

FILED

AUG 30 1990

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-229 / 89-1060

STATE OF IOWA, IOWA DEPARTMENT HUMAN SERVICES, ex rel.
CAROL BETH ANTLE,

Appellee,

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vs.

LOUIS EDWARD ANTLE, a/k/a LOUIS A. ANTLE,

Appellant.

Appeal from the Iowa District Court for Webster County,
Newt Draheim, Judge.

The defendant appeals from a ruling of the district court finding paternity and that defendant was to repay the State \$33,967.72 in past due child support paid by the State to support his four children. **AFFIRMED.**

Keith Ferguson, Dayton, for appellant.

Thomas J. Miller, Attorney General; Gordon Allen, Deputy Attorney General; Robert R. Huibregtse, Assistant Attorney General; and Tina Meth Farrington, Assistant County Attorney; for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

SCHLEGEL, J.

Carol Spaulding and Louis Antle cohabited from 1964 to 1974. They had five children, with four surviving. Carol, Louis, and the children moved to Iowa in 1974. Shortly thereafter, Louis left Iowa and eventually moved to Texas. Carol stayed in Iowa. From 1974 to 1983, Iowa provided assistance for the support of the four children in the amount of \$33,962.72.

In 1984, the State filed an action in Iowa seeking reimbursement from Louis. That petition was referred to Texas, Louis's place of residence, under Iowa's Uniform Support of Dependents Law, Iowa Code chapter 252A. Louis filed a separate action in Texas to determine paternity. The Texas court consolidated the two suits. The Texas court sent notices to the State of Iowa and to Carol to appear in Texas. When neither appeared in Texas, the Texas court dismissed both actions due to Carol's failure to establish paternity and an obligation of support. The original action filed in Iowa was eventually dismissed under Iowa Rule of Civil Procedure 215.1.

In 1986, the State filed this action in Iowa against Louis seeking reimbursement. The State obtained long-arm jurisdiction over Louis under Iowa Code section 252B.12. At trial, Carol presented evidence of paternity and of a support obligation. Louis submitted certified records from the Texas proceedings. The district court dismissed the action on res judicata grounds. The State appealed. We

found that the issues of paternity and support had not been fully and fairly litigated in the Texas courts and, therefore, reversed and remanded. Iowa Dept. of Human Services v. Antle, 433 N.W.2d 42 (Iowa App. 1988).

On remand, the district court concluded that Louis is the father of Carol's four children and is obligated to reimburse the State of Iowa in the sum of \$33,962.72. The court ordered mandatory income withholding. Louis appeals.

Louis contends that the Iowa courts must give full faith and credit to the findings of the Texas court. Alternatively, Louis claims that there was insufficient evidence to establish that he has the ability to repay the State.

Because the present case was brought pursuant to Iowa Code chapter 252A, our scope of review is de novo. Heyer v. Peterson, 307 N.W.2d 1, 4 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Louis first argues that the trial court erred in failing to give full faith and credit to the findings of the Texas court. We addressed that question in the previous decision filed regarding this case. See Iowa Dep't of Human Services v. Antle, 433 N.W.2d 42, 43 (Iowa App. 1988). In our prior holding, we followed the general rule "that a judgment is entitled to full faith and credit when the second court's inquiry discloses that those
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have been fully and fairly litigated and finally decided in the court which rendered the original judgment." 433 N.W.2d at 43, citing Durfee v. Duke 375 U.S. 106, 111, 84 S. Ct. 242, 245, 11 L. Ed. 2d 186, 191 (1963). We held that the record showed no trial on the merits of the paternity or support action, and that no actual judgment had been filed in either case, thus these issues had not been fully and fairly litigated. We stand by our prior holding and need not address this issue further.

Louis alludes that the trial court erred in finding judgment for full reimbursement even though he offered evidence showing his maximum income per month to be \$300 per month. Louis eludes to the proposition that he is not even responsible for any support at all, because this case is predicated on "the bare testimony of any woman that bears a child." We believe that there is overwhelming evidence that Louis is the father of the parties' children, and that he is responsible for full reimbursement.

The record reveals that the parties cohabited from April 1964 until October 18, 1974. During this period of time five children were born, one of whom passed away shortly after birth. All the children's birth records indicate that Louis and Carol were the children's biological parents. There is no evidence in the record that Louis ever denied paternity of the children until the time of this action. There was no evidence that Carol had sexual relations with anyone other than Louis during this

period. Carol introduced herself to others as Carol Antle, and held herself out to be Louis's wife. The parties had joint checking accounts and filed joint income tax returns. Louis and Carol even commenced an action for dissolution of marriage in 1978 in Webster County.

Under Iowa law, a party seeking to hold another as a parent has a burden of establishing paternity by a preponderance of the evidence. State ex rel. Hodges v. Fitzpatrick, 342 N.W.2d 870, 874 (Iowa App. 1983). We agree with the trial court that there is sufficient evidence to establish paternity.

Louis next contends that even if paternity is established, he is financially unable to fully repay the \$33,962.72 the State provided as assistance to Carol for the support of the parties' four children. Though Louis maintains his highest income is \$300 per month, the record reveals that from April 1987 to June 1988 Louis averaged \$670 per month working at a Motel 6 in Dallas, Texas. The net take home was approximately \$300 per month. Louis provided no tax returns or road expenses from which the trial court could adequately assess Louis's income. Through Carol's testimony, the trial court was presented evidence that Louis was an experienced trucker who had told her a year before trial that he and his new girlfriend were making good money driving trucks together. Carol testified that Louis had told her in July 1986, that he had bought a new truck and owned a home in Longview, Texas.

Iowa courts have long held that parents have a statutory as well as a common-law duty to contribute to the support of their children. In re Marriage of Hoak, 364 N.W.2d 185, 189 (Iowa 1985). Such burden, however, is not necessarily to be borne equally, but according to each persons ability to pay. Iowa Dep't of Human Services ex rel Greenhaw v. Stewart, 435 N.W.2d 749, 751, (Iowa App. 1988). Our courts have also consistently recognized that there is an obligation to pay past due child support as well as current child support under Iowa Code chapter 252A. Foreman v. Wilcox, 305 N.W.2d 703, 704 (Iowa 1981). See also Iowa Code §§ 252A.4(2) and 252A.5(5) (1987).

We believe that in the instant case the trial court was correct in ordering Louis to fully reimburse the State for amounts paid to help support his children. There was sufficient evidence from which the trial court could determine that Louis was a skilled truck driver who could easily find work that paid greater than \$300 per month. We note that Louis's income apparently dropped precipitously after the commencement of the present actions. Through Carol's testimony, the trial court could have found that Louis was making a good wage until the support actions were filed against him. The evidence is more than sufficient to support this finding.

AFFIRMED.