IN THE COURT OF APPEALS OF IOWA

No. 1-318 / 90-1849

FILED
OCT 29 1991
CLERK SUPREME COURT

DENNIS W. ARMSTRONG,

Appellee,

vs.

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MICHELLE RENEE BUCHOLZ, a/k/a **MICHELLE RENEE HALL,**

Appellant.

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

Michelle Bucholz appeals a district court order entered without a hearing of record or stipulation. **VACATED AND REMANDED.**

Maynard S. Telpner of Telpner, Smith, Sawatzke & Ruesch, Council Bluffs, for appellant.

Joseph J. Hrvol, Council Bluffs, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

PER CURIAM

On May 17, 1990, Dennis Armstrong filed an application for custody pursuant to Iowa Code chapter 598A. He alleged he and Michelle Bucholz, though not married, were the natural parents of Shane, born March 18, 1989. The application requested the parties be granted joint custody, with physical custody remaining with Michelle. Dennis also requested the court grant him reasonable and liberal visitation with Shane. He later amended to seek primary care of the child.

Michelle answered. She alleged Dennis was verbally and physically abusive to her and would not be a fit parent. Michelle requested sole custody of Shane. She asked the court restrain Dennis from any acts of harassment or violence towards her or Shane. She also requested Dennis be held responsible for all medical expenses for the birth of Shane in the amount of $2,500. Michelle also requested Dennis be obligated to pay child support.

The matter came before the court on September 10, 1990. However, no hearing was held. Instead, the trial court apparently conferred with the parties' attorneys. A proposed stipulation was prepared by Dennis's attorney. Michelle refused to sign the proposed stipulation.

On October 24, 1990, the district court entered its final decree, again without a hearing. The order signed by the judge was essentially the proposed stipulation which

Michelle had refused to sign.[1]

Michelle, through new counsel, filed numerous posttrial motions. Michelle maintained she never signed any agreements concerning custody, visitation, or child support. She claims the entry of the final decree was a surprise to her. Michelle argued she had agreed to different visitation from that provided in the decree. She alleges she was never informed she was entitled to past support and maintenance.

The district court, in a calendar entry, overruled all Michelle's posttrial motions. Michelle appeals both the October 24 final decree and the November 20 order overruling her posttrial motions.

Michelle argues she never gave her attorney authority to settle the dispute, never signed the proposed stipulations, and made no court appearance. Michelle maintains in essence the district court adopted a stipulation never agreed to. Michelle also contends the district court erred in failing to vacate the decree pursuant to Rule 252, since the decree was entered pursuant to irregular circumstances.

Michelle asserts the trial court erred in failing to grant a new trial since there is insufficient evidence to

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1. Dennis, the appellee here, appears to agree in his appellate brief with Michelle's basic version of the course of proceedings, namely: 1) no formal hearing was held on the merits of this case, 2) Michelle refused to sign the proposed stipulation, and 3) the order signed by the trial court was essentially the proposed stipulation prepared by Dennis' attorney.

support the final decree. Michelle points out pursuant to Iowa Code section 675.1 (1989), a father is liable to pay the expenses of the mother's pregnancy, and the provisions of the decree ordering the sharing of these expenses is contrary to law. Michelle asserts the trial court erred in failing to grant her application for a Rule 179(b) enlargement of finding and conclusions, since the court denied the motion without a hearing.

Our review is de novo. Iowa R. App. P. 4.

The problem facing this court is there is no evidence of record. The trial court signed its order without a hearing. There was no agreement, as Michelle refused to sign the proposed stipulation. Therefore, there is nothing for us to base our de novo review upon.

We determine the trial court's ruling is not supported by the evidence. As there is essentially no record for us to review, neither can we fashion a de novo ruling at the appellate level. We therefore vacate the decision of the trial court and remand for a full hearing on the merits.

VACATED AND REMANDED.