



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA ex rel. HILARIE)
 WILLIAMS, by her mother and next)
 Friend, JULIE WILLIAMS,)

Petitioner-Appellee,)

Filed April 8, 1983

vs.)

DALE GERHART,)

2-464
 2-68458

Respondent-Appellant.)

Appeal from Wapello District Court - Robert Bates, Judge.

Respondent appeals the trial court's determination of paternity and imposition of support obligation on him pursuant to Iowa Code Ch. 252A (1981).
 AFFIRMED.

Allan C. Orsborn of Barnes & Orsborn, Ottumwa, for the respondent-appellant.

Thomas J. Miller, Attorney General, and William J. Callaghan, Assistant Wapello County Attorney, for petitioner-appellee.

Heard en banc.

DONIELSON, J.

Respondent appeals the trial court's determination of paternity and imposition of support obligation on him pursuant to Iowa Code Chapter 252A (1981). On appeal respondent asserts that the trial court erred (1) by permitting the case to proceed to final judgment before correcting the caption to show the child, rather than the mother, as petitioner; (2) by admitting into evidence, over his foundational objections, the results of a blood test and his signed agreement to take the test; (3) by resolving the case in a bifurcated proceeding, with paternity determined first and the amount of support decided later; and (4) in determining that the evidence was sufficient to support a finding of paternity. We affirm.

This action under chapter 252A is in equity and our review, therefore, is de novo. Iowa Code § 252A.6(1) (1981); Greenstreet v. Clark, 239 N.W.2d 143, 147 (Iowa 1976). Accordingly, we give weight to the findings of the trial court but are not bound by them. State Department of Social Services, Cedar County ex rel. Brecht v. Brecht, 255 N.W.2d 342, 344 (Iowa 1977).

I.

The facts giving rise to this appeal are as follows: Julie Williams is the mother of Hilarie Williams, who was born in October 1979. When Julie Williams became a recipient of Iowa ADC payments, the State filed the present petition against the putative father, respondent Dale Gerhart, seeking a determination of paternity and an award of child support.

The trial court found the respondent to be the child's father and later imposed a support obligation of \$40 per week. The respondent then instituted this appeal.

II.

Initially, respondent contends the court erred in ordering that he be responsible for the support of Hilarie Williams when the petition was brought in

the name of the child's mother, Julie Williams. The State's petition initially did name, as petitioner, "State of Iowa ex rel. Julie Williams" The respondent moved to dismiss the petition on the ground it did not name a proper petitioner under Iowa Code section 252A.2(4) and (5) because the mother of a child, not married to the respondent, is not listed in the class of "dependents" who may petition for support under chapter 252A.

The trial court correctly ruled that respondent's motion to dismiss based on an improper party was untimely since such motion must be raised before an answer is filed. See Iowa R. Civ. P. 104(b); Powell v. Khodari-Intergreen Co., 303 N.W.2d 171, 174-75 (Iowa 1981). However, the claim that the court is without subject matter jurisdiction may be raised at any time. Id. We believe the language in Moody v. Christiansen, 306 N.W.2d 775, 777 (Iowa 1981), is dispositive of this issue:

This action was initially brought in the name of the mother. On that basis the respondent claims a lack of subject matter jurisdiction because, he says, section 252A.6(1) provides that the child, not its mother, is the proper petitioner. The contention is without merit for two reasons. The child was later substituted in this suit as the petitioner. Such a mistake, if it was a mistake, will not work to deny the court subject matter jurisdiction. In Brauer v. J. C. White Concrete Co., 253 Iowa 1304, 1311, 115 N.W.2d 202, 205 (1962), we said:

We are firmly committed to the rule that the question of the right of a plaintiff to maintain an action in court does not go to the court's jurisdiction to afford relief but only to the merits of the controversy. Jurisdiction of the subject matter is not dependent on who institutes the action.

The respondent's argument for distinguishing the instant case from Moody is without merit. While the court reserved ruling on defendant's motion, the court did rule, in the final judgment, that the child's name should be substituted as the name of the real party in interest. This case was presented and tried on the merits with the child, not the mother, as the real party in interest. We believe

respondent's first assignment of error is without merit.

