2017 IL App (4th) 160901-U

NO. 4-16-0901

**FILED**
August 14, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| In re: MARRIAGE OF NEWTON, | ) | Appeal from |
| JANICE L. NEWTON, n/k/a JANICE L. LOVEKAMP, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Macon County |
| and | ) | No. 08D53 |
| KENNETH D. NEWTON, | ) | |
| Respondent-Appellant. | ) | Honorable |
| | ) | James R. Coryell, |
| | ) | Judge Presiding. |

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not abuse its discretion in requiring respondent to pay one-third of his daughter's college expenses.

¶ 2 In May 2008, the trial court entered a judgment for dissolution of marriage between petitioner, Janice L. Newton, n/k/a Janice L. Lovekamp, and respondent, Kenneth D. Newton. In April 2016, Janice filed a petition for the college expenses of their daughter, A.N. In July 2016, the court ordered Kenneth, Janice, and A.N. to each pay one-third of her college expenses. In August 2016, Kenneth filed a motion for reconsideration, which the court denied.

¶ 3 On appeal, Kenneth argues the trial court erred in ordering him to pay one-third of his daughter's college expenses. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In September 1997, Janice and Kenneth were married, and two children, A.N. and

K.N., were born during the marriage. In February 2008, Janice filed a petition for dissolution of marriage. In May 2008, the trial court entered the judgment for dissolution of marriage. Subject to a joint-parenting agreement, the parties shared joint custody of the children.

¶ 6 In April 2016, Janice filed a petition for educational expenses pursuant to section 513 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/513 (West 2014)). The petition alleged A.N. had been accepted and would begin her study of food science at the University of Illinois (U of I) in August 2016. Janice stated each of the parties was employed and able to contribute to A.N.'s educational expenses. Janice asked the trial court to direct each party to pay one-half of the expenses for A.N.'s undergraduate education, minus any financial aid, scholarships, and/or grants, other than loans, A.N. might receive.

¶ 7 In May 2016, Kenneth filed a response, stating A.N. had been accepted at other educational institutions and, due to financial concerns, it was in A.N.'s best interests to attend Richland Community College (Richland). Kenneth stated he was in a position to pay "minimal amounts" for A.N.'s education.

¶ 8 In June 2016, the trial court held a hearing on Janice's petition. Janice testified she works as the director for the surgical technology program at Lincoln Land Community College and makes approximately $74,000 per year. Janice is married to Terry Lovekamp, and their 2015 joint tax return showed an adjusted gross income of $144,814. Janice testified A.N. "is a very high caliber student" and graduated "close to the top of her class." The cost for A.N. to attend the U of I is approximately $33,000 to $34,000 per year, and Janice asked the trial court to divide that cost between her, Kenneth, and A.N. Janice stated A.N. could obtain a student loan and use $2,000 from A.N.'s own savings. While A.N. would receive financial aid to attend Richland, Janice believed A.N. would only take general education classes during her two years

there, and she would then be required to spend three years at the U of I. Given that A.N. has to take seven food science courses in her first two years, Janice stated A.N. would only have to attend four years if she started at the U of I.

¶ 9 On cross-examination, Janice testified A.N. received a trustee scholarship to attend Richland, which would pay for two years of tuition at the school. Janice stated the cost of attending Richland amounted to $8,000 for two years.

¶ 10 Kenneth testified as an adverse witness. He works at Ameren Illinois and received $94,714 in wages in 2015; $94,182 in 2014; and $81,927 in 2013. As of May 2016, Kenneth had earned $48,350, which included a bonus.

¶ 11 On direct examination, Kenneth stated his current wife works for an attorney in Springfield and earns approximately $100 per month. He thought it was in A.N.'s best interests to attend Richland and "not just from a financial standpoint." A.N.'s trustee scholarship at Richland would pay her tuition for four semesters. He was also not convinced A.N. would study food science, which was based on a survey at school. However, Kenneth stated Richland has a "guaranteed transfer agreement with the U of I," and A.N. would not have to attend an extra year there. He believed it would not be in A.N.'s best interests to go into debt to finance her education.

¶ 12 Kenneth testified he would have to take out a loan to pay for A.N.'s college expenses, and if his son, K.N., wanted to attend a four-year university, he "wouldn't ever be able to retire." He receives disability benefits from the Department of Veterans Affairs, but the payments are reduced as each of his children reaches the age of 18. He also stated his youngest daughter from his current marriage has a congenital kidney disease, and he and his wife owe "several thousand" dollars in outstanding medical bills.

