

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).

2016 IL App (4th) 160348-U

NO. 4-16-0348

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 29, 2016
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF MARK R. COWLES,)	Appeal from
Petitioner-Appellant,)	Circuit Court of
and)	DeWitt County
TAMMY L. COWLES, a/k/a TAMMY L.)	No. 97F1
MUSSELMAN,)	
Respondent-Appellee.)	Honorable
)	Karle E. Koritz,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it ordered petitioner to pay 40% of his daughter's out-of-pocket medical costs and educational expenses to attend a private university.

¶ 2 Petitioner, Mark R. Cowles, and respondent, Tammy L. Cowles, a/k/a Tammy L. Musselman, are the parents of a daughter, J.C., who was born in 1995. In April 2016, the trial court entered an order directing Cowles to pay 40% of the out-of-pocket educational expenses for J.C. to attend Millikin University in Decatur, Illinois. Petitioner appeals, arguing the court abused its discretion by finding the cost to attend Milliken was reasonable since J.C. could have attended less expensive postsecondary institutions. We affirm.

¶ 3 I. BACKGROUND

¶ 4 J.C. was born in 1995. In January 1997, Cowles filed a petition to establish a parent and child relationship by consent of the parties. That month, the trial court entered a joint

parenting agreement. In that order, the court gave Musselman full custody of J.C. and ordered Cowles to provide child support payments and reimburse Musselman for half of J.C.'s out-of-pocket medical expenses. In August 2001, the court modified the joint parenting agreement by increasing the amount of Cowles' support payments. In November 2004, the court entered a stipulation and order to modify the joint parenting agreement, which increased Cowles' support payments. It also provided each of the parties would provide half of all school registration costs, book fees, lab fees, activity fees, and the cost of any school-recommended tutoring until J.C. graduated from high school. None of these orders addressed the payment of postsecondary educational expenses.

¶ 5 In April 2014, Musselman filed a petition for support for educational expenses. The petition alleged J.C. was accepted into Millikin's nursing program and would begin her coursework in the fall of 2014. The petition sought contribution from Cowles for educational expenses, including tuition, books, supplies, monthly living expenses, tutors, transportation expenses, and other school-related expenses,. According to the petition, J.C. obtained \$11,000 in merit-based scholarships from Millikin to attend the school. Later in April, Cowles filed a motion to dismiss Musselman's petition for educational expenses, which the court denied.

¶ 6 In December 2015, the trial court held a hearing on the petition for college expenses. The following pertinent facts appear from the evidence and testimony presented at the hearing.

¶ 7 A. J.C.'s Personal and Academic History

¶ 8 Musselman testified J.C. was diagnosed with a reading-comprehension problem requiring special accommodations starting in the second grade. J.C. had an individualized educational plan (IEP) for every year from second grade until she graduated from high school. J.C.

was given extra time for anything involving reading and took specially administered tests, which were read out loud to her. She attended special classes aimed at improving her reading and reading comprehension. She was tutored during many of the summers in junior high and high school.

¶ 9 Musselman also testified J.C. has a history of being treated for major anxiety and depression issues. At the time of the hearing, J.C. had been seeing a psychiatrist for approximately three years, dating back to before she graduated from high school. She continued to take medication for her anxiety and depression and was continuing to receive counseling.

¶ 10 Musselman testified J.C. always wanted to become a nurse. During J.C.'s sophomore year in high school, she began looking at schools in Decatur, Bloomington, Champaign, and Springfield. Musselman and J.C. went on a tour of Millikin and liked its size and the fact its status as a four-year institution would not require J.C. to switch colleges like a junior college would require. Musselman believed the small number of students and close-knit campus community would help with J.C.'s anxiety and depression. Musselman also testified Millikin's nursing program was better than all the others. J.C. applied and was accepted in October 2013. J.C. received a significant merit-based scholarship and a grant to defray the costs of attending Millikin.

¶ 11 The person managing J.C.'s IEP informed J.C. and Musselman of the possibility J.C. might qualify for an Illinois Division of Rehabilitative Services (DRS) program that would help manage her learning disability in college and provide financial assistance for college expenses. In applying to that program, Musselman and J.C. submitted documentation of J.C.'s learning disability and her anxiety and depression. J.C. was found eligible for the DRS program. Among other things, DRS would provide audiobooks to help J.C.'s reading comprehension,

counseling, and other accommodations for up to six years. DRS would also provide money for tuition, books and supplies, gasoline to commute from Musselman's house to Millikin, and parking.

¶ 12 Musselman testified, in the spring of 2015, J.C. was hospitalized for three weeks and was forced to drop many of her classes because she was too far behind once she was discharged. She took a summer course to try to make up for some of the credits she had lost. In the fall of 2015, J.C. dropped out of the nursing program. Musselman believed the change was because J.C. had yet to receive her audiobooks for the fall 2015 semester and her scholastic performance had suffered because of it. J.C.'s anxiety and depression were also a factor. She declared as a human services major. At the time of the hearing, J.C. remained enrolled in Millikin and maintained a cumulative grade point average of 2.73 as of December 2015. Assuming J.C.'s audiobooks arrive in a timely manner in the future, Musselman stated J.C. would receive her degree without having spent more than five years on undergraduate coursework.

