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2013 IL App (3d) 120740-U

Order filed October 29, 2013

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
JACQUELINE BECK, f/k/a JACQUELINE)	Will County, Illinois
CAFFARELLI,)	
)	
Petitioner-Appellee,)	
)	Appeal No. 3-12-0740
and)	Circuit Nos. 10-D-159
)	10-D-266
TIMOTHY CAFFARELLI,)	
)	Honorable Robert P. Brumund,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.

Justices Carter and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's ruling that respondent owes \$1,523.75 for previously incurred school, extracurricular and medical expenses, as well as \$7,228.75 toward his daughter's college expenses, is not against the manifest weight of the evidence.
- ¶ 2 Petitioner, Jacqueline Beck, brought numerous petitions against her former husband,

respondent, Timothy Caffarelli, seeking contribution for college expenses, leave to use certain funds for tutoring and other educational expenses, as well as a rule to show cause seeking a finding of indirect civil contempt. The circuit court of Will County denied petitioner's request to find respondent in contempt of court, as well as the request to use certain accounts to pay for tutoring of two of the children. The court did, however, order respondent to pay \$7,228.75 in contributions toward one child's educational expenses, and also found that respondent owed petitioner a balance of \$1,523.75 from previously incurred school, extracurricular, and medical expenses. Respondent appeals, claiming, *inter alia*, the trial court erred in ordering him to contribute anything toward the college expenses for one of the children, as doing so violated section 513 of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/513 (West 2010)). Respondent further claims that the trial court's finding that he owed \$1,523.75 from previously incurred expenses is against the manifest weight of the evidence.

¶ 3

BACKGROUND

¶ 4 Timothy and Jacqueline were married in March of 1989. The parties have three children: Ashley, born September 8, 1989; Eric, born July 9, 1994; and David, born June 19, 1995. On February 7, 2011, the trial court entered the judgment for dissolution of marriage.

¶ 5 Relevant to this appeal, the judgment states:

"13. That the children have UBS accounts established with money gifted to each of them by their great-grandmother, which account proceeds are intended to be used for college education expenses of the children. In the

event those funds are exhausted for the support, education or other purpose for the children, both TIMOTHY and JACQUELINE shall contribute to the post-high school education expenses of the children pursuant to Section 513 of the Illinois Marriage and Dissolution of Marriage Act. JACQUELINE shall provide TIMOTHY with copies of the children's UBS account statements twice each year (On July 1st and January 1st of each year). That before the proceeds in the children's accounts can be used for any purpose other than college expenses, [JACQUELINE] shall petition the court for an order granting such relief."

¶ 6 On October 18, 2011, Jacqueline filed a petition for contribution toward college expenses and other relief. The petition alleged that Ashley was 22 years of age and was enrolled as a full-time student at the University of Iowa. It continued, noting that Ashley contributed to her college expenses via "grants, student loans and monies in her UBS account ****" and that the funds in the UBS account were exhausted. Ultimately, the petition sought contribution from Timothy toward Ashley's college expenses "pursuant to the provisions of Section 513 of the Illinois Marriage and Dissolution of Marriage Act."

¶ 7 On November 7, 2011, the trial court entered an order mandating that all "medical expenses" and "school expenses not reimbursed *** will be divided equally between the parties." The order further noted that each "party's contribution toward any of ASHLEY CAFFARELLI'S Section 513 college expenses over and above the Section 513 expenses paid by her UBS monies

is reserved for future consideration by the court."

¶ 8 On February 9, 2012, Jacqueline filed a two-count verified petition for rule to show cause. The petition alleged Timothy failed to pay certain medical and school expenses as directed by the November 7, 2011, order. The petition, itself, claimed that those expenses totaled \$8,999.17; however, attached to the petition is an exhibit indicating the expenses total \$7,079.51.

¶ 9 Eventually, the trial court held a hearing over three days in February, May and July of 2012, taking evidence to assist in ruling on Jacqueline's petition for rule to show cause, as well as the unresolved issue of Ashley's college expenses. At those hearings, Jacqueline testified that at the time Ashley graduated high school in 2008, her UBS account was valued at approximately \$80,000. Timothy believed the value of the account to be approximately \$90,000 upon Ashley's graduation. Neither party discusses or directs our attention to a statement of the account from 2008. The earliest statement we find in the record is from August of 2010 indicating Ashley's account was valued at \$49,129.49.

¶ 10 Ashley testified at a February 15, 2012, hearing. She noted that she was currently 22 years of age and expected to graduate in May of 2012 with a bachelor's degree. She previously attended College of Du Page, then began her sophomore year at Northern Illinois University. Since January of 2011, however, she had been attending the University of Iowa, which is from where she expected to graduate. In March of 2011, when Ashley turned 21, Jacqueline stopped acting as trustee of Ashley's account, turning the funds over to Ashley.

