

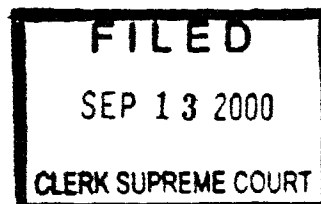
IN THE COURT OF APPEALS OF IOWA

No. 0-517 / 00-72
Filed September 13, 2000

**IN RE THE MARRIAGE OF RICHARD C. PIEPER
And JANE L. PIEPER,**

**Upon the Petition of
RICHARD C. PIEPER
Petitioner-Appellee,**

**And Concerning
JANE L. PIEPER,
Respondent-Appellant.**



Appeal from the Iowa District Court for Crawford County, Richard J. Vipond, Judge.

On appeal from a ruling determining her child support delinquency, the appellant argues her support obligation ceased when she filed a notice of her unemployment with the clerk of court. **AFFIRMED.**

Bradley J. Nelson of Norelius & Nelson, Denison, for appellant.

Julie A. Schmacher of Mundt, Franck & Schumacher, Denison for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

VAITHESWARAN, J.

Jane Pieper appeals a ruling on her application to determine the amount of her child support delinquency. Under the terms of a modified dissolution decree, her obligation to pay child support was to cease if she notified the clerk of court she lost her job. The question we must decide is whether Jane's notice of her unemployment filed with the clerk but not served on opposing counsel or her former spouse was sufficient to abate her child support obligation. Like the district court, we conclude it was not, and, accordingly, we affirm.

I. Background Facts and Proceedings

Richard and Jane Pieper divorced in 1987, with Richard assuming primary care of the parties' two daughters and Jane incurring no support obligation. Richard subsequently applied for support. Pursuant to a stipulation approved by the court, Jane was to pay the Child Support Recovery Unit \$75 per month on behalf of her two children. The stipulation and order, however, contained the following limitation:

[I]n the event the said Respondent is no longer employed and does not have other suitable employment at like wages, this Stipulation as to Child Support shall cease upon notification to the Clerk of District Court in and for Crawford County.

Jane paid support for approximately two years. She then resigned her job to obtain mental health treatment and simultaneously stopped her support payments. Jane did not immediately notify the clerk of court of this change in circumstances. When she filed her notice of unemployment approximately two years after resigning her job, she neglected to serve the notice on Richard or his attorney.

Meanwhile, Richard took no action to enforce his right to support until nine years after the support payments became delinquent. In 1999, the district court entered a mandatory income withholding order for \$8025 in back-due support. However, the court subsequently quashed the order due to noncompliance with notice provisions.

Believing Richard would seek another mandatory income withholding order, Jane preemptively filed an "application to determine support delinquency." Pursuant to the terms of the stipulation cited above, she asserted her arrearage ended when she notified the clerk of her unemployment. The district court rejected this assertion, concluding the notice of unemployment was void in the absence of service on Richard. The court concluded Jane owed Richard \$9675 minus the \$2225 she paid, leaving a balance of \$7450. This appeal followed.

II. Effect of No Service

Jane readily concedes what is essentially legal dogma: documents filed with the court must also be served on the opposing party. Iowa R. Civ. P. 82(a).¹ She acknowledges she did not serve Richard or his attorney with the notice of her unemployment status, but maintains she did not need to. Specifically, she contends: (1) Rule 82(b) authorized alternate service of the document by the

¹ At the time Jane attempted to file her notice, Rule 82(a) stated:

Everything required by these rules to be filed, every order required by its terms to be served, every pleading subsequent to the original petition unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. Iowa R. Civ. P. 82(a)(1992). The rule was incorporated into Rule 106 in 1998.

clerk of court; (2) she was ignorant of any contrary rule; (3) Richard had actual knowledge she was unemployed; and (4) Richard was not prejudiced by Jane's failure to mail the notice. Richard counters that rule 82(a), by its terms, required Jane to serve him with the notice.

The parties, therefore, dispute whether the district court correctly applied Iowa Rule of Civil Procedure 82 to the essentially undisputed facts of this case. Preliminarily, we note the rules of civil procedure have the force and effect of a statute. *Krebs v. Town of Manson*, 256 Iowa 957, 129 N.W.2d 744, 746 (1964). Accordingly, our review is for errors of law. See *In re Marriage of Carr*, 591 N.W.2d 627, 628 (Iowa 1999) (noting general de novo review of support matters does not apply to issue of statutory interpretation in face of undisputed facts). We will separately address each of Jane's reasons for believing rule 82(a) was incorrectly applied.

A. Alternate Service. Rule 82(b) authorizes service on the clerk of court if the attorney or party's address is unknown. Jane posits that this provision absolved her of responsibility for serving the notice of unemployment on Richard. However, rule 82(b) presupposes Jane attempted service of some kind on Richard. There is no evidence she did so. Additionally, the alternate service provision contained in rule 82(b) is triggered only if a party's address is unknown. There is no evidence to suggest either Richard's or his attorney's address was unknown. Indeed, the court file contains the address of the family home which was awarded to Richard, as well as the address of Richard's modification attorney. Therefore, the record suggests Jane could have obtained direct service

on Richard or his attorney with only minimal effort. Because she made no effort to do so, she could not avail herself of the alternate service provision.

