FILED
MAY 31 1979
SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, ex rel **LISA CAMPBELL,** Appellee,	)	Filed May 31, 1979
vs.	)	
DENNIS JOHNSON, Appellant.	)	121 / 2-62133

Appeal from Webster District Court - R. K. Richardson, Judge.

Defendant appeals from the trial court's establishment of paternity against him, asserting that the court erred in failing to admit the results of blood tests taken of him, the plaintiff and the child. - Affirmed.

Robert L. Ulstad, Ulstad Law Office, Fort Dodge, for Appellant.

Thomas J. Miller, Attorney General of Iowa, Robert E. Keith, Assistant Attorney General, and Monty L. Fisher, Webster County Attorney, for Appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from the trial court's finding that he was the father of petitioner's child and that he should contribute $75 monthly toward the support of that child. Defendant asserts the trial court erred in refusing to admit the results of blood tests taken by mutual consent of the parties of the plaintiff, the defendant and the child. The parties did not stipulate to the admissibility of these results. We affirm the trial court.

The question of the admissibility of results of blood tests in paternity actions has never been directly addressed in Iowa. Neither Dale v. Buckingham, 241 Iowa 40, 42, 40 N.W.2d 45 (1949) nor Livermore v. Livermore, 233 Iowa 1155, 1158, 11 N.W.2d 389, 390 (1943), provide guidance in this matter.

The general rule in many jurisdictions is that the results of blood tests taken to establish paternity are admissible, either with or without statutory authority, into evidence, but only where definite paternity or nonpaternity is established. E.g., Torino v. Cruz, 82 Misc.2d 684, 685, 369 N.Y.S.2d 291, 292 (1975); Schultz v. Peeler, 10 Ill. App. 3d 937, 938, 295 N.E.2d 252, 254 (1973); Hurd v. State, 125 Ga. App. 353, 355-56, 187 S.E.2d 545, 547 (1972); Krause, Scientific Evidence and the Ascertainment of Paternity, 5 Fam. L. Q. 252, 262 (1971); 10 C.J.S. Bastards § 82 at 171 (1978 Supp.); Annot., 46 A.L.R. 1000, 1018-25 (1946). This rule of admissibility is premised upon the theory that tests which do not establish paternity or nonpaternity are irrelevant and that their probative value, if any, is not great enough to counterbalance their possible prejudicial, misleading effect upon the jury. Torino, 82 Misc.2d at 685, 369 N.Y.S. at 292-93; Hurd, 125 Ga. App. at 355-56, 187 S.E.2d at 547.

We note, without specifically adopting the above test, that defendant in this case failed to show the relevancy of the proferred test results. We further find that defendant did not lay proper foundation necessary for the admissibility of blood test results in civil and criminal actions in Iowa. The supreme court has stated:

> Before any result of a blood test analysis can be admitted in any civil or criminal case, the party seeking to introduce such evidence must first lay a proper foundation for its admission. Unless waived, this foundation must show that the specimen was taken by a duly authorized person using proper sterile equipment, that it was properly labeled and preserved, that its care and transportation were proper, and also the identity of

> persons processing it so as to give the opposing party the opportunity to cross-examine as to the care and procedure used in the test.

Lessenhop v. Norton, 261 Iowa 44, 51, 153 N.W.2d 107, 111 (1967); See also, Henkel v. Heri, 274 N.W.2d 317, 322 (Iowa 1979); Brooks v. Engel, 207 N.W.2d 110, 114 (Iowa 1973).

Because no such showing was made in this case, the trial court's ruling is affirmed.

AFFIRMED.