¶ 11 Ashley testified that in May of 2011, she obtained a Toyota Camry "in her name" but that

she did not drive the Camry. She continued to drive an Acura and intended her mother to drive the Camry until she graduated. The Camry cost between \$23,000 and \$25,000, which Ashley noted was paid for by her grandfather.

¶ 12 Ashley identified documents indicating that, also in May of 2011, she withdrew \$24,232.00 from her UBS account which "zeroed out the account." She deposited that amount into her PNC bank account on June 1, 2011. She testified that her disbursements from her PNC account were used for various college expenses. Ashley denied any allegations that she used funds from her UBS or PNC bank account to purchase the Camry.

¶ 13 Timothy testified that at the time of the entry of the judgment for dissolution of marriage in February of 2011, he was unemployed. He obtained employment on March 7, 2011. He moved from Atlanta, Georgia to Las Vegas, Nevada to accept his current position. His gross annual salary is \$95,000. In 2011, he earned \$87,000.

¶ 14 Timothy noted that he had not contributed to any tuition or college expenses for Ashley. He believed some of Ashley's UBS funds were used to buy the Camry. He noted the UBS account contained approximately \$49,000 in August of 2010. In August of 2010, \$15,000 from the account was used to pay for Ashley's first semester of the 2010-2011 school year, leaving approximately \$33,600 in the account. That semester was the first of Ashley's junior year.

¶ 15 On July 11, 2012, the court issued oral rulings, noting that "fortunately for the Caffarelli children, they have a fairy godmother, or should I say a fairy great-grandmother." The court continued, noting how overjoyed the majority of parties appearing before it would be knowing

that the only unpaid college expenses of a child totaled \$15,000. The court noted:

"The respondent expects the child's grandmother to kick in again and pay the balance. The respondent further believes, though he has not convinced me, that some of the money used from the college fund was spent for the purchase of a car by his daughter. I do not believe that to be the case."

¶ 16 The court went on to find that there "is no question here about academic performance" and that Ashley "used the extent of her financial resources in grants, aids, and loans. That's her contribution to the college education expenses, her own expense." The court continued, noting that Timothy "has a better ability to pay college education expenses of the minor child." However, noting that the petition only requests 50% of the cost of the final semester's expenses, the court ultimately ordered Timothy to pay \$7,228.75.

¶ 17 When ruling on Jacqueline's petition for rule to show cause, the trial court found the total unpaid medical and school expenses, not including expenses associated with Ashley's final semester, totaled \$7,079.59, and that Timothy's share was half of that amount: \$3,539.76. The court further found that Timothy paid \$2,016 of that amount, resulting in an outstanding balance of \$1,523.76 chargeable to Timothy.

¶ 18 The court memorialized its July 11, 2012, findings in a written order issued July 31, 2012. Timothy filed his notice of appeal on August 29, 2012.

¶ 19 ANALYSIS

¶ 20 Timothy raises two issues on appeal. Initially, he argues that the trial court erred in ordering him "to pay petitioner for contribution to educational expenses of Ashley Caffarelli." Timothy's second contention is that the trial court's "finding that respondent owed petitioner the sum of \$1523.75 for unreimbursed medical expenses and extracurricular expenses was against the manifest weight of the evidence."

¶ 21 A. Unreimbursed Medical and Other Expenses

¶ 22 Timothy contends that the trial court's finding that he owed Jacqueline \$1,523.75 for unreimbursed medical and extracurricular expenses is against the manifest weight of the evidence. A decision is against the manifest weight of the evidence when the opposite conclusion is clearly evident or where it is unreasonable, arbitrary, or not based on the evidence. *In re Marriage of Cianchetti*, 351 Ill. App. 3d 832 (2004).

¶ 23 Respondent argues that some, or all, of the \$1,523.75 the trial court ordered him to pay Jacqueline has been discharged in bankruptcy and, therefore, he should not be forced to pay Jacqueline money she neither owes nor paid to providers.

¶ 24 To support this contention, Timothy identifies two documents in the record: a Schedule F – Creditors Holding Unsecured Nonpriority Claims from Jacqueline's bankruptcy case and an exhibit attached to her motion, which details \$7,079.51 of medical, extracurricular and optical expenses of the children. Respondent notes that all of the expenses listed on the exhibit predate Jacqueline's bankruptcy filing, then claims all "except for two, IL Basketball and EDS Driving School, were actually listed on petitioner's bankruptcy filing ***."

