2016 IL App (2d) 150927-U
No. 2-15-0927
Order filed May 26, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re THE MARRIAGE OF MARTIN FIELDER, Petitioner-Appellant, and KIMBERLY FIELDER, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 10-D-2519 Honorable Timothy J. McJoynt, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly required petitioner to contribute to the parties' child's educational expenses pursuant to a marital settlement agreement: although the child's discontinuance of her education would have terminated petitioner's obligation, no discontinuance had occurred since the agreement, the only purported discontinuance having occurred previously.

¶ 2 Petitioner, Martin Fielder, appeals the trial court's order requiring him to contribute to the college expenses of his daughter, C.F. He contends that the parties' marital settlement agreement (MSA) unambiguously relieved him of that obligation where C.F. had dropped out of school for more than two years. We affirm.

¶ 3 Petitioner and respondent, Kimberly Fielder, were married in 1986 and had three children together, P.F., C.F., and E.F. On November 17, 2010, petitioner sought to dissolve the parties' marriage. They eventually settled the issues, memorializing their understanding in the MSA. The MSA was included in a dissolution judgment entered on September 29, 2011. One portion of the MSA provided for the children's post-high-school expenses. Each party was responsible for 50% of "the educational expenses of a college, university, graduate school, or vocational school education for each child of the parties," or a different percentage "as later determined in accordance with their then-means."

¶ 4 The MSA further provided that the parties' respective obligations would terminate upon the first to occur of the following:

> "1. The child's receiving a four (4) year undergraduate degree;
>
> 2. The child's discontinuance of his educational pursuit. For purposes of this Agreement, the child shall be conclusively deemed to have discontinued his or her education pursuit when he or she is not enrolled for a period of 18 consecutive months as a full-time student in a good academic standing in a course of study that, upon completion, will result in the award of a college or university undergraduate or graduate degree or vocational certification;
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> 3. The child's attaining the age of twenty-four (24) years; or
>
> 4. The child's marriage."

¶ 5 On August 26, 2014, respondent filed a petition for a rule to show cause, alleging that petitioner had refused to pay C.F.'s educational expenses. Petitioner filed a response and a counterpetition for a rule to show cause, arguing that respondent had willfully refused to pay C.F.'s educational expenses. At a hearing on the petitions, respondent testified that C.F. enrolled

at the Illinois Institute of Art in Chicago in October 2007 but dropped out after 25 days. In the fall of 2009, she enrolled at the Pacific Northwest College of Art in Oregon and remained enrolled there until 2011. C.F. did not attend school from early summer 2011 until January 2012 except for a brief period at the University of Illinois-Chicago. In January 2012, she enrolled at Columbia College, from which she graduated in December 2013.

¶ 6 Respondent testified that she cosigned student loans for C.F. with a total balance of $147,591. In addition, she advanced C.F. $3,441.07 for itemized expenses related to her education. Petitioner had not contributed anything toward those expenses.

¶ 7 Petitioner testified that he was not aware that C.F. had reentered college after dropping out in 2007. However, C.F. testified that she had communicated with petitioner by phone and e-mail about "a few of the things that [she] had been doing in school," including the fact that she made the dean's list. She identified emails from 2011 discussing a school project she had done.

¶ 8 In a written order, the trial court found that the dissolution judgment was unclear, such that petitioner did not willfully violate it. Nonetheless, the court found that respondent incurred out-of-pocket expenses of $3,441.07 for C.F.'s educational expenses and was responsible for loans totaling $147,591. The court held that petitioner was responsible for 40% of those expenses. The court rejected petitioner's argument that his obligation had terminated pursuant to the portion of the dissolution judgment relating to C.F.'s discontinuance of her educational pursuit. The court did not believe that "a 25 day attempted college [*sic*] is a start to college."

¶ 9 The court denied petitioner's motion for clarification or reconsideration. Petitioner timely appeals.

¶ 10 Petitioner contends that the plain language of the MSA terminated his obligation to contribute to C.F.'s educational expenses. He argues that the MSA unambiguously provided that

he was relieved of such an obligation if a child discontinued his or her educational pursuit, which is deemed to have occurred when he or she "is not enrolled for a period of 18 consecutive months as a full-time student." He notes that C.F. enrolled at the Illinois Institute of Art for 25 days in 2007, then dropped out and did not attend school for nearly two years until enrolling at the Pacific Northwest College of Art in 2009. Thus, he contends that his obligation to contribute to C.F.'s educational expenses terminated.

¶ 11 Respondent first argues that petitioner forfeited this contention when he petitioned for a rule to show cause to compel respondent to pay C.F.'s educational expenses. She argues that petitioner "sought to enforce the very provision he now claims to be terminated." However, petitioner never sought to void or "terminate" the provision regarding educational expenses. In fact, he sought to enforce it, at least according to his reading of it. Petitioner's positions were consistent that the MSA relieved him of his obligation to pay a portion of C.F.'s expenses, thus requiring respondent to pay them (at least to the extent that she had cosigned the notes).

¶ 12 Respondent next contends that petitioner's obligations pursuant to the MSA could not be terminated by an event that occurred before the agreement existed. She notes that the agreement did not become effective until it was incorporated into the dissolution judgment in September 2011. She argues that C.F. had re-enrolled in school by 2009 and that it would be "an absurdity" to hold that petitioner's obligation to contribute to C.F.'s educational expenses had already been terminated by that time. We agree.

¶ 13 Interpreting a marital settlement agreement is a matter of contract construction. *In re Marriage of Dundas*, 355 Ill. App. 3d 423, 425 (2005). In construing a contract, courts seek to give effect to the parties' intent. *Id.* at 426. The agreement's language is generally the best indication of that intent, and when it is unambiguous it must be given its plain and ordinary

meaning. *Id.* However, where the language is ambiguous, parol evidence may be used to decide what the parties intended. We review *de novo* an interpretation of a marital settlement agreement and whether the agreement's terms are ambiguous. *Id.*

¶ 14 The MSA outlines the parties' respective obligations going forward. It expresses the parties' intention to provide a post-high-school education for "each child of the parties." That obligation would only be terminated if one of the listed events occurred subsequently. If the parties had intended that petitioner's obligation to provide educational support for C.F. had already terminated, they could simply have said so. Instead, they promised to provide educational support for "each child of the parties."

¶ 15 It is undisputed that C.F. was enrolled in college in 2009 and remained so (except for a six-month gap in 2011) until graduation in 2013.[1] Thus, no discontinuance occurred after the MSA. In any event, we agree with the trial court that C.F.'s attending college for 25 days in 2007 did not begin her post-secondary education such that her dropping out for two years should be counted as a discontinuance."

¶ 16 Petitioner notes his testimony that he was unaware that C.F. had re-enrolled in school. Thus, he presumably asks us to infer that his understanding was that C.F.'s discontinuance of her education was ongoing, such that he could not have intended to provide support. Whether petitioner's unilateral mistake could nullify his contractual obligation is an issue we need not decide, as petitioner's testimony was significantly impeached the evidence that C.F. and petitioner had detailed conversations during 2011 about her progress in school and school projects.

[1] C.F. had turned 24 by the time she graduated, and respondent did not seek reimbursement for expenses incurred after C.F.'s twenty-fourth birthday.

¶ 17 The judgment of the circuit court of Du Page County is affirmed.

¶ 18 Affirmed.