

NOTICE

Decision filed 11/27/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 120066-U
NO. 5-12-0066
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
ZOLA LOUISE FIX, n/k/a ZOLA LOUISE VAN,)	Williamson County.
)	
Petitioner-Appellant,)	
)	
and)	No. 97-D-56
)	
WILLIAM DAVID FIX,)	Honorable
)	Brian D. Lewis,
Respondent-Appellee.)	Judge, presiding.

PRESIDING JUSTICE DONOVAN delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err in apportioning between the parties the educational expenses for the parties' two daughters. The court also did not err in denying Mother's request for an increase in child support especially when custody of one of the daughters was modified in favor of Father.

- ¶ 2 Petitioner Zola Louise Fix, n/k/a Zola Louise Van (Mother), appeals the postjudgment disposition entered by the circuit court of Williamson County. We affirm.

- ¶ 3 The marriage of Mother and respondent William David Fix (Father) was dissolved in November of 1997. Prior to the dissolution, two children were born to the marriage. Mother is a fifth-grade teacher and Father an optometrist. Upon the dissolution of the parties' marriage, Mother was awarded full custody of both children.

¶ 4 In December of 2010, Father filed a petition for payment of college expenses for the parties' older child. Mother responded by filing a motion to modify child support seeking an increase in support. Father, in turn, filed a motion to modify custody of the younger child. After a hearing on all of the motions, the court entered an order requiring Mother to pay 40% of both children's college expenses. Each of the parties, by agreement, had maintained a life insurance policy on each child that was to be used for college educational expenses. At the time of the hearing, the older daughter's policy had not been cashed in yet. The court determined that, after deducting the application of the cash value of the life insurance policy, any educational expenses paid after the filing of Father's petition, as well as all future college expenses, were to be paid at a ratio of 60% by Father and 40% by Mother. Out-of-pocket health care expenses, however, were to be divided evenly between the parties. The court ordered the same ratios be applied for payment of future college expenses for the younger child as well. While Mother's income was significantly lower, the family incomes of both parties and their new spouses were much closer, thereby justifying the 60-40% split. The parties also agreed that the parties' younger daughter would move in with Father. The court therefore modified custody of the younger child accordingly. The court further denied Mother's request for an increase in child support.

¶ 5 Mother argues on appeal that the court erred in ordering her to pay 40% of the older daughter's college expenses. Mother points out that the court failed to consider additional monies Father earns from working one day a week at the federal penitentiary. Father testified, however, that he planned to stop working at the penitentiary once Mother started helping with the educational expenses. Determinations by the trial court as to the credibility of the parties are to be given

great deference. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641, 686 N.E.2d 670, 675 (1997). It was also for the court to determine what ratio to use and to determine which factors it would consider in arriving at that ratio. Section 513 of the Illinois Marriage and Dissolution of Marriage Act authorizes the trial court to order a parent to pay for the educational expenses of a child. 750 ILCS 5/513(a) (West 2010). The trial court's decision to award educational expenses will be reversed only if there is an abuse of the court's discretion. *In re the Marriage of Thomsen*, 371 Ill. App. 3d 236, 243, 872 N.E.2d 1, 7 (2007); *In re Marriage of Cianchetti*, 351 Ill. App. 3d 832, 834, 815 N.E.2d 17, 19 (2004). We see no reason to overturn the court's decision in this instance. The same is true with respect to the order requiring Mother to pay 40% of the younger daughter's college expenses. During the hearing the court determined it would save everyone time to handle the issue of college expenses for the younger daughter at the same time. Even the court mentioned that if situations changed significantly in the future, the parties could return to have the court determine a new ratio. Such a decision was within the court's discretion. We find no abuse of the court's discretion in making such a determination. Mother also asserts that we should remand this cause to require an order be entered requiring Father to use the cash value from the insurance policy for the younger daughter's college expenses. Besides the fact that the younger daughter is only 16 and not yet in college, the court specifically noted that the parties' original joint parenting agreement provided that each party maintain a life insurance policy on one of their daughters and that the cash value of each policy was to be used for the college education expenses of the daughters. The parties already agreed to do what Mother requests that we order. There is no need to do so at this time. Should Father refuse to cash in the policy at the appropriate time, Mother can seek to enforce that agreement at that time. In the

meantime, the cash value will continue to increase.

¶ 6 Mother next argues the court erred in requiring that \$1,899 in out-of-pocket medical expenses incurred be divided equally between the parties as opposed to employing the same 60-40% ratio for college expenses. The trial court not only had the authority to order Mother to share in the payment of medical expenses but also in what amounts. See *In re Marriage of Bates*, 141 Ill. App. 3d 566, 574, 490 N.E.2d 1014, 1019 (1986). As the court noted, according to the parties' own marital settlement agreement, uncovered medical expenses were to be divided on an equal basis. Again, we find no abuse of the court's discretion.

¶ 7 Mother also argues on appeal that the court erred in failing to consider her motion to modify child support and in failing to set visitation. We disagree. The court specifically denied Mother's request for an increase in child support. The court had the financial information needed to make a decision regarding the increase in child support even though very little argument was presented on the issue. We find no error. We also find no error in failing to set a visitation schedule. Prior to starting the hearing, the court specifically asked the parties what issues remained. Father's attorney stated the first issue pertained to the petition for payment of college expenses. He further pointed out that there was also a motion to modify child support and to modify custody with respect to the younger daughter. The attorney reported that the issues pertaining to custody of the younger child had been resolved as had the matter of her child support. Mother concurred. As the court noted in ruling on Mother's motion for reconsideration, the issue of visitation with the younger daughter was never raised, nor did either party advise the court that the proposed ruling did not cover all contested issues. Mother's contention therefore is without merit. If the parties cannot reach an agreement as to visitation, Mother can file a petition for

visitation at any time.

¶ 8 For the aforementioned reasons, we affirm the judgment of the circuit court of Williamson County.

¶ 9 Affirmed.