¶ 25 Respondent's characterization of the evidence is simply incorrect. Comparing the bankruptcy document to the exhibit, we note that the exhibit contains items or amounts for medical services provided to the children that are not listed on the bankruptcy filing. One example is services provided to one son by "Nap. Radiologists" for \$222.30. This amount and provider appears on the exhibit as an incurred but unpaid expense, but the provider is not listed anywhere on the bankruptcy filing. Moreover, while "Du Page Med. Grp" is listed both on the exhibit and on the bankruptcy filing, the amount of services they rendered the two boys as identified on the exhibit totals \$1,764, yet the bankruptcy filing identifies only \$506.18 as due and owing.

¶ 26 Furthermore, while respondent identifies the unsecured nonpriority creditors schedule in the record on appeal, he provides no citation to the record as to where we can find an order from the bankruptcy court, or testimony specifying which debts were actually discharged and which were not. The trial court seemed confused by this fact as well, stating, "If they have been discharged, they have been discharged, they don't owe it. I can't tell." Our review of the transcript from a February 15, 2012, hearing revealed that respondent's counsel inquired as to whether petitioner took a bankruptcy course in April of 2010 and whether she paid a lawyer \$6,000 to file bankruptcy for her. Timothy's counsel also inquired as to whether or not petitioner had \$34,000 "in your account" when she paid her lawyer \$6,000 to file bankruptcy. The inquiry into her bankruptcy stops there.

¶ 27 Respondent acknowledges Jacqueline's pleading, which states she incurred various

medical, dental, optical, and extracurricular expenses on behalf of the three children totaling \$7,079.51. Half of that amount totals \$3,539.75 of which the trial court found respondent had already paid \$2,016, leaving respondent's outstanding balance at \$1,523.75, the exact amount the trial court ordered him to pay. Again, he claims this was done in error as the trial court failed to properly consider portions of the \$7,079.51, which were discharged in bankruptcy. However, we fail to find in the record where respondent detailed for the trial court exactly what, if any, amounts were discharged in bankruptcy. Therefore, we cannot say the trial court's ruling was against the manifest weight of the evidence.

¶ 28 B. Contribution to Ashley's College Expenses

¶ 29 Timothy also contends that he "should not have been ordered to pay petitioner for contribution to educational expenses of Ashley Caffarelli." His arguments to support this contention are loosely developed, including citation to section 513 of the Act (750 ILCS 5/513 (West 2010)) and a recitation of certain section 513 factors. Timothy cites paragraph 13 from the judgment for dissolution of marriage in his opening brief, yet fails to specify exactly what effect, if any, it had or should have had on the trial court's ruling. Instead, Timothy seemingly focuses on his general and broad contention that "equity requires the request to contribute to petitioner be denied."

¶ 30 As Timothy spends a significant amount of time reviewing the section 513 factors and arguing that the trial court erred in ordering him to pay a portion of Ashley's educational expenses, we infer that the gist of his argument is the trial court's finding that he owes \$7,228.75

toward Ashley's educational expenses is against the manifest weight of the evidence. While he never specifically states the trial court erred in balancing the section 513 factors, that appears to be the general theme of his arguments. As a general rule, a parent's duty to support a child ends when the child reaches the age of majority. *In re Marriage of Truhlar*, 404 Ill. App. 3d 176, 180 (2010). During the latter part of this century, however, family courts began routinely allocating college expenses for children who had attained the age of majority pursuant to the judiciary's general authority to order child support. *Id.* at 180-81; *Strom v. Strom*, 13 Ill. App. 2d 354 (1957). The legislature codified this practice and specific in section 513 of the Act that the "authority under this Section [of the Act] to make provision for educational expenses" of the child extends to "college education or professional or other training after graduation from high school." 750 ILCS 5/513(a)(2) (West 2010).

¶ 31 Permissible educational expenses include room, board, dues, tuition, transportation, books, fees, registration and application costs, living expenses and medical expenses. 750 ILCS 5/513(a)(2) (West 2010). Section 513 educational expenses are considered a form of child support. *Petersen v. Petersen*, 403 Ill. App. 3d 839, 844 (2010).

"In making such awards the Act provides the court shall consider the financial resources of both parents, the standard of living the child would have enjoyed if the marriage had not been dissolved, the financial resources of the child and other relevant factors. [Citation.] Other relevant factors have been held to include the cost of the school, the programs offered at

the school, the child's scholastic aptitude, how the school meets the child's goals, and the benefits the child will receive from attending the school.

