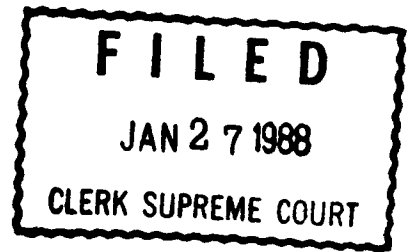


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA, ex rel. IOWA)
DEPARTMENT OF HUMAN SERVICES,)
DAVID A. SOETEBEER, on behalf of)
STACY LITWILLER,)

Petitioners-Appellees,)

vs.)

ROGER W. LITWILLER,)

Respondent-Appellant.)

Filed January 27, 1988

7-298
86-1739

270

Appeal from the Iowa District Court for Webster County (No. 51472), Newt Draheim, Judge.

The respondent appeals an order and judgment filed against him for reimbursement and future support by the State Child Support Recovery Office.

REVERSED AND REMANDED.

Blake Parker of Parker & Fors, Fort Dodge, for respondent-appellant.

Thomas J. Miller, Attorney General; Robert R. Huibregtse, Assistant Attorney General; and Ralph H. Allen, Assistant County Attorney, for petitioner-appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J.

271

Plaintiff, State of Iowa, brought an action under Iowa Code chapter 252A requesting that defendant, Roger Litwiller, be required to pay support for one of his children. The defendant appeals the trial court's ruling that Roger should be required to pay support. We reverse and remand.

Roger and Kathy were married in September of 1972. Stacy was born on February 4, 1971, prior to the marriage. Roger is not Stacy's biological father. The parties were divorced on July 11, 1983. Kathy was given custody of Stacy since Roger was not the biological father. Roger was given custody of his two biological children born during the marriage. Neither party was required to pay child support to the other.

Following the divorce, Stacy was placed in the care of her maternal grandparents. They began receiving public assistance of \$154 monthly. This amount was increased to \$163 and remains at this level. The State had paid out a total of \$6,398 at the time of trial. Kathy is required to pay \$150 per month towards support, but has only paid \$40.

Roger is a financially-distressed farmer. He has remarried and has custody of his two sons. His operating loan from the PCA is in default, and his income has been turned over to Capital Corporation ("Capital") for collection and debt management. His property, except for a car, a truck, and furniture, is secured by Capital. Capital allows yearly living expenses of \$7,800, or \$650 per month. Roger and his family have monthly living expenses of \$625 per month. Roger also has an unsecured debt of \$56,000 owed to his father.

The trial court found that Roger was liable for support and ordered him to pay \$165 per month. This case is in equity and our review is de novo. State ex rel. Blakeman v. Blakeman, 337 N.W.2d 199, 201 (Iowa 1983); State ex rel.

Foley v. Hereid, 370 N.W.2d 599, 599 (Iowa App. 1985). We give weight to the trial court's findings of fact, but are not bound by them. Iowa R. App. P. 14(f)(7).

Roger first contends he is not the father of Stacy and, therefore, he cannot be ordered to pay support under Iowa Code chapter 252A.¹ The State argues there was an adoption in fact.

The State produced a birth certificate which shows Stacy's father to be Roger Litwiller. A certified copy of a birth certificate is prima facie evidence of the facts stated therein. Iowa Code § 144.45. The evidentiary value of such a record when filed more than a year after the event, or amended, shall be determined by the court before whom the evidence is offered. Id. The presumption created by the birth certificate can be rebutted. Cf. Kuhns v. Olson, 141 N.W.2d 925, 927 (Iowa 1966); Beardsley v. Ostrander, 254 Iowa 356, 360, 118 N.W.2d 61, 63 (1962) (construing Iowa Code § 144.48 (1961)).

The trial court held that by merely denying he was the father, Roger had not rebutted the presumption. Stacy's mother admitted that Roger was not the biological father of Stacy. There was also no proof that a legal adoption occurred. The State contended there was an adoption proceeding in Pocahontas County. The State, however, produced no evidence of the proceedings and the court properly refused to judicially notice the matter. See Cunha v. City of Algona, 334 N.W.2d 591, 594 (Iowa 1983) ("An Iowa district court cannot in one case take judicial notice of another of its cases, let alone a case in another trial court."). In the absence of further evidence, we cannot conclude that Roger legally adopted Stacy.

¹Iowa Code section 252A.2(3) (1985) states:

"Child" includes but shall not be limited to a stepchild, foster child or legally adopted child and means a child actually or apparently under eighteen years of age,

The general rule in Iowa is that a stepparent is only required to support a stepchild when they are living in his or her home. Fransen v. Iowa Dept. of Human Services, 376 N.W.2d 903, 907 (Iowa 1985); Kelley v. Iowa Dep't of Social Services, 197 N.W.2d 192, 199 (Iowa), appeal dismissed, 409 U.S. 813, 93 S. Ct. 170, 34 L. Ed. 2d 69 (1972). Roger is therefore under no duty to support Stacy now that she is living with her grandparents. We hold Roger is not obligated to support Stacy and reverse the judgment of the lower court and remand the case to the district court for dismissal of the State's petition. Costs are taxed to the State.

REVERSED AND REMANDED.