

NOTICE
Decision filed 09/27/18. 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.

2018 IL App (5th) 160386-U

NO. 5-16-0386

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).

JOHN W. JOHNSON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Marion County.
)	
v.)	No. 15-LM-47
)	
AMANDA L. JOHNSON,)	
n/k/a AMANDA L. MCGRATH,)	Honorable
)	Mark W. Stedelin,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Barberis and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court’s decision to enter a declaratory judgment in favor of father was not against the manifest weight of the evidence.

¶ 2 Father, John W. Johnson, brought a declaratory judgment action seeking a determination that he did not sign or authorize anyone to sign his name on any student loan applications for the benefit of his daughter, Amanda L. Johnson, n/k/a Amanda L. McGrath (Amanda). The circuit court of Marion County entered a declaratory judgment in favor of father on August 3, 2016, following a bench trial held on July 25, 2016. Amanda appeals the court’s decision. We affirm.

¶ 3 This controversy stems from the default of a student loan which was originally taken out in 2007 to help pay part of Amanda's college education. Although father's electronic signature was on the loan application, father contends he never signed or authorized his name to be placed on the application, and therefore he should not be held responsible for the loan.

¶ 4 Father claimed that during the time his children were growing up, he stressed to them two family policies: (1) if they made good grades and stayed out of trouble he would buy each of them a new car when they turned 16, and (2) they would have to pay for their own college expenses with no help from him. Father believed his children needed to find their own path, which did not necessarily include a college education. Father did not have the benefit of having his tuition paid when he was younger. Amanda denied any such policy was announced to her, although her stepsister testified she was aware of father's beliefs. Amanda did receive a car on her 16th birthday.

¶ 5 Following her high school graduation in 2005, Amanda attended Kaskaskia College. She was awarded a \$500 scholarship which did not cover all of her tuition and expenses. She testified, and father admitted, that father helped pay for the trailer in which Amanda was living, the rent for the lot on which the trailer sat, and utilities for the trailer, as well as her car insurance and food during the two years she attended Kaskaskia. Amanda also claimed father paid cash for her tuition whenever she requested assistance. Amanda finished her schooling at Kaskaskia with no student debt.

¶ 6 In 2006 or 2007, Amanda asked father to sign for a student loan so Amanda could next attend Greenville College. Father refused. Two individuals with whom father

worked testified that Amanda approached her father two different times at their work site, asking father to sign school loan applications. Each time, father refused to do so. Amanda denied she ever went to father's work site to have him sign school loan applications for her.

¶ 7 In the fall of 2007, Amanda began attending Greenville College through a distance learning program. Amanda claims her father subsequently authorized a parent loan to help pay her tuition at Greenville. The Federal Direct PLUS Loan Application and Master Promissory Note, dated November 20, 2007, sought a federal loan from the student loan program for the benefit of Amanda. The application contained father's name, address, driver's license number, social security number, date of birth, and telephone number. Father's signature on the documents was electronically filed.

¶ 8 Amanda finished her undergraduate degree with Greenville in December 2008. In the early summer of 2010, she moved to California after marrying her husband, who is in the United States Air Force. According to Amanda, once she moved to California, father mailed loan statements to her. Father denied ever receiving or forwarding any payment notes to Amanda. Amanda further noted that in 2013, she and her husband were stationed at an air force base in England, and all communications with her family were made through Facetime or Facebook messaging. Up until the move to England, Amanda had made a handful of payments on the loan.

¶ 9 Father denies having ever signed or authorized his signature upon any loan documents for Amanda. In fact, father claims he knew nothing about the loan until June 2013, when he received a letter from the Department of Education that the loan was

delinquent. Father applied to the department to have the loan discharged because of his unauthorized signature, but the department first required him to obtain a court order finding that his signature on the loan was not authorized.

¶ 10 Amanda claims her father was upset with her for failing to make all of the student loan payments, and sought to escape its effect by claiming she forged his electronic signature. Amanda asserts she had no reason to ask father to sign any loan documents since he was already paying her college expenses and tuition. She further denied any telephone conversation with father in June 2013 about the delinquent loan because she was living in England by then.

¶ 11 The trial court found that father met his burden of proof by a preponderance of the evidence that he did not sign, and did not authorize, his signature on the loan application and promissory note. The court noted that father and Amanda had not been close for quite some time, and father had not paid for the other daughter's tuition. The court further noted that there was no written documentation by either party of any tuition payments having been made, and particularly, no written record of cash tuition payments which might have been tax deductible for father. Amanda argues on appeal that the court's decision is against the manifest weight of the evidence. We affirm.

¶ 12 The declaratory judgment procedure permits a court to address a controversy after a dispute has arisen, but before either party has taken any action which would give rise to a claim for damages or other relief. *Barrington Community Unit School District No. 220 v. Special Education District of Lake County*, 245 Ill. App. 3d 242, 251 (1993). The court's grant or denial of a declaratory judgment is discretionary, but that discretion is

subject to an independent, searching review, with the court's findings of fact not being disturbed unless they are against the manifest weight of the evidence. *East St. Louis School District No. 189 Board of Education v. East St. Louis District No. 189 Financial Oversight Panel*, 349 Ill. App. 3d 445, 453 (2004). A decision is against the manifest weight of the evidence when the opposite conclusion is apparent or when the court's findings appear to be unreasonable, arbitrary, or not based on the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). Under the circumstances presented to the trial court, we cannot say the court's decision is against the manifest weight of the evidence.

¶ 13 The evidence reveals that father had a policy of not paying for his children's college education. While he may have assisted Amanda with living expenses while she was attending Kaskaskia, it is unclear whether he assisted with any tuition payments as well. Even if he had helped out in the past, that did not mean he was willing to take on a student loan for the benefit of his daughter for another year or two of college. He did not pay tuition for his other daughter's college education, and twice refused in front of witnesses to sign any loan papers for Amanda. Father believes Amanda had access to the information needed to complete the loan papers at their home, and because an electronic signature was acceptable, she did not need to have him actually sign for the loan. He further asserts that he would never have agreed to the references listed on the application, Amanda's boyfriend and mother. He had not known Amanda's boyfriend for three years as required for the loan, and he had a poor relationship with his ex-wife, Amanda's mother. Father believes Amanda chose these two references because they were people who would be loyal to her and she could control them in order to keep her father in the

dark as to the existence of the application. Father further claimed that Amanda placed her email address on the loan application to keep him from learning of the loan's existence. Father did not have an email address. Father also pointed out that he was married at the time of the application, and his spouse's name was not listed on the loan, even though the application required the spouse to complete the documentation as well. Additionally, as the court noted, the absence of any documentation for loan payments made by father is at odds with any intent to secure tax deductions for such payments. While Amanda had plausible answers for some of these questions, it ultimately was a matter of credibility for the court to determine. It is unfortunate that the matter resulted in the family having to resort to the courts, but the department required a declaratory judgment in favor of father for father to be released from liability for Amanda's student loan payments. The court ruled in favor of father, and we cannot say the court's decision is against the manifest weight of the evidence based upon the record before us.

¶ 14 For the foregoing reasons, we affirm the declaratory judgment awarded to father by the circuit court of Marion County. The motion to dismiss the appeal taken with the case is denied.

¶ 15 Affirmed.