IN THE COURT OF APPEALS OF IOWA

No. 9-335 / 08-1293
Filed July 22, 2009

IN RE THE MARRIAGE OF KAREN WEIDAUER AND MARK JOSEPH WEIDAUER

Upon the Petition of
KAREN WEIDAUER,
Petitioner-Appellee,

And Concerning
MARK JOSEPH WEIDAUER,
Respondent-Appellant.

Appeal from the Iowa District Court for Pocahontas County, Joel E. Swanson, Judge.

Respondent appeals a district court order denying his request to receive credit for child support payments he made directly to the children's mother. **REVERSED AND REMANDED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Karen Weidauer, Brentwood, California, appellee pro se.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

MILLER, J.

Mark Weidauer appeals a district court order denying his request to receive credit for child support payments he made directly to his children's mother, Karen Weidauer. We reverse and remand.

I. BACKGROUND FACTS AND PROCEEDINGS.

Mark and Karen Weidauer were divorced in 1996. The decree dissolving their marriage placed the parties' four children in Karen's physical care and ordered Mark to pay $503.48 per month in child support to the Pocahontas County clerk of court unless directed to make such payments to the collection services center. From September 2001 until May 2004, Mark wired money directly to Karen on an almost monthly basis.[1] The transfers ranged from $500 to $2000, although most were for $650. Karen received a total of $22,750 from Mark during that time period.

In September 2004, Karen requested assistance from the Child Support Recovery Unit (CSRU) of the Iowa Department of Human Services to enforce the support provisions of the dissolution decree. After CSRU notified Mark that he owed delinquent child support,[2] he filed a petition in November 2007 requesting the district court to enter an order for credit and satisfaction of child support payments he made directly to Karen.

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[1] The record as to Mark's child support payment history prior to September 2001 is unclear. Karen did attach a "certified payment record" to her appellate brief. However, that document is not in the court file, nor was it entered as an exhibit at the hearing. We do not consider facts outside the record on appeal. *See Rasmussen v. Yentes*, 522 N.W.2d 844, 846 (Iowa Ct. App. 1994).

[2] The amount Mark is in arrears on his child support obligation is not in the record.

At the hearing on his petition, Mark testified that Karen had asked him to pay child support directly to her through wire transfers. As exhibits, he presented copies of each wire transfer he had made to Karen. Karen acknowledged receiving the payments from Mark, testifying "I'm not denying that I . . . call[ed] Mark and ask[ed] him for his help in getting the items that his children needed," such as "clothes," "school items, school lunch tickets," "medical bills," and a vehicle for their son. But she testified that it was Mark who "chose to wire the money into my account, because at that time . . . it would make things easier."

The district court entered an order in July 2008, denying Mark's request for a credit on his official support payment record for the money he paid directly to Karen. The court determined he did not satisfy either of the statutory exceptions to the mandate in Iowa Code section 598.22(1) (2007) that no credit be granted for child support payments made to anyone other than the clerk of court or collection services center. Mark appeals.

II. SCOPE AND STANDARDS OF REVIEW.

Our review in this equitable action is de novo. Iowa R. App. P. 6.4. We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. 6.14(6)(*g*).

III. MERITS.

Iowa Code section 598.22(1) provides that all orders for permanent child support shall direct the payment of those sums to the clerk of the district court or the collection services center. The section states, "Payments to persons other than the clerk of the district court and the collection services center do not satisfy

the support obligations created by the orders or judgments." Iowa Code § 598.22(1). "The rule is simple. A child support obligor will only receive credit for child support payments made to the appropriate clerk of court or to the collection services center." *Hurd v. Iowa Dep't of Human Servs.*, 580 N.W.2d 383, 386 (Iowa 1998).

Prior to July 1, 2005, section 598.22A(1) (2005) set forth the sole statutory exception[3] to this rule as follows:

> Notwithstanding sections 252B.14 and 598.22, support payments ordered pursuant to any support chapter for orders entered on or after July 1, 1985, which are not made pursuant to the provisions of section 252B.14 or 598.22, shall be credited only as provided in this section.
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> 1. For payment made pursuant to an order, the clerk of the district court or collection services center shall record a satisfaction as a credit on the official support payment record if its validity is confirmed by the court *upon submission of an affidavit by the person entitled to receive the payment*, after notice is given to all parties.

(Emphasis added.)

