2012 IL App (1st) 103830-U

THIRD DIVISION
March 28, 2012

Nos. 1-10-3830 & 1-11-1582 (Consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TERESA C. SHERRY, (n/k/a TERESA COOK),	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiff-Appellee and Counter-Appellant,	)	
	)	
v.	)	No. 01 D 11739
	)	
STEPHEN F. SHERRY,	)	
	)	Honorable Elizabeth Rivera and
Defendant-Appellant and Counter-Appellee.	)	Mark Lopez, Judges Presiding.

JUSTICE MURPHY delivered the judgment of the court.
Neville and Salone, JJ., concurred in the judgment.

O R D E R

¶ 1 *HELD*: Where marital settlement agreement entered into by parties specifically provides parties may resolve a dispute over educational expenses through mediation or in a court of competent jurisdiction, the trial court did not err in rejecting motion to dismiss arguing that mediation was condition precedent to action in court and granting summary judgment on the issue.

¶ 2 *HELD*: Where mother included request for educational expenses pursuant to marital settlement agreement in petition for rule to show cause seeking contempt finding, trial court did not err in ordering father pay educational expenses pursuant to the terms of the parties' marital settlement agreement.

¶ 3 *HELD*: Where trial court accepted evidence that there was a communication breakdown and misinterpretation of marital settlement agreement, trial court did not err in finding father's actions were not willful and contumacious conduct and that father had compelling cause to refuse payment of educational expenses and denying request for attorney fees was proper.

¶ 4 *HELD*: Where marital settlement agreement specifically reduces party's obligation to pay education expenses by the availability of funds such as scholarships, grants-in-aid, and school loans, the trial court did not err in reducing father's obligation by the amount of a school loan secured by the child.

¶ 5 A judgment for dissolution was granted to the parties in the instant matter on April 25, 2002. Incorporated within the judgment was a marital settlement agreement (MSA) which contained provisions concerning educational choices and expenses for the parties' two children. On July 7, 2009, Plaintiff, Teresa Sherry (n/k/a Teresa Cook), filed a petition for rule to show cause and other relief. Teresa sought, *inter alia*, a finding that defendant, Stephen F. Sherry, was responsible for their son's college expenses and had failed to pay these expenses.[1] Stephen moved to dismiss the petition pursuant to sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 619 (West 2008)), but that motion was denied. Teresa filed an amended petition for rule to show cause. Stephen asserted five affirmative defenses related to Teresa's claim regarding educational expenses.

¶ 6 The parties subsequently filed cross-motions for summary judgment. The trial court granted only Teresa's motion concerning Stephen's affirmative defense that mediation was a condition precedent to court action and the matter proceeded to trial. Trial testimony was

[1]The petition also sought a finding of indirect contempt for Stephen's failure to pay orthodontia expenses and to maintain Teresa as a beneficiary on his life insurance policy, but the resolution of those claims is not at issue on appeal.

presented on the petition and the trial court entered an order on December 22, 2010, finding that Stephen was not in indirect civil contempt of court for his failure to pay. However, the trial court ordered him to pay $23,493.35 to Teresa for educational expenses.

¶ 7 Teresa filed a motion to reconsider, requesting that the trial court modify its order to grant her request for attorney fees and remove the reduction of $20,000 from Stephen's obligation based on a school loan obtained by their son. On May 24, 2011, the trial court entered an order rejecting Teresa's request for a finding that Stephen's failure to pay college expenses was without cause or justification and willful and contumacious. The trial court also denied her request for attorney fees. The trial court also denied Teresa's request to modify the December 22, 2010, order to include the amount of their son's college loan in the amount owed by Stephen.

¶ 8 Stephen now appeals, asserting that the trial court erred by: (1) denying his motion to dismiss because Teresa's petition was filed without the parties agreeing on a school or a court determined selection as required in the MSA; (2) finding that mediation was not a condition precedent to filing a petition for rule to show cause pursuant to the MSA; and (3) not discharging the petition because it found Stephen did not act willfully or contumaciously, Teresa improperly delayed in seeking payment, Flashpoint Academy is not a "vocational school" as the trial court concluded, and the computation of expenses was improperly determined. Teresa filed a counter-appeal, arguing that the trial court erred in not finding Stephen in contempt of court and in reducing Stephen's obligation by the amount of the student loan. These appeals have been consolidated and for the following reasons, we affirm the judgment of the trial court.