¶ 13 In July 2016, the trial court issued its ruling in a docket entry. The court found A.N. had "worked very hard and [had] been an excellent student." The court concluded it was in A.N.'s best interests to enroll at the U of I. The court ordered her to apply for all grants and scholarships available to her, maintain full-time status, maintain at least a "C" average, and supply her parents with her class schedule and grade reports. The court also ordered Kenneth, Janice, and A.N. to each pay one-third of her college expenses, including room and board, books, fees, and medical expenses.

¶ 14 In August 2016, Kenneth filed a motion for reconsideration. In October 2016, the trial court denied the motion, finding the financial obligation imposed on the parties was "not an undoable burden." This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Kenneth argues the trial court erred in requiring him to pay one-third of A.N.'s college expenses. We disagree.

¶ 17 "A child does not have an absolute right to a college education." *In re Marriage of Spear*, 244 Ill. App. 3d 626, 630, 613 N.E.2d 358, 360 (1993). Section 513(a)(2) of the Dissolution 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 for 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). The court may also consider "the cost of the school, the programs offered at the school, how the school meets the child's goals, the benefits the child will receive from attending the school, and whether the parent needs to pay for

a private school education when adequate public schools are available." *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872, 878-79, 892 N.E.2d 11, 17 (2008).

¶ 18 "In determining whether to order contribution to the educational expenses for a particular school, a court may consider whether the child has access to a less-expensive public institution." *Sussen*, 382 Ill. App. 3d at 879, 892 N.E.2d at 17. "[W]hen a child wants to attend an expensive school, the petitioner must present evidence that (1) special programs or attributes of the school make the additional costs reasonable under the circumstances or (2) the more expensive school was necessary or more appropriate for the child." *Sussen*, 382 Ill. App. 3d at 881, 892 N.E.2d at 19.

¶ 19 "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." *Sussen*, 382 Ill. App. 3d at 879, 892 N.E.2d at 17. 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." *Sussen*, 382 Ill. App. 3d at 879, 892 N.E.2d at 17 (quoting *In re Marriage of Taylor*, 89 Ill. App. 3d 278, 283, 411 N.E.2d 950, 954 (1980)). "[A] court should not order a party to pay more for educational expenses than he or she can afford." *In re Marriage of Thurmond*, 306 Ill. App. 3d 828, 834, 715 N.E.2d 814, 818 (1999).

¶ 20 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. *Thurmond*, 306 Ill. App. 3d at 834, 715 N.E.2d at 818. "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)).

¶ 21 In the case *sub judice*, the trial court ordered Kenneth, Janice, and A.N. to each pay one-third of A.N.'s college expenses at the U of I, which costs $33,000 to $34,000 per year to attend. In arguing the court committed error, Kenneth contends A.N. could attend Richland at little or no out-of-pocket expense. He also argues he does not have the financial ability to pay and the order would "indefinitely" delay his ability to retire.

¶ 22 The evidence indicated Richland offered a less expensive option than the U of I, at least for the two years of community college. While A.N. could attend Richland for two years at little or no cost, the evidence indicates the U of I provided immediate opportunities for A.N. in her field of study. A.N. had been accepted into the food science program at the U of I, and the curriculum would include at least six courses specific to food science in her freshman and sophomore years. Janice testified A.N. would only take general education classes in her two years at Richland, which would then require an additional year at the U of I. While Kenneth disputed this claim, the evidence was unclear as to any food science courses offered at Richland, and whether A.N. would then have to take the first and second year courses at the U of I during her junior year. The evidence also indicated Kenneth was employed and had an income of over $94,000 in 2015. The trial court ordered Kenneth and Janice to pay the same amount toward A.N.'s college expenses.

¶ 23 The trial court found A.N. to be "an excellent student" and concluded it was in her best interests to attend the U of I. At the hearing on Kenneth's motion to reconsider, the court noted A.N. was "not bouncing around taking elective courses or nonsense courses" but was "taking hard core science courses to get a good career." While the court understood the cost of A.N.'s education at the U of I would be a financial burden on her parents, the court found it was

"not an undoable burden" since Kenneth and Janice had the resources to contribute. Considering the totality of the evidence, we find the court did not abuse its discretion in requiring Kenneth to pay one-third of A.N.'s college expenses.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's judgment.

¶ 26 Affirmed.