IN THE COURT OF APPEALS OF IOWA

No. 1999-329 (9-582) / 98-1484
Filed March 15, 2000

IN RE THE MARRIAGE OF GARRY LYNN WHITE AND TRACY LYNN WHITE

Upon the Petition of
GARRY LYNN WHITE,
Petitioner-Appellant,

And Concerning
TRACY LYNN WHITE,
Respondent-Appellee.

FILED
MAR 15 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge.

The petitioner appeals a district court order which modified his child support obligation. **AFFIRMED.**

Richard L. Boresi of King, Smith & Boresi, Cedar Rapids, for appellant.

Frank J. Nidey of Maher & Nidey Law Firm, Cedar Rapids, for appellee.

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

PER CURIAM

Garry White appeals the decision of the district court which increased his child support obligation for his minor son. Garry claims the district court improperly attributed his live-in girlfriend's income to him. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Garry and Tracy Morris were previously married to each other. They have one child, Paul, born in July 1990. Under the terms of a dissolution decree entered for the parties in October 1991, Paul was placed in Tracy's primary physical care and Garry was ordered to pay child support of $180 per month.

In December 1995, the decree was modified to increase Garry's child support to $556 per month. Garry was a self-employed carpet installer, and earned about $40,000 in 1994.[1]

Garry closed his floor covering business in early 1996. His live-in girlfriend, Brenda Edwards-White, opened a floor covering business at about the same time, although she was also employed full-time as an office manager. Garry worked part-time as Brenda's employee, and earned about $4500 in 1996. Under a yearly review provision in the modified decree, Garry's child support obligation was decreased to $260 per month effective June 1, 1996.

In October 1997, Tracy filed an application to have Garry found in contempt for failure to pay child support. The district court found:

> The Court concludes that Garry intentionally discontinued his floor covering business in early 1996 after having his child support increased from $180 per month to $556.68 per month and that

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[1] Garry appealed other provisions of the modification, but not the increase of his child support obligation. *In re Marriage of White,* No. 96-0263 (Iowa App. Jan. 29. 1997).

> Garry assisted Brenda in setting up a floor covering business in her name and, thus, transferred the income from the business to Brenda. There was no evidence that Brenda had any knowledge about running a floor covering business other than what she may have picked up from being around Garry. She had other full-time employment. Garry had the benefit of the earnings from Brenda's carpet laying business in that he was living with her at the time at her residence and continues to do so.

The parties agreed to have the court determine Garry's child support obligation for the time period from June 1, 1997 to May 31, 1999. The court attributed part of Brenda's income from the floor covering business to Garry. The court ordered Garry to pay child support of $381.63 per month for the time period June 1, 1997 to May 31, 1998, and $291.79 per month for the time period June 1, 1998 to May 31, 1999.

Garry appealed, claiming Brenda's income should not have been attributed to him. He asserts Brenda's business is entirely different from the floor covering business he used to own. Garry contends his child support should be set at $50 per month.

Our scope of review in this equity action is de novo. Iowa R. App. P. 4. In reviewing the district court's decision, we are not bound by its findings of fact, but give them deference because the court had an opportunity to view, firsthand, the demeanor of the witnesses. *See In re Marriage of Krone,* 530 N.W.2d 468, 471 (Iowa App. 1995). This important perspective can greatly enhance the decision-making process and is not forgotten on appeal. *In re Marriage of Brainard,* 523 N.W.2d 611, 614 (Iowa App. 1994).

The district court found Garry was not credible in his testimony regarding Brenda's business. The court determined Garry assisted Brenda in setting up a

floor covering business in her name and, thus, transferred the income from his business to Brenda. We agree with the court's conclusion Garry transferred his business to Brenda's name in order to avoid paying child support. In these circumstances, the court properly attributed a portion of Brenda's income from the floor covering business to Garry. *See In re Marriage of McKamey,* 522 N.W.2d 95, 98 (Iowa App. 1994); *In re Marriage of Aronow,* 480 N.W.2d 87, 89-90 (Iowa App. 1991); *In re Marriage of Mueller,* 400 N.W.2d 86, 88 (Iowa App. 1986).

We affirm the decision of the district court. Costs of this appeal are assessed to Garry.

AFFIRMED.