next contends he should not be required to reimburse the State for public assistance funds it advanced on behalf of Shawn for the three months Shawn resided with Jana's daughter. This logic is not supported by Iowa law. Regardless of where Shawn was living, Rick, as the father, still had an obligation to support his son. This obligation does not change merely because Shawn lived with his sister and not his mother for three months. *See Arledge*, 445 N.W.2d at 418.

IV. Accrued Support Judgment

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Our child support enforcement laws contemplate reimbursement for past support as well as the imposition of a support obligation. *See State ex rel. Hammons v. Burge*, 503 N.W.2d 413, 416 (Iowa 1993); *Foreman v. Wilcox*, 305 N.W.2d 703, 704 (Iowa 1981). Thus, a support award may include support from the date of the child's birth until adjudication of paternity. *State ex rel. Hammons*, 503 N.W 2d at 416.

The district court determined Rick must pay $23,816.06 in total accrued support. This amount was assessed from Shawn's birth and included reimbursement to the State for public assistance in the amount of $6529.72. Rick claims there was insufficient evidence of his net income to determine accrued support for the years 1992 to 1995 We disagree considering Rick's earning capacity and the number of years he was obligated to support Shawn. We find the total accrued amount to be reasonable.

AFFIRMED AS MODIFIED AND REMANDED.