¶ 9 I. BACKGROUND

¶ 10 On April 25, 2002, the parties were granted a judgment for dissolution. Included in the

judgment was the MSA entered between the parties. At issue in the instant matter is article VIII of the MSA which provides for the parties obligations concerning continuing education and related expenses for their two children. Article VIII of the MSA provides, in pertinent part:

¶ 11 "8.1 STEPHEN shall pay for a college, university or vocational school education for the parties' children, SARAH and DAVID. STEPHEN'S obligation shall be reduced by the availability of funds for the children's college expenses, including but not limited to, scholarships, grants-in-aid, student loans, fellowships, other financial assistance, trust funds, or other monies designated for the children's education; and neither party shall have any obligation to pay any child's college expenses as set forth in this Article until all such scholarships, grants-in-aid, fellowships, trust funds or other monies designated for that child's educational expenses have been exhausted.

¶ 12 8.2 For purposes of this Article, the expenses of a college, university or vocational school education shall include charges for tuition, room and board, books, fees and assessments, standardized tests, registration and other required fees, tutors, and transportation expenses between the school and the child's home not to exceed four (4) round-trips per school year if the child is in attendance at an out-of-town school.

¶ 13 * * *

¶ 14 8.4 All decisions affecting a child's education, including the choice of college or other institution, shall be made jointly by the parties and shall consider the expressed preference of the child and the ability of the parties to pay. In the

event the parties cannot agree upon any issue related to a child's education, said issue shall be submitted to mediation (see Article III) or a court of competent jurisdiction for determination upon proper notice, petition and hearing.

¶ 15 8.5 STEPHEN'S obligation to pay the education expenses of the children as set forth in this Article is expressly conditioned upon the following:

¶ 16 (a) That the child in question has, at the time, the desire and aptitude for a college, university or vocational school education and begins that education not more than one year after graduation from high school except that the time shall be extended in the case of serious illness or for good cause shown;

¶ 17 (b) That said education is limited to five (5) consecutive years beginning not more than one year after graduation from high school, except for the circumstances described in paragraph 7.3 of this Agreement."

¶ 18 The pertinent section of Article III of the MSA referenced above in article 8.4 is article 3, which reads in full:

¶ 19 "3.13 In the event the parties are unable to agree to the specifics necessary to carry out the intentions of this Agreement, any dispute shall first be submitted to a private mediator for resolution. Each party shall pay one-half (½) of the cost of said mediation. If the dispute cannot be resolved by mediation, either party may submit the issue for determination by a court of competent jurisdiction upon proper notice, petition and hearing."

¶ 20 On July 7, 2009, Teresa filed the underlying petition for rule to show cause. Teresa sought a rule to show cause why Stephen should not be held in indirect civil contempt for refusing to comply with his obligation to pay David's educational expenses and an order requiring Stephen to pay David's educational expenses. Teresa asserted that article 8.1 of the MSA created Stephen's obligation to pay for educational expenses for the children. She alleged that Stephen arbitrarily denied her requests and David's requests for him to pay for David's expenses related to his pursuit of a vocational course of study in film at Flashpoint Academy (Flashpoint).

¶ 21 Stephen moved to dismiss the petition pursuant to sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 619 (West 2008)), but that motion was denied. Teresa filed an amended petition for rule to show cause. Stephen filed an answer and asserted five affirmative defenses related to Teresa's claim regarding educational expenses: (1) failure to fulfill conditions precedent; (2) waiver; (3) *laches*; (4) estoppel; and (5) failure to allege a *prima facie* case of willful disobedience. The parties each filed motions for summary judgment, and the trial court denied the motions except for Teresa's motion concerning Stephen's affirmative defense that mediation was a condition precedent to an action in circuit court to pursue educational expenses.

