

IN THE COURT OF APPEALS OF IOWA

No. 0-150 / 99-0314

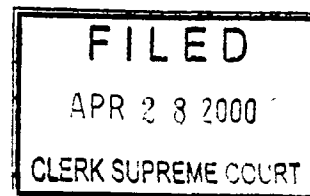
Filed April 28, 2000

**IN THE MATTER OF THE NAME CHANGE
OF WILLIAM OTTO STRUBE, Minor Child,**

**TERESA L. WETTENGEL, Mother,
Petitioner-Appellee,**

vs.

**LAWRENCE STRUBE, Biological Father,
Respondent-Appellant.**



Appeal from the Iowa District Court for Dallas County, Paul R. Huscher,
Judge.

The respondent appeals a district court ruling changing the name of his biological minor child despite his objection. He contends the child's mother Petitioner-Appellee Teresa Wettengel failed to meet the burden necessary to change the child's name without his consent. **AFFIRMED.**

Brian J. Muench, Omaha, Nebraska, for appellant.

Susan Larson Christensen of Larson, Childs, Hall & Christensen, P.C.,
Harlan, for appellee.

Heard by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

SACKETT, C.J.:

Respondent-Appellant Lawrence Otto Strube appeals a district court ruling changing the name of his biological minor child despite his objection. He contends the child's mother **Petitioner-Appellee** Teresa Wettengel failed to meet the burden necessary to change the child's name without his consent. We affirm.

Iowa Code section 674.6(2)¹ sets the framework for changing the name of a minor child. The child here, born on February 21, 1991, was shown on his birth certificate as William Strube. On October 12, 1998, Teresa filed a petition to change the child's name to William Otto Strube Wettengel. She alleged the child, then seven years of age, had been in her primary physical care since he was a year and a half. She further alleged Larry had been ordered to contribute to the child's support and had consistently been delinquent in paying support. Lawrence objected. A hearing was held and on January 22, 1999. Following the hearing the district court found: (1) Lawrence had been ordered to contribute to the child's support and had failed without good cause to do so, and (2) the child's name be legally changed as requested in Teresa's petition.

¹ Iowa Code Section 674.6(2) (1999) provides:

If the petitioner is married, the petitioner must give legal notice to the spouse, in the manner of an original notice, of the filing of the petition.

If the petition includes or is filed on behalf of a minor child fourteen years of age or older, the child's written consent to the change of name of that child is required.

If the petition includes or is filed on behalf of a minor child under fourteen, both parents as stated on the birth certificate of the minor child shall file their written consent to the name change. If one of the parents does not consent to the name change, a hearing shall be set on the petition on twenty days' notice to the nonconsenting parent pursuant to the rules of civil procedure. At the hearing the court may waive the requirement of consent as to one of the parents if it finds:

(2) That the parent has been ordered to contribute to the support of the child or to financially aid in the child's birth and has failed to do so without good cause.

Lawrence's challenge to the change being made without his consent focuses on that part of Iowa Code section 674.6 that provides:

[B]oth parents as stated on the birth certificate of the minor child shall file their written consent to the name change. If one of the parents does not consent to the name change, a hearing shall be set on the petition on. At the hearing the court may waive the requirement of consent as to one of the parents if it finds:

* * *

2. That the parent has been ordered to contribute to the support of the child or to financially aid in the child's birth and has failed to do so without good cause; or

These facts are not in dispute. In February of 1991 Lawrence was ordered to pay Teresa child support of \$215 a month. Lawrence did not make all ordered payments, and by September of 1998 he had a delinquency of nearly \$5,000. On September 2, 1998. Teresa asked the court to find Lawrence in contempt for his failure to pay. A hearing on the application was set for October 19, 1998. On September 18, 1998, Lawrence brought his support obligation current. He was current with support at the time Teresa filed the petition for name change and he was also current at the time of the hearing on the petition.

