

STATE OF MICHIGAN
COURT OF APPEALS

LAVONNE JOYCE MARCH,
f/k/a LAVONNE JOYCE JOHNSON,

Plaintiff-Appellee,

V

RICHARD C. JOHNSON,

Defendant,

and

MICHAEL JOHNSON,

Third-Party-Appellant.

UNPUBLISHED

August 21, 2001

No. 224716

Calhoun County Circuit Court

LC No. 90-000529-DM

Before: K.F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Third-party appellant Michael Johnson (Michael) appeals by leave granted an order of the circuit court holding him in contempt for failing to pay \$7,502.75 to the friend of the court, which represented child support owed by his brother, defendant Richard Johnson (Richard). Michael was permitted to cure the contempt by paying the money to the friend of the court, which he did. We affirm.

On November 7, 1990, the court entered a judgment of divorce between Richard and plaintiff Lavonne Joyce Johnson. As part of the judgment of divorce, the court ordered Richard to pay child support for the parties' two minor children. Richard subsequently fell behind on his support payments and accumulated an arrearage. On March 29, 1995, Richard's arrearage was \$7,502.75.

Plaintiff suspected that her bother-in-law Michael was the executor of the brothers' ailing mother's estate. She also suspected that Richard would inherit from the estate. She conveyed this information to the friend of the court. On March 29, 1995, the friend of the court sent Michael a "Certification to Source of Income (Lump Sum)" ("the certification"). It directed Michael to pay any income of Richard to the friend of the court. When the certification was

issued, their mother was not deceased, and Michael was not the executor of her estate. However, the certification was never set aside, extinguished, or canceled.

On June 1, 1998, Michael paid Richard \$15,000. The record is unclear regarding the facts surrounding this transaction. Michael has given inconsistent accounts regarding how the property was transferred, at one point asserting that the property was first transferred from the parents to him and Richard, and then from Richard to him, and at another point asserting that there was one transfer, embodied in a deed dated May 22, 1997, in which the property was transferred from the mother and Richard to Michael. The only deed that has been produced is the May 22, 1997 deed.

Michael asserts that he and Richard exchanged the second deed and \$15,000 simultaneously, and therefore there was no debt created and the certification did not apply to the \$15,000 payment at issue.

On July 29, 1999 a hearing was held before a referee as a result of the friend of the court filing a petition for an order to show cause why Michael should not be found in contempt for failing to comply with the certification. The referee recommended that the court dismiss the petition because the \$15,000 was not income within the meaning of the statute.

On October 5, 1999, a de novo hearing was held. The court held that the money was a debt and therefore fell within the meaning of income in the statute. Michael was found in contempt for failing to comply with the certification, and was permitted to purge himself of contempt within ninety days by paying \$7,502.25, the amount in the certification, to the friend of the court.

On appeal, Michael asserts that because the exchange of the \$15,000 for the deed to the house occurred simultaneously, no debt was created, and the money was not income and was not subject to the certification. The record does not, however, support this position. Michael asserts that the deed was not delivered until the money was paid. While we agree that a deed is generally not effective until delivery, the record does not support that the deed was not delivered until the money was paid. The deed was recorded June 16, 1997. The record shows that the money was not paid until June 1, 1998. Thus, the money was due to Richard as a debt of Michael, and the certification applied.

Michael also asserts that he did not know that the money exchanged constituted income, and, therefore, he did not knowingly and intentionally fail to comply with the certification. However, it is clear that Michael knew that Richard owed child support. It is also clear that the certification was an effort to assure that any money's payable to Richard would be paid to the friend of the court. The certification made clear that Michael could be held liable for failure to comply with the order and also stated: "If you have any questions concerning implementation of the income withholding order, contact the Friend of the Court immediately."

Lastly, Michael raises as an issue in his brief that property received as a gift cannot be subject to an income withholding order. However, he provides no argument on the issue and no

support for his position. Further, the \$15,000 was not paid as a gift, rather as consideration for the deed.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Michael J. Talbot