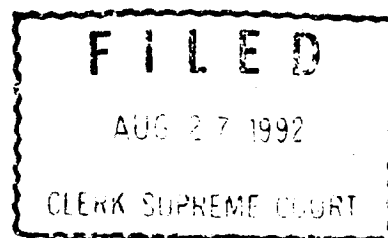


IN THE COURT OF APPEALS OF IOWA

No. 2-188 / 91-1415



IN RE THE MARRIAGE OF SABRINA YANDA AND RICK YANDA

Upon the Petition of
SABRINA YANDA,

Appellee,

And Concerning
RICK YANDA,

Appellant.

Appeal from the Iowa District Court for Tama County,
Thomas L. Koehler, Judge.

Rick appeals a district court decision overruling his motion to quash an order of mandatory wage assignment for delinquent child support. **AFFIRMED.**

Nancy L. Burk, Toledo, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Kay Delafield, Assistant Attorney General, and Sandra Wagner, Assistant County Attorney, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett,
JJ.

PER CURIAM

Pursuant to a dissolution decree entered August 28, 1981, Rick Yanda was to pay child support to Sabrina Yanda for the couple's minor child, Christina. In August of 1982 the couple and their child resumed living together. The couple separated in November of 1990, and Christina was placed in foster care until April of 1991. Christina turned eighteen on August 19, 1991, which was prior to trial.

On March 14, 1991, the State filed a notice of mandatory wage assignment against Rick for delinquent child support. On June 7, 1991, Rick moved to quash the State's mandatory wage assignment on the basis the order contained a mistake of fact. See Iowa Code § 252D.2 (1991). Rick contended the order erroneously claimed he was delinquent in child support payments. Rick argued the support was current because he had supported Sabrina and Christina during the period in which they lived together.

On August 20, 1991, the district court overruled Rick's motion to quash. Before any evidence was presented, the district court determined Rick was seeking to modify the original dissolution decree by eliminating a past due child support obligation. The district court found it would be exceeding its jurisdiction because the action to quash actually converted into a modification proceeding. The district court based its decision on In re Marriage of Mills, 441 N.W.2d 416 (Iowa App. 1989).

Rick appeals the district court's decision overruling his motion to quash. The basis of his argument is the assignment order contained a mistake of fact with regard to delinquency; Rick alleges the order incorrectly claims he failed to pay support during the period in which he, Sabrina, and Christina lived together.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

We find the district court's reliance on Mills was misplaced because the case at bar does not involve an attempt to modify. Rick is requesting an opportunity to prove he is not delinquent in child support payments. In Mills the noncustodial parent sought to have his child support arrearage setoff by an amount owed to him by his former wife due to an unpaid property settlement under their dissolution decree. Mills, 441 N.W.2d at 417. We held a setoff would be an improper exercise of jurisdiction because it requires a modification of the original dissolution decree; the district court lacks authority to excuse past due and accrued child support payments. Id. at 418. Thus, we denied the setoff and reinstated the wage assignment order. Id. at 419.

The district court, however, does have jurisdiction to hear evidence regarding whether a mandatory wage assignment contains an alleged mistake of fact. On appeal, Rick argues State ex rel. Wagner v. Wagner is the dispositive case. The facts of Wagner did not involve a modification. State ex rel. Wagner v. Wagner, 480 N.W.2d 883, 885 (Iowa 1992). In Wagner the State filed a notice of mandatory wage assignment against the former husband for delinquent child support. Id. at 884. The obligor moved to quash the order of assignment pursuant to Iowa Code section 252D.2, which specifically provides a person whose wages are subject to mandatory withholding may move to quash the order of assignment "upon a showing of mistake of fact relating to the delinquency." Iowa Code § 252D.2 (1991). The Iowa Supreme Court quashed the State's order for a mandatory wage assignment against former husband. Wagner, 480 N.W.2d at 886. The court based its decision on the equitable ground the former wife had concealed the whereabouts of the children during the period of the former husband's support obligation. Id. at 884. In interpreting section 252D.2, the court stated the section must be construed broadly to protect child support obligors. Id. at 885 (citing State ex rel. Keasling v. Keasling, 442 N.W.2d 118, 123 (Iowa 1989)).