¶ 22 At trial, Stephen testified as an adverse witness. Stephen admitted that the MSA required that he pay for college, university or vocational school expenses for the parties' children and that the MSA provided no similar contribution requirement for Teresa. Stephen testified that, as of October 31, 2007, David was a senior at Maine South High School and lived with Teresa. Stephen was made aware of David's desire to attend Flashpoint after high school, but did not find

out until sometime in the fall of 2008 that David had enrolled and was attending classes at Flashpoint. He added that he understood David completed his course of instruction and received a certificate of completion in May or June of 2010, but that he still had not paid any of David's expenses for Flashpoint.

¶ 23 David testified that he went to live with Teresa on October 31, 2007, and fulfilled the requirements for his high school diploma at Prairie State Community College. David stated that he discussed his desires for education after high school with Stephen at the end of his junior year and beginning of senior year in high school. David testified that Stephen "laid down the ground rules about my education after high school, which was that if I still wanted to live there and if I wanted him to contribute at all, I had to be enrolled in a four-year college right after I graduated and I had to be living on campus." David indicated that he told Stephen that he did not want to go to a four-year college.

¶ 24 David testified that he learned about Flashpoint near the beginning of his senior year in high school and discussed the school with Stephen, but that it was a two-year school so it was not an option for Stephen. David discussed Flashpoint with Teresa after he moved in with her. He informed her that he discussed the school with Stephen and that Stephen told him he wanted him to go to a four-year university. David stated that Stephen also may have indicated concern that Flashpoint was not accredited and noted that he was not sure whether it was accredited at the time of trial. He indicated that he took an extra class and believed he would receive an associate's degree.

¶ 25 David testified that Teresa took him to Flashpoint for a tour and that he did not consider or apply to any other schools because he did not like school. David started coursework in Fall

2008 and graduated Flashpoint with a 3.4 grade point average. David testified that he would receive an associate of applied science degree in January 2011. He explained that the degree was delayed because Flashpoint just recently had been granted degree granting status and the school offered an extra class to take so that he could receive a degree.

¶ 26 David testified that he discussed financing his Flashpoint expenses with Teresa. She told him that they would have to apply for loans and scholarships and David secured a $7,500 per year scholarship. David secured a $20,000 school loan, cosigned by Teresa to pay for his expenses. David stated that he requested Stephen's help with finances around the end of his first year at Flashpoint. Counsel introduced email correspondence between David and Stephen in support. In David's email dated March 2, 2009, he asked Stephen if he could utilize a life insurance policy for his tuition expenses, but David responded on March 4, 2009, "[t]he Thrivent policy you ask about was cancelled some time ago. I'm sure you will be able to line up financing for your second year without too much problem - just like you did for your first year. Good luck."

¶ 27 David testified that he had additional required expenses for school including a computer, headphones and other accessories. David also undertook an optional field trip to California and had an unpaid internship with a film production company. David testified that Teresa paid his expenses incurred during this time.

¶ 28 Teresa testified that in October 2007, Stephen sent her an email that was their first correspondence regarding David's higher education expenses. David stated in his email, that was introduced into evidence, that he would support David's college plans and allow him to live with him when not away at school provided that he was enrolled full-time and living at a four-year

university, take a full load of courses and maintain a 3.0 or higher grade point average, and contribute significantly to financing his education. Teresa stated that none of these requirements were outlined in the MSA. Further, she sent an email response indicating that she shared Stephen's concern that David was not applying himself and hoped they would continue the dialogue to get David "on the right track." Teresa asked Stephen if David could live with him after high school if he got a job and give him time to "get his act together."

¶ 29 Teresa testified that Stephen did not reply to her response email. However, soon after Stephen brought David to live with her on October 31, 2007, Teresa had a brief phone conversation with Stephen. Teresa indicated that she informed Stephen that David was interested in Flashpoint and she thought they should go on a tour there, notwithstanding Stephen's concerns. Teresa testified that Stephen responded that Flashpoint had no track record for getting students jobs after graduating.

¶ 30 Teresa testified to a November 16, 2007, email to Stephen and his response of the same date. Teresa stated in her email that she had been talking with David about his plans for after high school and wanted to know what Stephen was willing to contribute to the children's college level education. In response, Stephen noted that the children were over 18 and it was "not necessary nor appropriate" for Teresa to be a spokesperson for them and "[i]f Sarah or David has something to discuss with me, I expect them to call me directly and I will talk with them."

