

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).

No. 3--09--0961

Order filed February 1, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

In re MARRIAGE OF)
SHERIE G. VOLDEN, n/k/a) Appeal from the Circuit Court
SHERIE G. MONZIN,) of the 21st Judicial Circuit,
) Kankakee County, Illinois,
)
Plaintiff-Appellant,) No. 93--D--402
)
and)
)
DAVID VOLDEN,) Honorable
) Michael D. Kramer,
Defendant-Appellee.) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

Held: Where both parties had the financial ability to contribute to their daughter's college education and plaintiff had not made any significant contribution, the trial court did not abuse its discretion in ordering plaintiff to reimburse defendant \$7,500 for the education expenses of the daughter's final semester.

Plaintiff Sherie Volden, n/k/a Sherie Monzin, appeals from an

order of the trial court in postjudgment proceedings requiring her to reimburse \$7,500 to defendant David Volden for the expenses of their daughter's college education. We affirm.

Sherie and David had two children during their marriage, Ashley and Christie. They divorced in 1993. On November 20, 2008, David filed a petition for educational support, seeking reimbursement for Christie's post high school education expenses under section 513 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/513 (West 2008)).

Prior to the hearing, Sherie filed a motion *in limine*, requesting that the trial court bar evidence of any expenses David paid before he filed his petition. The trial court denied the motion.

At the hearing, Sherie testified that Ashley attended cosmetology school and Christie attended the University of Illinois and that both girls had completed their education. Sherie was currently employed at Northwestern Memorial Hospital and recently took a new position as a resource coordinator, making approximately \$45 per hour. In 2008, her income was \$83,592. Her projected gross income for 2009 was approximately \$112,000. Sherie testified that she had a 401(k) retirement account through her employer that had approximately \$40,000 in it. She further testified that she and her current husband also owned their home. However, she had to refinance the house for \$90,000 when she "bought [David] out" after

the divorce.

When asked if she had paid any of Christie's college tuition or fees, Sherie testified that she paid \$218.70 in November of 2007 and \$489.55 in February of 2008. Sherie stated that she did not make any other payments toward Christie's college tuition, nor had she paid for Christie's fees, room or board. For the last three years, she purchased food and clothing for Christie and "all of the things that she needed" at the beginning of each semester. She testified that she never had any discussions with either Christie or David about monetary contributions toward Christie's college education.

David testified that after the divorce, he and Sherie had an informal agreement that they would both pay for the children's education, but they had not determined the exact amount. Christie started attending the University of Illinois in the fall of 2005 and graduated in the spring of 2009. David introduced exhibits that listed the various college expenses that he had paid during Christie's four years at the University of Illinois. As of June 2009, the expenses paid totaled \$44,670.

Beginning in the fall of 2008 and ending in August 2009, David paid Christie's rent for her apartment in Champaign in the amount of \$520 each month. In the fall of 2008, he made a payment of \$4,334 for tuition, and in the spring of 2009 he paid \$4,339. In addition, he paid for incidental expenses, such as Christie's cell

phone, utilities and charges on her credit card. Christie's credit card charges for the spring semester totaled \$1,331 and included purchases at Target, Meijer, the United States Postal Service, and a tanning salon. The exhibits also indicated that in the spring of 2009, David paid for Christie's parking permit in the amount of \$200, her car insurance totaling \$350, and her health insurance in the amount of \$1,032 (\$172 per month). Including tuition, rent, utilities, and credit card expenses, David contributed \$11,645 toward Christie's college education during the spring semester of 2009.

David testified that he worked 40 hours or more a week at Exelon, making \$50 an hour. He earned an approximate yearly income of \$100,000 and had an employee 401K worth \$220,000. He also testified that he owned two cars and his home in Manteno. The house was a duplex; David lived in one unit and rented the other unit for \$1,095 per month. He had a mortgage balance of approximately \$135,000.

On cross-examination, David testified that Christie received a \$10,000 scholarship which she used for "college costs" during her four years at school. He also testified that he cashed in several \$100 savings bonds which he then invested in Janus funds to help pay for Christie's education expenses. When he redeemed the funds in November of 2005, the account was worth \$3,937. He acknowledged that Christie worked at Buffalo Wild Wings while she attended the

University of Illinois. She made approximately \$127 in a two-week pay period and reported \$164.40 in tips.

In closing arguments, David requested that Sherie pay for one-half of Christie's expenses for her fourth year of college education and asked the court to award him \$8,500. The trial court considered the factors in section 513 and concluded that:

"Under the facts of this case, the Court finds that equity requires that the Petitioner [Sherie] pay to the Respondent [David] the sum of \$7,500 for reimbursement for amounts he paid for Christie's tuition, fees, books, and reasonable living expenses for her final semester which began in January, 2009."