Our legislature amended that provision in 2005, adding a second statutory exception to the rule. *See* 2005 Iowa Acts, ch. 112, § 18. The amended subsection now reads:

> 1. For payment made pursuant to an order, the clerk of the district court or collection services center shall record a satisfaction as a credit on the official support payment record if its validity is confirmed by the court upon submission of an affidavit by the person entitled to receive the payment *or upon submission of documentation of the financial instrument used in the payment of the support by the person ordered to pay support*, after notice is given to all parties.

[3] Our courts have additionally recognized that a party may be estopped from collecting a child support obligation after promising to enter a satisfaction of judgment for out-of-court child support payments. *In re Marriage of Harvey*, 523 N.W.2d 755, 756-57 (Iowa 1994); *In re Marriage of Yanda*, 528 N.W.2d 642, 644 (Iowa Ct. App. 1994).

Iowa Code § 598.22A(1) (2007) (emphasis added).

In its initial order denying Mark's petition, the district court determined the "only statutory exception" in section 598.22A(1) did not apply because Karen had not submitted an affidavit. Mark filed a motion requesting the court to reconsider its ruling based on the second exception in section 598.22A(1). The court denied Mark's motion, stating it did not believe the amendment to the statute created another exception "but merely another process by which the person entitled to receive payments is given the opportunity to object or concur." The court concluded Mark "has not offered proof sufficient for the Court to allow credit" for the payments he made directly to Karen because she "did not agree that these amounts should be accepted as child support payments." Upon our de novo review, we believe the district court erred in so concluding.

Mark testified at the hearing on his petition that he began wiring his child support payments directly to Karen because she had asked him to do so. He submitted copies of the wire transfers he made to Karen from September 2001 through May 2004. That documentation showed he made a payment to her nearly every month in that period of time. The first two payments were for $2000. The majority of the subsequent payments were for $650, although the amounts did vary occasionally. The transfers totaled $22,750.[4]

In her brief on appeal, Karen states, "It is true that no one involved with this litigation doubts that Mark paid $22,750 and that Karen received it." She argues, however, that money was a "gift" from Mark "above and beyond court

[4] We note the total amount of child support Mark owed under the parties' decree during this thirty-three month time period was $16,614.84.

ordered child support payments." *See, e.g.*, *In re Marriage of Caswell*, 480 N.W.2d 38, 40 (Iowa 1992) (stating Christmas and birthday gifts from a child support obligor would clearly not discharge the support obligation). Yet at the hearing on Mark's petition, Karen testified she would contact Mark "at different times in regards to helping with his children. I would ask [for] money to help purchase clothes, to purchase school items, school lunch tickets . . . and so forth."[5] We believe those items directly relate to Mark's support obligation for his children. *See* Iowa Code § 598.21B(2)(a) (stating that child support is for the "reasonable and necessary" expenses of a child). Moreover, the regularity of Mark's payments to Karen belies her contention that the payments were gifts.

We disagree with the district court that Karen's refusal to "agree that these amounts should be accepted as child support payments" dictates the result here. To so conclude would virtually nullify the second statutory exception our legislature saw fit to add to section 598.22A(1) in 2005 and ignore the plain language of the statute. *See Harvey*, 523 N.W.2d at 757 ("A statutory mandate cannot be ignored . . . ."); *Caswell*, 480 N.W.2d at 40 ("In accordance with well-established principles of statutory construction, a statute must be construed to give effect to its plain language."). Mark submitted "documentation of the financial instrument[s] used in the payment of the support" as required to invoke

[5] Karen additionally testified that some of the money Mark sent to her was to help with medical expenses for the children. The parties' decree provided, in relevant part, "Each party shall be responsible for the payment of one-half of any insurance deductible and non-covered medical expenses for the children." *See also* Iowa Ct. R. 9.12 (requiring the court to enter an order for medical support in addition to a parent's child support obligation). However, the only medical expenses actually identified by Karen at the hearing were for their daughter's two knee surgeries in 1997 and 1998, several years before Mark began making payments directly to Karen.

the second exception in section 598.22A(1). Furthermore, Karen testified she used the money Mark regularly transferred to her bank account from September 2001 through May 2004 for "items that the children needed." We therefore conclude that Mark is entitled to credit on his child support obligation for the $22,750 in child support payments that he paid directly to Karen under section 598.22A(1).

IV. CONCLUSION.

The district court should have granted Mark's request for a credit on his official support payment record for the $22,750 in child support payments that he made directly to Karen. We accordingly reverse the judgment of the court and remand for entry of an order under Iowa Code section 598.22A(1) confirming the validity of those payments.

REVERSED AND REMANDED.