¶ 31 Teresa next testified to a January 10, 2008, email to Stephen. Teresa detailed that David was excited that there might be funds available through the Thrivent life insurance policy and David's savings account to use toward his Flashpoint expenses. Teresa requested information for David regarding these two possible sources of funds. Teresa testified that she did not receive a

response to this email from Stephen.

¶ 32 Teresa explained that it was important for David to start his education at Flashpoint immediately after high school because he was able to secure a scholarship that was not guaranteed to continue in future years and there was a provision in the MSA that if he waited a year, Stephen would not be obligated to pay for college expenses. Teresa further explained that she waited until July 2009 to file her petition because she "wanted to give Stephen every opportunity to do what he had agreed to do in the settlement agreement." She added that she knew it would be important to David if Stephen would take an interest and support him. Teresa further admitted that because Stephen is a litigation attorney, she was also concerned that if she filed a petition, he would do everything in his power to make it a costly decision. Teresa testified to the payments she made for David's tuition and other school expenses including transportation and field trip costs.

¶ 33 On cross-examination, Teresa admitted that she never called Stephen to discuss the issue of David's educational expenses after he failed to respond to emails. Teresa admitted that she understood she could seek mediation or petition the court under the MSA if she was at loggerheads with Stephen on an issue. However, as addressed above, she waited to file her petition for various reasons.

¶ 34 Teresa presented the testimony of Paula Froehle, academic dean for Flashpoint. Froehle testified that Flashpoint was not accredited at the time of trial, but had applied for accreditation and that Flashpoint was licensed by the State of Illinois as a vocational school and granted authority to grant an associate's degree in January 2010. Froehle testified that Flashpoint graduated its first class in May 2009 and offered graduates the opportunity to take a compressed

course to be able receive a degree in January 2011. Froehle testified that the field trip David took was highly recommended, but not a requirement.

¶ 35 Stephen testified on his own behalf. Stephen testified that in forming the MSA, he did not contemplate paying for items such as computers, software or similar items, or for transportation outside of four round trips from an out-of-town school. Stephen agreed that under the MSA he was to pay for one hundred percent of college tuition, if he agreed to the selection of the school.

¶ 36 Stephen admitted that he did not return Teresa's calls and that by the time David moved to live with Teresa, their communication was limited to electronic correspondence. Stephen testified that he would respond if Teresa e-mailed and was not made aware of any time where she tried to communicate and he failed to respond. He testified that he never received an e-mail informing him that David was enrolled at Flashpoint or that he had to pay or should pay for anything. Stephen admitted that he did not pay anything when he found out David was attending Flashpoint because he believed it was a bad decision based on the lack of accreditation, no graduates or track record of graduates getting jobs and the availability of numerous alternative institutions that offered film majors. Stephen testified that he never brought a motion on this issue because he believed that Teresa had assumed the responsibility of paying for David's education based on the fact she had ignored his emails outlining his requirements and desires for David's educational choice.

¶ 37 The trial court heard closing arguments, took the matter under advisement and issued an order on December 22, 2010. With respect to the issue of educational expenses, the trial court found that Stephen was not in contempt of court for his refusal to pay educational expenses. The

court reasoned that Stephen did not object to paying for David's post high school education and was actually not only the party to first raise the issue but also insisted that David apply to more expensive four year universities where he could live on campus. Further, the evidence supported concerns voiced by Stephen since Flashpoint was a newly created institution that had no graduates, was not accredited, could not yet confer a degree, and had no track record for helping secure employment. Further, the trial court cited to communication lapses between the parties and Teresa's own requests for whether Stephen was willing to contribute rather than pay for education expenses as the MSA required.

¶ 38 However, the trial court also found that Stephen misinterpreted the MSA and did not require Teresa to seek mediation before filing her petition. The trial court noted Teresa's delay in bringing the instant petition, but noted Stephen's refusal to discuss the matter with Teresa and failing to respond to inquiries about contribution from him. The trial court rejected Stephen's argument that he should not pay because Flashpoint was not an accredited university, pointing to the language of the MSA providing for vocational school education and the evidence presented that Flashpoint fell in that category. Accordingly, the trial court determined the tuition and required equipment costs for David's education as allowed by section 8.2 of the MSA and reduced the amount owed by Stephen by the amount of David's school loan pursuant to section 8.1 of the MSA and ordered Stephen pay $23,493.55.

