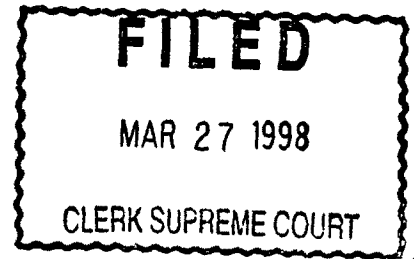


IN THE COURT OF APPEALS OF IOWA

000359

No. 7-774 / 97-0538
Filed March 27, 1998



DIANA JOYCE SMITH,
Appellee,

vs.

TROY WILKIE,
Appellant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker and
William J. Pattinson (post-trial motions), Judges.

Wilkie appeals from a finding of paternity and the entry of an order for child
support. **AFFIRMED.**

Troy Wilkie, Marshalltown, pro se.

Michael J. Moon of Moon Law Office, Marshalltown, for appellee.

Considered by Cady, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Troy Wilke appeals from the district court's judgment determining paternity and ordering child support for his child, Dalton. He argues the district court erred by failing to order blood or genetic testing to aid in its paternity determination. He also argues the district court should have deviated from the child support guidelines in determining his support obligation.

I. Background Facts & Proceedings.

Wilke was named by the child's mother, Diana Smith, as the father of her child, Dalton, based on exclusive sexual intercourse with Wilke at the time of conception. Wilke admitted intercourse with Diana within the relevant time period, but denied paternity. Another male named as a potential father by Diana was earlier excluded by genetic testing.

On December 9, 1997, the district court entered a scheduling order setting trial for March 13, 1997. On March 10, 1997, Wilke filed an obligatory pretrial statement in which he, for the first time, requested blood or genetic testing. Wilke acknowledged he was unable to pay for the test and demanded that Diana bear its cost.

In its paternity decision, the district court acknowledged Wilke's entitlement to blood or genetic testing under Iowa Code section 600B.41 (1995). The court, however, denied Wilke's request stating:

Troy's request for blood testing did not come until three days prior to trial. In addition, while requesting that testing procedures be undertaken, Troy states that he has no money to pay for such testing.

This court concludes that given the evidence at trial, blood testing is unnecessary because Diana has met her burden of proof.

Wilke was ordered to pay \$289 monthly child support based on the parties' respective net incomes of \$591 and \$1195.

II. Scope of Review.

Actions to establish or overcome paternity are triable as ordinary proceedings. Iowa Code §§ 600B.10, 600B.41A(5). Hence our review is for correction of legal error. *Dye v. Geiger*, 544 N.W.2d 538, 539 (Iowa 1996); *Mason v. Hall*, 419 N.W.2d 367, 369 (Iowa 1988) (applying Iowa Code chapter 675 (1981), recodified in 1983 as chapter 600B). We are bound by the trial court's factual findings that are supported by substantial evidence. Iowa R. App. P. 14(f)(1). The claimant has the burden to establish paternity by a preponderance of the evidence. *In re Marriage of Schneckloth*, 320 N.W.2d 535, 536 (Iowa 1982); *Moody v. Christiansen*, 306 N.W.2d 775, 777 (Iowa 1981); *Hartman v. Stassis*, 504 N.W.2d 129, 131 (Iowa App. 1993).

III. The Merits.

Iowa Code section 600B.41(1) provides:

In a proceeding to establish paternity in law or in equity the court may on its own motion and upon the request of a party shall require the child, mother, and alleged father to submit to blood or genetic tests.

Iowa Code section 600B.41(7) provides:

All costs shall be paid by the parties or parents in proportion and at times determined by the court except as otherwise provided pursuant to 600B.41A.

Because section 600B.41 is a rule of evidence, the district court's discretion to rule on evidentiary matters is implicated. *See State ex rel. Hodges v. Fitzpatrick*, 342 N.W.2d 870, 873 (Iowa App. 1983). Careful review of the district court's order discloses the reason for denying Wilke's request for testing was the untimeliness of his request. Wilke made his request three days before trial despite ninety days' advance notice of the trial date. Additionally, the testing Wilke proposed required at least two weeks to complete. We are unable to say the district court's stated reason for denying Wilke's request was an abuse of discretion. We affirm on this issue.

We have also carefully examined the record to determine if it discloses circumstances justifying deviation from the child support guidelines. None are present, and we affirm the district court on this issue.

The judgment of the district court is affirmed in its entirety.

AFFIRMED.