III.

Respondent's second contention concerns evidence regarding a blood test taken by respondent. The court admitted into evidence, over the respondent's objections, a document signed by the respondent and entitled "stipulation re: blood test." The court also admitted over the respondent's objection the results of a subsequent blood test showing a high probability for the respondent's paternity.

Respondent asserts that the stipulation was erroneously admitted because it was irrelevant and immaterial and because there was no foundation for its admission. The respondent, alone, signed the stipulation although both the stipulation and the subsequent blood test were requested by petitioner.

The determination of relevancy is a matter within the trial court's discretion. Thompson v. Bohlken, 312 N.W.2d 501, 509 (Iowa 1981). Evidence is relevant if it renders a fact more probable or less probable with it than without it. Id. We believe the stipulation was clearly relevant even though the results of the blood test had not been introduced when the stipulation was offered. By its very language the stipulation evidenced the fact that a blood test was taken. Thus it was clearly relevant to the issue of paternity, since such tests are often used to establish paternity. We find no abuse of discretion in the trial court's ruling admitting the stipulation. Moreover, we note that stipulations are to be construed in an attempt to ascertain and effectuate the intent of the parties. Hawkins/Korshoj v. State Board of Regents, 255 N.W.2d 124, 126 (Iowa 1977). To do so the court must interpret "the stipulation with reference to its subject matter and in light of the surrounding circumstances and whole record including the state of the pleadings and issues involved." Id. at 126-27. Based on our de novo review of the record, we believe the intent of the parties was to have the blood test for use at trial. We believe respondent was fully cognizant of this

intent. The fact that petitioner mistakenly failed to sign the stipulation, even though it requested it, does not change this fact. The stipulation was properly introduced. Accordingly, we also find that the respondent's challenge that the foundational requirements for the introduction into evidence of the blood sample were not met, is without merit since the respondent stipulated to the foundation requirements. Moreover, based on our de novo review of the record, we find the foundational requirements set forth in Henkel v. Heri, 274 N.W.2d 317, 320 (Iowa 1979), were satisfied. We thus affirm the trial court's ruling admitting the results of the blood test.

IV.

Next the respondent contends that petitioner did not sustain the burden of proof and that the trial court therefore erred in finding paternity. It is well settled that paternity may be established in a chapter 252A proceeding. Moody, 306 N.W.2d at 777; Greenstreet, 239 N.W.2d at 147. Paternity must be proven by a preponderance of the evidence. Iowa Code § 252A.6(11) (1981); Moody, 306 N.W.2d at 777.

The evidence here is more than sufficient to establish respondent's paternity. Respondent and petitioner lived together until December of 1978 and had sexual relations at least twice a week while they lived together, and continued to have sexual relations after respondent moved away from petitioner. Petitioner testified that the only person she had sexual relations with during the two or three month period before and after the pregnancy was determined, was respondent. The results of the blood test also establish a high probability that respondent is the father of Hilarie Williams.

Based on our de novo review of the record, we agree with the trial court that paternity is established. Respondent's contentions to the contrary are without merit.

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V.

Finally, respondent contends that the court erred in continuing the matter to determine the amount of child support. The court bifurcated the proceedings in this case only because "no or insufficient evidence concerning child support" was introduced. The court thus continued the proceedings so that evidence of the petitioner's needs and the respondent's ability to pay could be introduced. It is clear from the record, however, that support is needed since petitioner contacted the Child Support Recovery Unit and received Aid to Dependent children; only the amount of such support considering respondent's ability to pay was left to be determined. We believe the court acted responsibly in continuing the case so that evidence could be introduced on these issues. Bifurcated proceedings have been utilized in the past to resolve remaining issues in such cases. State ex rel. Parcel v. St. John, 308 N.W.2d 8 (Iowa 1981); see also Donnelly v. Nolan, 235 Iowa 141, 15 N.W.2d 924 (1944)(equity court may retain jurisdiction to resolve remaining issues and to accomplish complete justice between the parties). We believe the court did not err in continuing this matter to determine the appropriate amount of support due.

Having considered all of respondent's contentions and having found them to be without merit, we affirm the judgment below.

AFFIRMED.