



State ex rel Akenaten Bluehorse

2002 | Cited 0 times | Court of Appeals of Iowa | September 25, 2002

Terrance Walker appeals from the district court's order retroactively terminating his obligation to pay child support. **AFFIRMED.**

Terrance Walker appeals from the November 8, 2000, order of the Story County District Court retroactively terminating his obligation to pay child support for his son, Akenaten Bluehorse, effective September 1, 1997. We affirm.

I. Background Facts and Proceedings.

On September 16, 1996, Terrance Walker was ordered to pay child support for Akenaten Bluehorse in the amount of \$374 per month. He was also ordered to pay an accrued support judgment of \$5610. These figures were calculated using an estimated annual income for Walker. At the time of the support order, Akenaten was in the custody of his mother, Iman Nural-din. Approximately a year later, Walker began providing Akenaten's physical care, and Nural-din moved to the Rosebud Sioux reservation in South Dakota.

Walker apparently informed the Child Support Recovery Unit he was providing Akenaten's physical care, but he did not take appropriate legal action to terminate his child support obligations until November 1, 1999. The district court denied Walker's initial Motion to Terminate Support because notice had not been served upon Nural-din. In September 2000, however, Nural-din joined in Walker's request to terminate support, and the court granted Walker's motion. On September 12, 2000, the district court entered an order stating that support would be terminated as of September 1, 1997, unless a written objection was filed before September 29, 2000. No objection was filed, and an order terminating support retroactively to September 1, 1997, was filed on November 9, 2000.

Walker appeals from this order on two grounds. First, he argues that his original attempts at service upon Nural-din were sufficient. Second, he argues that the amount of child support was calculated incorrectly and seeks to have it retroactively modified.

II. Standard of Review.

The standard of review involving child support obligations is *de novo*. Iowa R. App. P. 4; *State ex rel. Nicholson v. Toftee*, 494 N.W.2d 694, 695 (Iowa 1993).

III. Service upon Iman Nural-din.



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Walker's first argument is that Iman Nural-din was properly served in Walker's action for termination of child support. We conclude this issue was resolved by the court's order dated September 12, 2000. In this order, the court determined that Nural-din had sufficient notice of the proceedings, and it terminated Walker's support obligation retroactively to September 1, 1997. Thus, Walker's claim "no longer presents a justiciable controversy because [the contested issue] has become academic or nonexistent." *In re M.T.*, 625 N.W.2d 702, 704 (Iowa 2001) (omitting cited decisions). Walker did perfect service upon Nural-din and had his child support obligation terminated as of the date he obtained physical custody of his son. Accordingly, this issue is moot.

IV. Retroactive Modification of the 1996 Support Order.

Walker's second claim is for retroactive modification of the 1996 support order. He contends the State had access to his actual income figures when it calculated his support obligation, but instead used an estimated income figure. However, Walker did not contest the order at the time it was issued. His first challenge to this support calculation and order was in September of 1999—three years after the order was issued. Although procedures were available in 1996 to challenge the figures used in the child support calculations and the amount of support calculated, Walker failed to utilize those procedures in a timely fashion. Error was not preserved on this issue.

Even if we were to entertain Walker's claim, we could not provide the relief he seeks. Iowa Code section 598.21(8)(k) (1999) states that retroactive modification of child support is allowed "only from three months after the date the notice of the pending petition for modification is served on the opposing party." Iowa Code § 598.21(8)(k) unnumbered paragraph 2 (1995). Because Walker did not challenge the calculation until September 1999, the earliest effective date the court could grant for Walker's child support modification is February of 2000. As indicated above, Walker's support obligation ceased as of September 1, 1997.

Because Walker's first claim is moot and his second claim was not preserved for our review, we affirm the district court's order retroactively terminating Walker's child support obligation.

AFFIRMED.