B. Ignorance of the Law. Jane also contends she did not know and could not have known she was required to serve the notice on Richard, because this requirement was omitted from the court's support order. Jane's ignorance of the service requirement is no excuse; we have held individuals who choose to represent themselves to the same standards governing lawyers. *See In re Estate of DeTar*, 572 N.W.2d 178, 180 (Iowa App. 1997). It is true neither the stipulation concerning child support nor the implementing order specified that the notice of her unemployment status needed to be served on opposing counsel. However, we deem this principle so well entrenched as to be implicit in every order requiring the filing of a document. *See Holmes v. Polk City Savings Bank*, 278 N.W.2d 32, 34 (Iowa 1979). Accordingly, we cannot conclude the stipulation or follow-up order misled Jane into believing service on Richard or his attorney was not required.

C. Actual Knowledge. Jane next asks us to ignore her failure to serve Richard because, in her view, he had actual knowledge she was unemployed or he could have determined her status with reasonable inquiry. We decline to do so. First, the record belies Jane's assertion Richard had actual knowledge of her unemployment.² Second, even where an opposing party has actual knowledge,

² The testimony, in pertinent part, was as follows:

Q: At the time she filed the notice were you aware that she had done so? A: No.

Q: Approximately when did you find out she filed a notification? A: When the first hearing was to go back to get child support.

Q: Okay. It would be approximately the time opposing counsel filed a motion to quash child support? A: Right.

Q: In 1999? A: Yes.....

our courts require compliance with notice requirements. See *Henry v. Shober*, 566 N.W.2d 190, 192 (Iowa 1997) (holding service of original notice and petition required even where insurer had actual notice plaintiffs intended to sue); *Eastern Iowa Light & Power Co-op. v. Interstate Power Co.*, 164 N.W.2d 135, 138 (Iowa 1969) (holding notice of appeal to district court from administrative action had to comply with statutory requirements even where agency had actual knowledge from other sources); *Bice v. Incorporated City of Urbandale*, 258 Iowa 1013, 1015, 141 N.W.2d 639, 640 (1966) (noting defendant's presumed knowledge would not supply information which law required in an original notice); *Krebs*, 129 N.W.2d at 747 (noting defendants' knowledge of lawsuit from outside sources did not obviate need for plaintiff to serve comprehensive original notice). Third, rule 82(a) does not place the onus on the non-filing party to determine what documents have been filed. *Krebs*, 129 N.W.2d at 747 (quoting *Parkhurst v. White*, 254 Iowa 477, 118 N.W.2d 47, 50-51 (1962)). As the Iowa Supreme Court stated in reference to another notice provision, "[t]he rule says what it means and means what it says." *Bice*, 141 N.W.2d at 640. We believe this statement applies equally to rule 82(a). Therefore, Richard had no obligation to search the court file or otherwise independently determine Jane was unemployed.

Finally, the cases cited by Jane in support of her argument are inapposite. In *Breitbach v. Christenson*, 541 N.W.2d 840, 845 (Iowa 1995), the notice at

Q: The fact that this support terminated or quit coming to you in May 30, 1990, didn't alarm you in any regard? A: No, it did not.

Q: Okay. Did you think maybe that termination was due to this paragraph 2 in your agreement? A: No, I did not. I thought that, like I said, I wasn't making much money, and I guess I was a little proud. I said I can do this without help.

issue was a notice of intent to sell real estate. There was no question the notice in *Breitbart* was properly served. Indeed, the court charged one of the parties with actual knowledge of a particular fact contained in the notice. Here, in contrast, Richard could not have been charged with actual knowledge of anything in the notice of unemployment because he never received it. Similarly, in *Millowners' Mut. Life Ins. Co. v. Goff*, 210 Iowa 1188, 1189, 232 N.W. 504, 506-507 (1930), the absence of service was not at issue. Instead, the court held a party could be charged with notice of a filed, indexed, and recorded prior mortgage, a well established principle of real estate law having no bearing on compliance with rule 82(a). *Id.* at 505, 210 Iowa at 1189. For these reasons, we reject Jane's actual notice argument.

D. Prejudice. Relying on *Shirk Oil Co. v. Peterman*, 329 N.W.2d 13 (Iowa 1983), Jane finally contends Richard suffered no prejudice by her failure to serve him with the unemployment notice. In *Shirk*, a defendant served a motion for summary judgment on the party but not on the party's attorney. The court held "the mailing of a motion to a party rather than to his attorney is not jurisdictional and does not deprive the court of power to proceed unless the party sustains prejudice as a result of the mailing to the party." *Shirk Oil*, 329 N.W.2d at 15.

Applying *Shirk*, the district court concluded Jane's failure to serve the notice "clearly resulted in prejudice... ." The court reasoned, " [b]ecause he had no knowledge of the document's existence, the petitioner lost the opportunity to take timely action in response to the document. He lost the opportunity to seek modification of the decree to reestablish a child support obligation."

Here, neither Richard nor his attorney received notice of any kind. Under these circumstances, we conclude prejudice is presumed. However, even if a showing of prejudice were required, we agree with the district court that such a showing was made and we adopt the court's findings concerning this issue.

We conclude rule 82(a) required Jane to serve Richard with the unemployment notice. Because she failed to do so, the notice is void and Jane is obligated to pay support in the amount found by the district court.

III. Attorney Fees

Richard asks us to require Jane to pay his appellate attorney fees. This decision rests within our sound discretion. *In re Marriage of Bell*, 576 N.W.2d 618, 625 (Iowa App. 1998). We award Richard \$500.

The district court decision is affirmed.

AFFIRMED.