At the hearing the parties disputed the reasons for Lawrence's earlier failures to pay. Lawrence contended he showed the court good cause for his delinquencies. He advanced that during the period of nonsupport he was either attending college or suffering financial difficulties. He further contended that due to Teresa's suggestions and agreement he did not seek a modification to decrease the amount of his obligation. Teresa denied she made the suggestion he not seek modification or that she entered an oral agreement not to collect the support. The district court dismissed Lawrence's argument he had shown good

finding, "even if there was such an agreement it was not good cause for Lawrence's failure to pay while he was pursuing his own education."

An action on a petition to change the name of a minor child is equitable in nature, reviewable de novo on appeal. *In re Staros*, 280 N.W.2d 409, 410 (Iowa 1979); Iowa R. App. P. 4 (1999). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7) (1999).

The district court is given discretion to waive Lawrence's consent to the name change if it finds his failure to pay support was without good cause to do so. See Iowa Code § 674.6 (1997).

In discretionary matters, the trial court is accorded broad but not unlimited discretion. *Benson v. Richardson*, 537 N.W.2d 748, 762 (Iowa 1995). We will not find an abuse of discretion unless it is shown the trial court's discretion was exercised on grounds clearly untenable or to an extent clearly unreasonable. *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990).

While Lawrence claimed to be a student and have financial problems, these factors alone are not sufficient to establish good cause for his nearly total failure to pay child support for an extended period. We do recognize as Lawrence argues that consideration should be given to the fact that by the time Teresa filed the petition he was current in his support. However, the issue of whether to waive Lawrence's support is a discretionary call with the district court. We cannot say on this record the district court abused that discretion. We find no merit to Lawrence's other arguments.

AFFIRMED.

IN RE NAME CHANGE OF STRUBE

SACKETT, C.J.

SACKETT, C.J. _____

_____ I concur
_____ I concur specially
_____ I concur in part, dissent in part
_____ I dissent
_____ I join _____
_____ Not a panel member

HUITINK, J. _____

_____ I concur
_____ I concur specially
_____ I concur in part, dissent in part
_____ I dissent
_____ I join _____
_____ Not a panel member

VAITHESWARAN, J. _____

_____ I concur
_____ I concur specially
_____ I concur in part, dissent in part
_____ I dissent
_____ I join _____
_____ Not a panel member

COMMENTS

Circulate to: Author _____ Panel _____

000701

SACKETT, C.J. - CIRC. 4-18-00 (May)

No. 99-0314 [0-150] IN RE NAME CHANGE OF STRUBE

Appeal from the Iowa District Court for Dallas County, Paul R. Huscher, Judge. **AFFIRMED.** Heard by Sackett, C.J., and Huitink and Vaitheswaran, JJ. Opinion by Sackett, C.J. (5 pages \$2.00)

Lawrence Strube appeals a district court ruling changing the name of his biological minor child despite his objection. He contends the child's mother Petitioner-Appellee Teresa Wettengel failed to meet the burden necessary to change the child's name without his consent. Teresa filed a petition to change the child's name to William Otto Strube Wettengel. She alleged the child, then seven years of age, had been in her primary physical care since he was a year and a half. She further alleged Larry had been ordered to contribute to the child's support and had consistently been delinquent in paying support. Lawrence objected. A hearing was held and the district court found: (1) Lawrence had been ordered to contribute to the child's support and had failed without good cause to do so, and (2) the child's name be legally changed as requested in Teresa's petition. In February of 1991 Lawrence was ordered to pay Teresa child support of \$215 a month. Lawrence did not make all ordered payments, and by September of 1998 he had a delinquency of nearly \$5,000. On September 18, 1998, Lawrence brought his support obligation current. He was current with support at the time Teresa filed the petition for name change and he was also current at the time of the hearing on the petition. At the hearing the parties disputed the reasons for Lawrence's earlier failures to pay. Lawrence advanced that during the period of nonsupport he was either attending college or suffering financial difficulties. The district court dismissed Lawrence's argument he had shown good finding, "even if there was such an agreement it was not good cause for Lawrence's failure to pay while he was pursuing his own education." The district court is given discretion to waive Lawrence's consent to the name change if it finds his failure to pay support was without good cause to do so. See Iowa Code § 674.6 (1997). We cannot say on this record the district court abused that discretion.

000402