

IN THE COURT OF APPEALS OF IOWA

FILED

APR - 8 1983

CLERK SUPREME COURT

STATE OF IOWA ex rel.
SHANNON WOLFF SCHRIEBER,) Filed April 8, 1983
)

Petitioner-Appellant,

)

vs.

KIRBY GRONBECK,

)

2-523
2-68428

Respondent-Appellee.

)

)

Appeal from Palo Alto District Court, James H. Andreasen, Judge.

Petitioner appeals from an adverse decree in an action to establish paternity and obtain support pursuant to Iowa Code chapter 252A (1983), contending that the trial court erred in refusing to consider blood test results and in finding the evidence insufficient to establish respondent's paternity. AFFIRMED.

Peter C. Hart, Assistant Palo Alto County Attorney, for petitioner-appellant.

Robert Boyd Griffith, Emmetsburg, for respondent-appellee.

Considered en banc.

PER CURIAM

Petitioner Shannon Walff Schrieber appeals from an action to establish paternity and obtain support pursuant to Iowa Code chapter 252A (1983). Petitioner is the mother of Todd Wolff, who was born out of wedlock in December 1977. When she became a recipient of ADC payments, the State instituted this action under chapter 252A, asking that respondent Kirby Gronbeck be declared the child's father.

At trial petitioner sought to introduce into evidence the results of blood tests performed on the mother, child, and alleged father. Respondent objected on foundational grounds, claiming that the chain of custody of the blood samples was not established and that the report of the test results was not properly verified. The trial court ruled that these foundational objections were meritorious and hence refused to consider the blood test results. The court further concluded that petitioner had not met its burden of proving by a preponderance of the evidence that respondent was the child's father. On appeal petitioner challenges the exclusion of the blood test results and the conclusion that the evidence was insufficient to establish paternity.

Since petitioner properly filed this action under chapter 252A, the matter was heard in equity, and our review is de novo. Iowa Code § 252A.6(1); Greenstreet v. Clark, 239 N.W.2d 143, 147 (Iowa 1976). Accordingly, we give weight to the findings of the trial court, particularly when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Iowa Code § 675.41 provides for the admission of blood test results in proceedings to establish paternity at law or in equity. That section specifies:

Verified documentation of the chain of custody of the blood specimens is competent evidence to establish the chain of custody. A verified expert's report shall be admitted at trial unless a challenge to the testing procedures or the results of blood analysis has been made before trial.

Iowa Code § 675.41 (emphasis added). Because there was no evidence that the expert's report had been "verified" in this case, the trial court properly excluded the test results from evidence. In previous cases a requirement of verification has been found to have been met by an affidavit, Foresters v. Scott, 223 Iowa 105, 123, 272 N.W. 68 (1937), and by a notary's certificate with attendant statement that the person who signed the statement had acknowledged that he executed the instrument as a voluntary act, Dalbey Brothers Lumber Co. v. Crispin, 234 Iowa 151, 155, 12 N.W.2d 277, 279 (1943). No similar documentation was filed in the instant case.

Petitioner cites as authority State ex rel. Buechler v. Vinsand, 318 N.W.2d 208 (Iowa 1982), in which the Iowa Supreme Court held that the trial court erred in excluding evidence of blood test results under similar circumstances. The essential distinction between that case and the one before us, however, is that there the statutory requirements, including verification, were met. In Buechler an affidavit was executed by the supervising physician documenting the chain of custody. It is interesting to note that Dr. Herbert F. Polesky was the supervising physician in both Buechler and in the instant case, and that the explanatory letters he wrote in both cases were virtually identical; however, in Buechler the letter was accompanied by an affidavit and in the instant case it was not.

We find this defect to be fatal. Contrary to petitioner's apparent interpretation of section 675.41, the verification requirement must be met regardless of whether a challenge to the testing procedures or result is made before trial. Absent verification, the test results are not admissible. In the absence of the test results, the only evidence of paternity presented at trial was the testimony of petitioner that she had sexual relations with respondent on a

specific date in 1977, and that there is some physical resemblance between respondent and the child. Respondent denied these allegations. On our de novo review we give weight to the trial court's findings, particularly regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). We conclude that petitioner has failed to sustain the burden of proving paternity by a preponderance of evidence, State ex rel. Brown v. Middleton, 259 Iowa 1140, 1141, 147 N.W.2d 40, 41 (1966), and therefore affirm the trial court's decision.

AFFIRMED.