

IN THE COURT OF APPEALS OF IOWA

No. 9-604 / 09-0116
Filed October 21, 2009

SCOTT LEE EARLES,
Petitioner-Appellee,

vs.

TAMMY L. ONLEY,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

A mother asserts the district court failed to grant her application to modify
visitation of her son. **AFFIRMED.**

James Cook, West Des Moines, for appellant.

Timothy Duffy, Des Moines, for appellee.

Considered by Vogel, P.J., and Potterfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, P.J.

In this appeal, Tammy Onley asserts the district court failed to grant her application to modify the visitation previously granted to Scott, with their son, Z. She also asserts the district court should not have reduced the child support, as Scott failed to provide accurate information of his current income. On our de novo review, we affirm. Iowa R. App. P. 6.907 (2009). We are not bound by the trial court's findings of facts, but we give them deference because the trial court had a firsthand opportunity to view the demeanor of the parties and evaluate them as custodians. *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa Ct. App. 1998).

I. Background Facts and Proceedings

Tammy and Scott were never married, but a son, Z., was born to them in 1997. Initially, they agreed to joint legal custody of Z., with Tammy having physical care and Scott having reasonable, but set, visitation. Child support was set at \$550 per month, an amount in excess of what would have been required at that time, but appropriate under the circumstances.

II. Visitation

In May 2008, Tammy sought to modify the original decree, seeking sole custody of Z., and restricting Scott's visitation. Scott responded by seeking physical care of Z., or in the alternative, additional visitation and a modification of child support.¹

The district court heard extensive testimony from both parties and received evidence from several professionals who had worked with the parties in

¹ This issue was withdrawn prior to the hearing.

various therapy settings. None of the professionals involved with the parties could support the allegations Tammy and Scott hurled at each other during trial. For years the parties have put their son in the middle of their intolerance for each other. At the close of the evidence, the district court made detailed findings analyzing the strengths and weaknesses of the parties in their ongoing and hostile relationship with each other. The district court, after having seen and heard the parties each testify, made appropriate credibility findings. We defer to those findings. *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996) (stating that the district court is in a better position to evaluate the credibility of witnesses; thus, factual disputes depending heavily on such credibility are best resolved by the district court). The animosity between the parties revealed to the district court remains apparent in the tenor of this appeal. On our de novo review, we affirm the district court's finding of facts, application of the law, and its conclusions. Iowa Court Rule 21.29(1)(a), (d), and (e).

III. Child Support

Tammy claims the district court should not have reduced Scott's child support obligation from \$550 per month to \$376.78. In reducing the amount, the court noted Scott's dubious estimate of his own earnings as a self-employed painter. Nonetheless, the court reviewed Scott's late-filed 2005 and 2006 federal and Iowa income tax returns, and imputed income to Scott upon which the child support was then calculated. See *In re Marriage of Will*, 602 N.W.2d 202, 204 (Iowa Ct. App. 1999) ("Generally, completed federal and/or state income tax returns are the best evidence of income and tax liability."). We, like the district court, also find Scott's reported income and claimed deductions suspicious, but

conclude the court properly determined the most accurate imputation of income from the evidence presented. As such, we affirm the modification of child support. Costs on appeal assessed to Tammy.

AFFIRMED.