

IN THE COURT OF APPEALS OF IOWA

No. 1-631 / 00-1443
Filed December 28, 2001

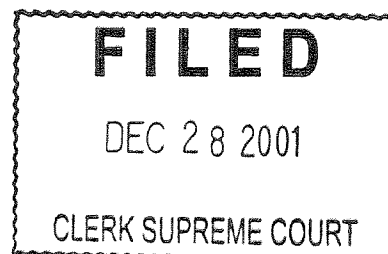
**IN RE THE MARRIAGE OF MARGIE LOUISE KOHRS
AND ROBERT LEROY KOHRS**

Upon the Petition of
MARGIE LOUISE KOHRS,
Petitioner,

And Concerning
ROBERT LEROY KOHRS,
Respondent-Appellee,

and

**STATE OF IOWA, DEPARTMENT OF
HUMAN SERVICES, CHILD SUPPORT
RECOVERY UNIT,**
Appellant.



Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

The State appeals from the district court's grant of Robert Kohrs's application for a declaratory judgment and permanent injunction and his motion to quash. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Thomas J. Miller, Attorney General, and Christina F. Hansen and Mitchell K. Mahan, Assistant Attorneys General, for appellant.

Rod Powell of Powell Law Firm, P.C., Norwalk, for appellee.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

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MAHAN, J.

The State appeals a decision of the district court that determined the child support obligation in an Iowa dissolution decree was not enforceable because an Arkansas court had determined Robert Kohrs was not the father of the child in question. The State claims the district court (1) failed to follow the Uniform Reciprocal Enforcement of Support Act (URESA), Iowa Code chapter 252A (1979); (2) should have granted its motion for summary judgment; (3) improperly entered a final order in the case; and (4) had no authority to award attorney fees to Robert. We affirm in part, reverse in part, and remand.

Robert and Margie Kohrs were married on February 20, 1970. One child was born during the marriage, Michael Kohrs, born on May 21, 1970. A dissolution decree was entered for the parties on November 15, 1971. Robert was ordered to pay child support of twenty-five dollars per week.

Margie assigned to the State her right to receive child support. Robert became delinquent in his child support payments. In August 1980 the State filed a petition in Iowa seeking to enforce Robert's child support obligation. The State also filed a petition under URESA in Arkansas, where Robert lived. On November 6, 1981, the Arkansas court entered the following order:

It appearing to the Court that the mother of the child known as Michael Wayne has admitted that Robert L. Kohrs, the defendant herein, is not the father of the child, it is hereby ORDERED that the case against the defendant should be and the same is hereby dismissed.

On November 5, 1983, the Iowa action was dismissed pursuant to Iowa Rule of Civil Procedure 215.1.

The State continued to attempt to collect child support from Robert. His federal income tax refunds were appropriated by the Child Support Recovery Unit (CSRU) in 1989, 1990, 1991, and 1992. In December 1998 Robert filed an application for a declaratory judgment and for a permanent injunction, alleging that the State and Margie should be prohibited from seeking to collect child support payments from him based on the Arkansas ruling that he was not Michael's father.

While the action was pending, in March 2000, the CSRU entered an order for mandatory income withholding under chapter 252D, stating Robert had a child support delinquency of \$9580. Robert then filed a motion to quash the order for income withholding.

The State filed a motion for summary judgment, alleging the Arkansas order could not supersede the Iowa order that required Robert to pay child support. On August 1, 2000, the district court ruled on all pending motions. The court found the State was bound by the Arkansas order because it was a party to the Arkansas action, and failed to appeal the order. The court concluded the State was not entitled to collect child support from Robert. The court granted the application for declaratory judgment and permanent injunction, and the motion to quash. The court assessed costs of the proceedings, including attorney fees, to the State. Robert's attorney subsequently filed an affidavit stating his fees for the case were \$12,914.33. The State appealed.

I. Scope of Review

A proceeding under chapter 252A is an equitable proceeding. *State ex rel. Phipps v. Phipps*, 503 N.W.2d 391, 392 (Iowa 1993). Our review is de novo. Iowa R. App. P. 4.

II. Application of URESA

At all times relevant to the present case, chapter 252A, which was the Iowa enactment of URESA, was the statute under which a child support claimant could collect against a support debtor residing in another state.¹ *In re Marriage of Griffey*, 629 N.W.2d 832, 833 (Iowa 2001). The parties agree that URESA was also the law of Arkansas at the time the Arkansas order was entered.

