

IN THE COURT OF APPEALS OF IOWA

No. 0-264 / 89-1393

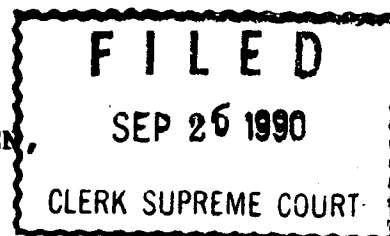
IOWA DEPARTMENT OF HUMAN SERVICES, ex rel.
BRENDA LEE HANSEN, Mother of MELISSA SUE HANSEN,

Appellee,

vs.

WILLIAM EDWARD MILLER,

Appellant.



Appeal from the Iowa District Court for Linn County,
Ansel J. Chapman, Judge.

William Miller appeals from a district court decision finding him to be the father of Brenda Hansen's child, and ordering him to pay past and current child support.

AFFIRMED.

J.L. Kuehnle of Sebesta & Kuehnle, Mechanicsville, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, J. Livingston Dunkle, Assistant Attorney General, Cedar Rapids, and Corenne M. Liabo, Friend of the Court Office, Cedar Rapids, for appellee.

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

OXBERGER, C.J.

Brenda Hansen gave birth to a baby girl, Melissa Hansen on June 13, 1986. The child was conceived at the end of September or beginning of October 1985. The State of Iowa provided ADC assistance to Brenda in the amount of \$5,624. Brenda is employed as a cosmetologist earning between \$200 and \$433 per month.

This action was commenced against William Miller to establish paternity of Brenda's child and to determine a support obligation. At trial, Brenda testified that she had sexual relations with no one but William during the possible time period of Melissa's conception. The paternity evaluation report based on blood tests indicates a 98.9 percent probability of paternity. The district court concluded that William was the father of Brenda's child. The court ordered William to reimburse the State in the amount of \$5,642 and to pay child support of \$216.50 per month. William appeals.

I.

William contends the district court erred in finding him the father of the child. He claims that a normal gestation period from a birth date of June 13, 1986, establishes the conception date on September 5, 1985. William and Brenda had intercourse at a party in November of 1985. Therefore, he claims that he cannot be the biological father of the child.

The record is reviewed de novo. State ex rel. Buechler v. Vinsand, 318 N.W.2d 208, 210 (Iowa 1982). Although the court gives weight to the findings of the trial court, especially when considering the credibility of the witnesses, it is not bound by them. Iowa R. App. P. 14(f)(7). The court can take judicial notice of the ordinary period of gestation. Moody v. Christiansen, 306 N.W.2d 775, 777 (Iowa 1981). Paternity must be proven by a preponderance of the evidence. Id. There is no requirement of corroboration of the mother's testimony, although the presence or absence of such corroboration may influence the ultimate determination. Foreman v. Wilcox, 305 N.W.2d 703, 704 (Iowa 1974). To determine whether there is substantial evidence to support it, the evidence is viewed in the light most favorable to the judgment, although we are not bound by the trial court's determinations of law. Moen v. McNamara, 272 N.W.2d 438, 439 (Iowa 1978).

Brenda testified that the parties began to engage in sexual intercourse soon after they met in August 1985. She realized she was pregnant after missing approximately two menstrual periods in November and December. Brenda also testified that she did not have intercourse with anyone but William during the time period in question. The blood test showed a 98.9 percent probability that William is the father. According to legislative directive, blood test

results in paternity suits "shall be weighed along with other evidence of the alleged father's paternity." See Iowa Code § 675.41 (1989). However, results showing a high degree of probability that the respondent is the father is very persuasive. State ex rel. Hodges v. Fitzpatrick, 342 N.W.2d 870, 873 (Iowa App. 1983).

AMA-ABA Guidelines: Present Status of Serologic Testing in Problems of Disputed Parentage, 10 Fam. L.Q. 247, 262 (1976), indicated that blood test results of 98.9 percent fall into the category of "very likely" that William is the father of the child. This is just a .1 percentage point from the category of "extremely likely." It should be noted that the court in Ex rel., Gremillion v. Erenberg, 402 N.W.2d 410 (Iowa 1987), upheld a paternity determination based on 98.25 percent probability, which is a lower probability than in the present case.

As previously noted, the evidence is viewed in the light most favorable to the judgment, although we are not bound by the trial court's determinations of law. Moen, 272 N.W.2d at 439. The trial court stated:

There is some discrepancy in the evidence with regard to whether Respondent had access to Brenda Hansen at the time of conception. The Court, as finder of fact, determines that the weight of the evidence and the credibility of the witness together with the strong corroborating evidence of the paternity evaluation report support the conclusion that the Respondent had access to the mother of Petitioner at the time of conception. The Court gives weight to the mother's testimony that she had sexual relations with William Miller at the time of conception, and did not have relations with any other individuals immediately before or after the date of conception.

After considering the blood test results "for what it is: a form of evidence to be considered . . . with other evidence to determine the issue of paternity," we agree with the trial court's finding that William is the father of Melissa Hansen. State ex rel. Wegman v. Schulz, 417 N.W.2d 228, 231 (Iowa App. 1987). We affirm the judgment of the trial court.

II.

Next, William contends the district court erred by awarding excessive child support to Brenda. William was required to pay \$216.50 per month child support and \$5,624.00 past child support.

Parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1971). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). The factors to consider are: the financial resources of the child; the financial resources of both parents; the cost of day care; the physical and emotional health needs of the child; and the child's educational needs. See Iowa Code § 598.21(4).

The Iowa Supreme Court on September 29, 1989, entered an order prescribing uniform child support guidelines pursuant to the Federal Family Support Act of 1988, Pub. L. No. 100-485. The guidelines state that monthly income means gross income less certain deductions. William's

financial affidavit filed May 31, 1989, indicates a gross monthly income of \$1,145.94. After deductions, we find William's monthly income is \$675.06 per month.

Brenda earns \$4.10 per hour as a cosmetologist. At that hourly rate times a 40-hour work week, her gross weekly wages are \$164. There is no other specific evidence in the record regarding federal and state taxes or any other required deductions.

The guidelines would require a higher support award than awarded by the trial court. Because the appellee has not cross-appealed, we do not remand this matter to the trial court.

The Court in Foreman v. Wilcox, 305 N.W.2d 703, 704 (Iowa 1981) stated, "we believe a requirement of payment toward past support as well as toward current support is consistent with the intent of sections 252A.4(2) and 252A.5(5) and with the rationale of Brown v. Brown, 209 N.W.2d 819, 822 (Iowa 1978)." We find past child support of \$5,624 a reasonable amount. We affirm the district court's order in all respects.

III.

William also contends the trial court abused its discretion, because it refused to allow a witness to testify who was not listed in the pretrial interrogatories. We find no abuse of the trial court's discretion in enforcing discovery rules. Hoekstra v. Farm Bureau Mutual Ins. Co., 382 N.W.2d 100, 108 (Iowa 1986).

AFFIRMED.