¶ 13 Musselman testified J.C. does not work and has never held a job. Musselman stated J.C. could not hold a job and while attending school because of her anxiety and depression. Musselman provides for many of J.C.'s day-to-day expenses. J.C. had seen a doctor daily for the six weeks before the hearing. Musselman testified she believes J.C. will be able to be employed in the future as a result of continued treatment of her anxiety and depression and her graduation from college. J.C. hopes to pursue a career in counseling.

¶ 14 B. Evidence Regarding Other Colleges

¶ 15 Musselman did not dispute the courses available to J.C. at Millikin were likely available at other schools in the area, but Musselman had not been in contact with any of them before enrolling J.C. at Millikin. Musselman admitted Richland Community College in Decatur

offers such classes and is a similar commute as Millikin from her house. She acknowledged the same is true about Heartland Community College and Illinois State University in Bloomington, and also Lincoln Land Community College in Lincoln. In Musselman's opinion, if J.C. had to transfer to another school, J.C. would not be capable of mentally coping with the anxiety the disruption to her life would cause her.

¶ 16 Musselman conceded J.C. could attend another school in the area for less money. She acknowledged the financial assistance and services provided by DRS would likely still be available at another school. She did not know whether J.C. would receive similar grants and scholarships at another school.

¶ 17 Musselman testified she did not contact Cowles regarding J.C.'s college search until she called to tell him J.C. was accepted into Millikin's nursing program. She did not consult with him about the expense or the possibility of applying to other schools. Musselman testified J.C. and Cowles do not get along well.

¶ 18 C. Parties' Finances

¶ 19 Musselman testified she was a salaried employee for State Farm. In 2012, she earned approximately \$35,000, and her husband earned approximately \$58,000, which is a combined income of \$93,000. Musselman and her husband's combined income was similar in 2013 and 2014. In addition to J.C. living at home, Musselman has a 16-year-old daughter with her husband.

¶ 20 Cowles testified he was a salaried employee of the town of Normal's water department. He had been so employed for the past 17 years. He earned a salary of \$80,000 in 2013 and 2014 and anticipated earning the same amount in 2015. He has \$48,000 in retirement savings. He testified he resided with his girlfriend, Kelly Cummings, and had done so for the

past five years. Cummings earned \$50,000 per year. Cowles and Cummings shared responsibility for the paying the mortgage and all other expenses related to the home. Cowles and Cummings had a combined income of approximately \$130,000 per year. Cowles stated he also had an adopted daughter, who was 20 years old at the time of the hearing.

¶ 21 Musselman testified she paid all the out-of-pocket tuition and other college expenses not covered by other sources. For the fall 2014 semester, Musselman paid \$3,372.08. For the spring 2015 semester, Musselman paid \$4,117.31. For the summer of 2015, due to a funding mix-up, Musselman paid more per credit for J.C.'s class, paying \$3,074, which would have been less had DRS funds been properly granted. J.C. dropped three of her four courses during the fall 2015 semester, therefore, the out-of-pocket cost was \$300.

¶ 22 Musselman testified the costs for future semesters should be similar to those in the spring 2015 semester. In addition to these costs, Musselman testified to paying others, including buying J.C. a laptop and her continued payment of J.C.'s uncovered medical expenses, to which Cowles had stopped contributing after J.C.'s graduation from high school in May 2014.

¶ 23 D. Trial Court's Ruling

¶ 24 At the conclusion of the hearing, the trial court found the college expenses at Millikin were minimally more than at a public institution. The court found both parents had good jobs, were a part of dual-income households, and could afford the costs of attending Millikin. The court also acknowledged, however, the fact Cowles and J.C. had a strained relationship and Cowles was never consulted about where J.C. was going to college. After examining all the relevant factors, the court ordered Cowles to pay 40% of J.C.'s out-of-pocket medical and college expenses.

¶ 25 This appeal followed.

¶ 26

II. ANALYSIS

¶ 27 Cowles argues the trial court abused its discretion in ordering him to pay 40% of J.C.'s educational expenses at Millikin because there are less expensive public schools in central Illinois. Musselman argues the court did not abuse its discretion because J.C.'s college expenses were shown to be mitigated by scholarships, grants, and state contributions, and because of J.C.'s anxiety and depression.

¶ 28 Section 513(a)(2) of the Illinois Marriage and Dissolution of Marriage Act allows a trial court to "award sums of money out of the property and income of either or both parties *** as equity may require" to pay the college expenses of a child. 750 ILCS 5/513(a) (West 2014). When making the decision, the court is to consider all relevant factors, including the financial resources of the parents, the standard of living the child would have enjoyed had the marriage not dissolved, the child's financial resources, and the child's academic performance. 750 ILCS 5/513(b) (West 2014).