The case at bar is more akin to Wagner than to Mills. Rick moved to quash the order of assignment by asserting it contained a mistake in fact as to delinquency. The alleged

mistake was Rick owed child support for the period in which the family lived together and he provided support. Wagner also asserted a mistake in fact in the order. Id. at 884. The alleged mistake was Wagner owed child support for a period in which the former wife concealed the whereabouts of their children. Id. Jurisdiction existed in both cases. Rick is not attempting to modify by a setoff, a situation in which the court lacks authority to excuse past due and accrued support. Mills, 441 N.W.2d at 418. Mills was decided in 1989, whereas Wagner was recently decided in February of 1992. Both Mills and Wagner, however, fail to address the central issue of the case at bar: Whether Rick can satisfy his child support obligation in a manner allegedly agreed to by the parties and then be made to duplicate the payments because Sabrina has refused to file an affidavit of satisfaction.

The facts of this case, however, also ask whether the evidence the district court can hear with regard to a wage assignment order includes payments made to an individual other than those listed under Iowa Code section 598.22. The Iowa Supreme Court's view on such payments is very strict. The court has held payments to the clerk of the district court or collection credit service, or an affidavit filed by the recipient acknowledging payment are the only acceptable methods by which an obligor can prove satisfaction of child support payments. In re Marriage of Caswell, 480 N.W.2d 38, 39-40 (Iowa 1992).

The case which best addresses this issue is In re Marriage of Caswell, 480 N.W.2d 38 (Iowa 1992). This decision was also decided in 1992. In Caswell the divorced couple resumed living together after their marriage was dissolved by the court. Id. at 38. The obligor alleged he was not delinquent because he supported the family during the period in which they lived together. Id. at 39. The district court allowed the obligor to submit an itemized list of expenditures allegedly made while the couple lived together, and held in favor of the obligor. Id. The Iowa Supreme Court reversed the district court and held "[p]ayments to entities other than [the clerk of the court or the] collection services center could not be considered in deciding whether former husband was in default on support payments." Id. at 38. The supreme court clearly resolved this issue based on the fact the former spouse failed to make support payments to the proper institution pursuant to Iowa Code section 598.22. The court acknowledged the district court's attempt to equitably balance the father's obligations with his general payments toward their discharge; however, it noted there is no statutory allowance for this approach." Id. at 40 (emphasis added). Section 598.22 of the Iowa Code clearly states:

Payments to persons other than the clerk of the district court and the collection services center do not satisfy the support obligations created by the orders or judgments

Iowa Code section 598.22A provides an exception to this method of satisfying support payments. The section allows a noncustodial parent to receive credit for support payments when the recipient submits an affidavit to the court, which it approves and the clerk records. Iowa Code § 598.22A(1) (1991). This exception, however, fails to protect Rick because Sabrina refused to file an affidavit confirming receipt of support payments. In order to receive credit, Rick needed to make payments pursuant to the statute or Sabrina was required by statute to submit an affidavit. Neither action was taken. The couple's attempt at reconciliation and alleged agreement regarding payment of support does not excuse a "failure to comply with the plain language of the decree, or the express intent of Iowa Code provisions." See Dwyer v. Clerk of District Court, 404 N.W.2d 167, 171-72 (Iowa 1987) (Reynoldson, J., dissenting).

When a party alleges mistake of fact in a wage assignment order, the district court has the jurisdiction to hear evidence. However, in this case the mistake upon which Rick attempted to submit evidence is he had in fact supported Sabrina and Christina while they were living together. The Iowa Supreme Court disfavors the admission of this type of evidence in a wage assignment proceeding. The Iowa Supreme Court has a rigid statutory interpretation with regard to child support payment. The supreme court has been strict in its interpretation of the statute and

holds payment is acceptable only if made to the clerk of the district court or collection services center, or the obligee submits an affidavit. Caswell, 480 N.W.2d at 39-40. We are constrained to so hold here.

AFFIRMED.