ANALYSIS

I

Sherie first argues that the trial court erred in denying her motion *in limine*, which sought to prevent the inclusion of evidence of education expense payments made prior to the filing of David's petition for contribution.

Sherie cites one case in support of her argument, *Potocki v. Potocki*, 98 Ill. App. 3d 501 (1981). In *Potocki*, a dissolution judgment was entered on November 1, 1976. The parties' son, James, began attending the University of Illinois in the fall of 1979 and turned 18 in December of that same year. On January 29, 1980, the father filed a petition to modify child support seeking to

terminate support. In its final order, the trial court instructed the father to pay the mother \$70 per week for James' college education. *Id.* at 503. On appeal, the court was asked to determine whether the trial court could modify the divorce decree to require the husband to contribute to his child's college education. It held that modification of a provision for education expenses could be made but only as to installments accruing subsequent to the filing of the motion for modification. The reviewing court modified the award and ordered the father to contribute \$70 each week toward his son's college education "commencing on the date the mother filed her petition." *Id.* at 507. The trial court's order in this case complies with that holding. However, *Potocki* did not discuss the admission of evidence.

To determine whether the trial court properly reviewed evidence of expenses incurred prior to the filing date of the petition, we must look to the statute and other case law. Section 513(b) allows a court to make provisions for the education expenses of a child of the parties after reviewing several factors, including the financial resources of the parents, the standard of living the child would have enjoyed had the marriage survived, and the child's academic performance. 750 ILCS 5/513(b) (West 2008). The consideration of evidence prior to the filing of a petition for contribution or modification is within the court's discretion.

Street v. Street, 325 Ill. App. 3d 108 (2001) (child's previous academic performance); *Gibb v. Triezenberg*, 188 Ill. App. 3d 695 (1989) (father/son relationship prior to filing of petition).

In this case, the trial court evaluated evidence regarding the financial resources and expenses of both Sherie and David and ordered reimbursement for the education expenses incurred after David filed his petition. To the extent that Christie's college expenses were relevant to those resources, the trial court appropriately considered facts which accrued prior to the filing of the petition for contribution. We therefore find no error in the court's consideration of prior evidence.

II

Sherie also argues that the trial court abused its discretion by ordering her to reimburse David \$7,500 for Christie's college expenses during the 2009 spring semester.

Pursuant to section 513 of the Act, the trial court may award sums of money out of the property and income of either or both parties "as equity may require" for the educational support of a child who has attained majority age. 750 ILCS 5/513(a) (West 2008). Section 513 provides:

"(b) In making awards *** [for the education expenses of the child] pursuant to a petition or motion to decrease, modify, or terminate any such award, the court shall consider all relevant factors that appear reasonable and

necessary, including:

- (1) the financial resources of both parents;
- (2) the standard of living the child would have enjoyed had the marriage not been dissolved,
- (3) the financial resources of the child,
- (4) the child's academic performance." 750 ILCS 5/513(b)

(West 2008).

The percentage of education expenses awarded to each parent will not be overturned absent a finding that the trial court abused its discretion. *Street*, 325 Ill. App. 3d 108. An abuse of discretion occurs when the trial court's decision is arbitrary or unreasonable or based on an incomplete record. *Blum v. Koster*, 235 Ill. 2d 21 (2009).

Here, the trial court's decision was not an abuse of discretion. The evidence showed that Sherie had a gross income in 2008 of \$83,592 and a projected income in 2009 of \$112,000. David's income was comparable; in 2008 he earned approximately \$100,000, and his estimated income for 2009 was \$127,000. Sherie paid \$218.70 in 2007 and \$498 in 2008 for Christie's education at the University of Illinois; she paid no additional expenses for her daughter's tuition, room or board, except a few incidentals. On the other hand, the record indicates that David paid Christie's tuition, fees, rent and other expenses for all eight semesters. Specifically, after David filed his petition for contribution, he

paid all of Christie's education expenses for the spring 2009 semester, which totaled \$11,645.

Nevertheless, Sherie maintains that David's record of expenses fails to account for Christie's \$10,000 scholarship. However, those proceeds were disbursed over the course of Christie's four years at the University of Illinois and were applied to expenses incurred before David filed his petition.

The trial court determine that both parties had the financial ability to make significant contributions to Christie's education. The court also found that, had the marriage survived, the parties would have provided the costs of Christie's college education, in excess of \$15,000 each year. The record supports those findings. Based on the evidence, the trial court's order directing Sherie to reimburse David \$7,500 for the 2009 spring semester was not unreasonable.

CONCLUSION

The judgment of the circuit court of Kankakee County is affirmed.

Affirmed.