¶ 29 "The petitioner bears the burden of proving that the respondent should contribute toward the college expenses of their child and the burden of showing how much the respondent should contribute." *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872, 879, 892 N.E.2d 11, 17 (2008). After the petitioner presents the necessary evidence, "the respondent has the burden of going forward with evidence that would 'equally balance' the petitioner's evidence." *Id.* (quoting *In re Marriage of Taylor*, 89 Ill. App. 3d 278, 283, 411 N.E.2d 950, 954 (1980)).

¶ 30 A trial court's decision to order the parties to contribute to a child's educational expenses will not be reversed absent an abuse of discretion. *In re Marriage of Thurmond*, 306 Ill. App. 3d 828, 834, 715 N.E.2d 814, 818 (1999). "A clear abuse of discretion occurs when 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person

would take the view adopted by the trial court.' " *Blum v. Koster*, 235 Ill. 2d 21, 36, 919 N.E.2d 333, 342 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)).

¶ 31 In his brief, Cowles cites *Sussen* and argues the trial court abused its discretion in ordering him to pay 40% of J.C.'s educational expenses at Millikin because less expensive, similar programs were available at public schools. Specifically, Cowles asserts, "the problem with the course of study [J.C. has chosen] at the pricey Millikin University is that more and better courses of humanities are probably offered at public colleges *** such as, Richland Community College, Heartland Community College, Lincoln Land Community College, St. John's College, and Illinois State University *** for little if any cost."

¶ 32 In *Sussen*, a father argued the trial court abused its discretion when it ordered him to pay one-third of the cost for his son to attend a private automotive school when an adequate public school was available for less expense. The cost of the 15-month program at the private automotive school was projected to be approximately \$34,000, of which \$8,520 would be living expenses. The cost of the 21-month program at a public community college would be \$16,685, of which \$4,757 would be living expenses. *Sussen*, 382 Ill. App. 3d at 880, 892 N.E.2d at 18 (2008). The difference between the two schools was approximately \$20,000, making the private school twice as expensive overall. Accordingly, we held the court's order directing the father to pay the cost for his son to attend the private automotive school was an abuse of discretion when the cost of the private school "far exceed[ed] the cost of attending [the public school]." *Id.* We summed up our reasoning in *Sussen* by stating the following:

"In this case record does not support the conclusion that [the father] should be ordered to pay one-third the cost to attend [the private school] when (1) [the mother and son] did not present

sufficient reasons for [the son's] choice of [the private school] over in-state schools and (2) [the father] presented evidence that an adequate, less-expensive public school was available." *Id.* at 879, 892 N.E.2d at 17.

¶ 33 We find *Sussen* distinguishable on these two points. First, here, unlike in *Sussen*, Musselman presented evidence "special programs or attributes of the school make the additional costs reasonable under the circumstances." *Id.* at 881, 892 N.E.2d at 19. Millikin University is a four-year institution offering bachelor's degrees, whereas many of the schools named by Cowles are two-year institutions. While it is possible it would have been less expensive for J.C. to have attended a two-year institution and then transfer to a four-year institution afterward, the trial court noted J.C.'s anxiety and depression made it "easier for J.C. to attend a four-year college than start anew with new people after two years." Musselman testified to other unique features at Millikin which she found helped J.C.'s anxiety, depression, and learning disability, including the school's small size and the fact the location of the school allowed J.C. to live at home with Musselman.

¶ 34 We also find *Sussen* is distinguishable on a second point. Here, unlike the father in *Sussen*, Cowles presents no evidence an adequate, less expensive public school was available for J.C. to attend. In addition to Musselman's testimony regarding the benefits Millikin University provided for J.C.'s well-being and ability to learn, Cowles failed to show a comparable, four-year education would be less expensive.

¶ 35 For example, if J.C. spent her first two years at Richland Community College, it would cost approximately \$10,000 for two years, or \$2,500 per semester. Assuming J.C. then transferred to a four-year institution, the only other such program referred to by Cowles is at Illi-

nois State University in Bloomington (aside from St. John's, which only specializes in nursing), which he notes costs approximately \$6,500 in tuition and fees per semester. J.C. would end up spending at least \$36,000 in tuition and fees for a bachelor's degree.

¶ 36 On the other hand, Musselman presented evidence J.C.'s educational expenses at Millikin were approximately \$4,000 per semester after scholarships, grants, and DRS contributions. J.C. will spend approximately \$32,000 in tuition and fees for a bachelor's degree at Millikin. Considering the possibility J.C. would no longer save money by living at home if she were to attend Illinois State University, as the trial court noted, the college expenses at Millikin do not "far exceed[] the cost of attending" the public college as they did in *Sussen*. *Id.* at 880, 892 N.E.2d at 18.

¶ 37 The trial court did not abuse its discretion by directing Cowles to pay 40% of J.C.'s out-of-pocket medical and college expenses at Millikin University.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the trial court's judgment.

¶ 40 Affirmed.