[Citation.] Another factor that may be considered is whether a divorced parent needs to pay for a private school education when adequate public schools are available." *In re Marriage of Schmidt*, 292 Ill. App. 3d 229, 237 (1997).

¶ 32 While some courts have noted that a trial court's decision to award educational expenses will not be reversed absent an abuse of discretion (see *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 243 (2007); *In re Marriage of Thurmond*, 306 Ill. App. 3d 828 (1999); *In re Marriage of Hillebrand*, 258 Ill. App. 3d 835 (1994)), our supreme court has indicated that a trial court's award of educational expenses should be reviewed under the manifest weight of the evidence standard. *In re Support of Pearson*, 111 Ill. 2d 545, 552 (1986) ("Given defendant's limited financial resources, the availability of a less expensive school with a similar program, and the fact that defendant's other children received less money toward their educations than was here requested, we cannot say that the trial court's judgment was against the manifest weight of the evidence."). This court echoed that standard in *In re Marriage of Cianchetti*, 351 Ill. App. 3d 832 (2004), when noting, "A trial court's decision to award educational expenses will be overturned only if it is against the manifest weight of the evidence."¹ *Id.* at 834. A decision is

¹A reasonable person could conclude that the difference between the two standards of review at issue here is in name only.

against the manifest weight of the evidence when the opposite conclusion is clearly evident or where it is unreasonable, arbitrary or not based on the evidence. *Id.*

¶ 33 In arguing that the trial court erred when ordering him to contribute to Ashley's expenses, respondent focuses on two of the section 513 factors: the financial resources of both parents, and the financial resources of the child. The *Pearson* court stressed that a trial court "should not order a party to pay more for educational expenses than he or she can afford." *Pearson*, 111 Ill. 2d at 552. It continued, stating that a "party's ability to pay must be evaluated with regard to the party's resources at the time of the hearing." *Id.*

¶ 34 We cannot say that no reasonable person would have taken the view adopted by the trial court when holding respondent owes \$7,228.75 toward Ashley's college expenses. Timothy acknowledges that the record indicates his net income totaled to \$5,358.58 per month. His gross income for 2011 equated to \$87,000 and would have been \$95,000 had he worked the entire year. He further acknowledges that this amount is significantly more than petitioner's monthly gross income of \$2,346.67.

¶ 35 Respondent argues that, at a minimum, the fact that the trial court ordered him to pay \$7,228.75 of the final \$14,968.05 of Ashley's college expenses is error, as it fails to adequately consider "the financial resources of the child." Specifically, respondent notes Ashley's grandfather paid the remaining \$7,739.30 for the final semester, leaving Ashley's responsibility at zero. Ashley testified, however, that the payment from her grandfather was a loan and that she is "obligated to pay that back." Apparently, the trial judge believed this.

¶ 36 It is axiomatic to note that it "is the province of the trial judge to determine the credibility of witnesses." *In re Marriage of Barnes*, 324 Ill. App. 3d 514, 520 (2001). Given Ashley's testimony regarding her grandfather's loan, the respondent's acknowledgment that his net income totaled \$5,358.58, and the disparity in income between respondent and the petitioner, we cannot say that no reasonable person would adopt the view taken by the trial court when holding respondent responsible for the final \$7,228.75 of his daughter's college expenses.

¶ 37 Finally, respondent cites to *Pearson*, suggesting the trial court erred in its judgment by failing to properly consider a "less expensive public institution." The *Pearson* court certainly identified "the availability of a less expensive school with a similar program" as a factor to be considered by a trial court when determining whether to award educational expenses. *Pearson*, 111 Ill. 2d at 552. In *Pearson*, however, the private school tuition that petitioner requested the respondent pay totaled \$5,300 a semester, or \$21,200 over the full term of the private program. *Id.* at 548. The *Pearson* respondent introduced into evidence the course catalog from Triton College, a public school, which showed that a similar program would cost \$1,006.50 per semester, or \$4,026 for the entire four semester program. *Id.*

¶ 38 On cross-examination, the respondent herein did elicit an answer from Ashley admitting that Northern Illinois University's business program was cheaper for her to attend than the University of Iowa's business program, given the out-of-state tuition she is paying. However, we find nowhere in his argument or the record on appeal where he identifies how much cheaper the in-state tuition would be at Northern Illinois. Respondent directs our attention to a singular

passage in the record where Ashley admitted Northern Illinois's tuition is cheaper than Iowa's and that she pays out-of-state tuition at Iowa. Given that record, we cannot conclude that the weight given to this factor by the trial court resulted in its ruling being against the manifest weight of the evidence.

¶ 39

CONCLUSION

¶ 40 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 41 Affirmed.