Under URESA, in order to collect child support from a party living out of state, a party was required to initiate a new action in the responding state. Iowa Code § 252A.6(3); *Griffey*, 629 N.W.2d at 834. Under section 252A.6(15), a responding state could not supersede an existing order by an initiating state.² *Id.*

However, "in determining whether a respondent in a URESA proceeding owes a duty of support the court must necessarily first decide whether the respondent is the child's father, . . ." *State ex rel. Dep't of Human Servs. v. Antle*, 433 N.W.2d 42, 43 (Iowa Ct. App. 1988). In *Antle*, we determined a prior

¹ Iowa Code chapter 252A was substantially rewritten in 1997, when the Uniform Interstate Family Support Act was adopted in Iowa as chapter 252K.

² Section 252A.6(15) provided:

Any order of support issued by a court of the state acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

This subsection was eliminated in 1997 when chapter 252A was rewritten.

Texas docket entry stating respondent was not the father of the child in question was not entitled to full faith and credit in Iowa because there was no showing the issue of paternity had been fully and fairly litigated in the Texas courts. *Id.* at 43-44.

The record in the present case shows a hearing was held on August 6, 1981, in the Chancery Court of Lonoke County, Arkansas. In a document filed with the Iowa district court, Robert states that in the Arkansas proceedings, Margie "again admitted that Robert L. Kohrs was not the father of the child," which leads to the conclusion testimony was taken in the Arkansas proceedings. On September 14, 1981, the Arkansas court ordered Robert and Michael to submit to blood tests, with the understanding the results would be admissible in the proceedings. As noted above, on November 6, 1981, the Arkansas court entered an order finding Robert was not Michael's father. Unlike the Texas docket entry at issue in *Antle*, we find the issue of paternity was fully and fairly litigated in the Arkansas court, and its decision is entitled to full faith and credit in Iowa.³

III. Retroactive Application

We turn then to the question of whether the Arkansas order should be given retroactive application. This issue was addressed in a case very similar to the present one, *State ex rel. Baumgartner v. Wilcox*, 532 N.W.2d 774, 775-76 (Iowa 1995), where a respondent had been ordered to pay child support under chapter 252A, but later filed an application to set aside the judgment of paternity.

³ We note Iowa Code § 600B.41A, concerning actions to overcome paternity, does not apply in this case.

The district court entered an order relieving the respondent of all past and future support obligations. The supreme court stated:

In prior cases, this court has consistently held that the courts do not have the authority under the common law to reduce court-determined support payments retroactively. The basis for this long-standing rule is that where the rights of the parties have been established, support payments which have accrued are vested and the courts, without statutory authority, cannot take them away. The rule also reflects the policy of protecting the stability and integrity of court judgments.

Baumgartner, 532 N.W.2d at 776-77 (citations omitted). The court also found there was no statutory authority to reduce the respondent's accrued child support payments. *Id.* at 777-78. The court concluded the respondent could only be relieved of future support payments. *Id.* at 779.

We determine the Arkansas court did not have the authority to eliminate Robert's child support obligation that had accrued prior to its order on November 6, 1981. Therefore, Robert is responsible for child support that became due between the dates of the dissolution decree, November 15, 1971, and the Arkansas order on November 6, 1981. Robert is relieved of responsibility for child support that had not accrued prior to November 6, 1981. We reverse the decision of the district court and remand for a determination of what this amount may be.

IV. Final Order

The State contends the district court should have ruled only on its motion for summary judgment and should not have taken the additional step of entering a final order in the case. The State's motion for summary judgment states, "The only fact necessary to adjudicate this matter - the existence of the order herein -

is admitted by all parties." It is clear there were no factual issues in the case. The only issues involved the effect of the prior orders. We determine the district court properly addressed all pending motions and entered a final order.

V. Attorney Fees

The district court ordered the State to pay Robert's attorney fees. Robert also seeks attorney fees for this appeal. There is no authorization for attorney fees as a part of costs in a chapter 252A proceeding. *In re Marriage of Fields*, 508 N.W.2d 730, 732 (Iowa 1993). The right to assess attorney fees is wholly statutory. *Id.* There is no common law right to assess attorney fees as a part of costs. *Id.*

On appeal, Robert claims he is entitled to attorney fees under section 625.29. Passing over the question of error preservation, we determine section 625.29 does not apply to this case:

Under section 625.29 such fees are only allowed when the state has commenced a civil action or when the attorney-fee claimant has prevailed against the state on the merits of the dispute in a chapter 17A judicial review proceeding.

Remer v. Bd. of Med. Exam'rs, 576 N.W.2d 598, 604 (Iowa 1998) (special concurrence). Robert commenced this action, not the State. Also, this was not an action brought pursuant to chapter 17A. We determine the district court did not have authority to order the State to pay Robert's attorney fees.

VI. Summary

We affirm the district court's conclusion that the Arkansas order should be given full faith and credit in Iowa. We reverse that portion of the court's decision, however, which relieved Robert of child support that accrued prior to

November 6, 1981. We also reverse the assessment of Robert's attorney fees to the State. We remand for entry of a district court order in conformance with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.