¶ 39 Teresa filed a motion to reconsider, asking the court to modify its order reducing Stephen's obligation by the amount of David's student loan and denying attorney fees. The trial court did clarify that found that Stephen's failure to pay for David's educational expenses was with compelling cause and justification and her request for attorney fees was properly rejected.

The trial court also rejected Teresa's request to modify its order to find that Stephen's actions were willful and contumacious. Finally, the trial court rejected her request to modify the award to include the amount of the $20,000 loan and expenses associated with that loan. These consolidated appeals followed.

¶ 40 II. ANALYSIS

¶ 41 General rules of contract interpretation apply to our interpretation of an MSA. *In re Estate of Zenkus*, 346 Ill. App. 3d 741, 743 (2004). The key to this analysis is determining the intent of the parties and where the language is clear and ambiguous, that is the best indication of the parties' intent. *In re Marriage of Sweders*, 296 Ill. App. 3d 919, 922 (1998). We conduct this review *de novo*. *Id.*

¶ 42 A. Mediation

¶ 43 Stephen first argues that the trial court erred in rejecting his 2-619 motion to dismiss Teresa's petition for her failure to submit the issue for mediation prior to filing her petition in the circuit court. Stephen also argues that the trial court erred in granting Teresa's motion for summary judgment as to the legal issue of whether mediation was a condition precedent to court action on educational expenses.

¶ 44 Stephen notes that it is uncontested that Stephen and Teresa never reached a mutual agreement concerning David's post secondary education. Further, Stephen points out that section 8.4 of the MSA required such an agreement on the choice of college, university or vocational school to trigger his obligation to pay for educational expenses. Stephen argues that Teresa therefore unilaterally decided that Flashpoint was acceptable and enrolled David and paid

for his expenses without any agreement and then filed the instant petition to seek reimbursement after the fact, without attempting mediation.

¶ 45 Stephen contends that the language of the MSA is clear that Teresa's failure to seek mediation of the issue forecloses her ability to seek redress via the instant petition. Stephen points to the provision in article 8.4 that any issues related to a disagreement on educational expenses "shall be submitted to mediation (see Article III) or a court of competent jurisdiction" and article 3.13's provision that any disagreement on carrying out the specifics of the MSA "shall first be admitted to a private mediator for resolution." Stephen argues that this language is clear and unambiguous in its requirement of mediation as a first step in resolving disagreements between the parties and when such a condition precedent is clear, strict compliance is required. *Midwest Builder Distributing, Inc. v. Lord and Essex, Inc.*, 383 Ill. App. 3d 645, 668 (2007).

¶ 46 Stephen adds that this failure to comply with the mediation requirement left him without any input or recourse as Teresa unilaterally enrolled David and then submitted her bills to the court. Stephen argues that this presented him and the trial court with a *fait accompli*. Stephen argues that this case is similar to *Van Nortwick v. Van Nortwick*, 52 Ill. App. 2d 229 (1964) and *Van Nortwick v. Van Nortwick*, 87 Ill. App. 2d 55 (1967), where the custodial parent enrolled the parties' child in a boarding school without ever discussing the matter with the father prior to filing a petition and the appellate court reversed an order requiring the father to pay educational expenses because the divorce decree did "not contemplate that one parent select a school, enroll the child, pay the tuition, and then present both the court and other parent with a fait accompli and a request to impose the financial burden on the one who was not consulted." *Van Nortwick II*, 87 Ill. App. 2d at 58.

¶ 47 We agree that the *Van Nortwick* cases are distinguishable from this case because, unlike that case, Teresa and David did reach out to Stephen prior to his applying and enrolling in any school. In fact, Stephen also reached out and, as he later admitted and the trial court found, limited his communication with Teresa. More importantly, we agree with the trial court that by the clear language of the MSA, mediation is not a condition precedent to the filing of a petition for the issue of educational expenses.

¶ 48 While the MSA does contain the general mediation clause, article 8.4 specifically provides that the parties may seek resolution of an issue concerning educational expenses through mediation or a petition in court. Article 8.4 does reference Article III of the MSA, but only with respect to an agreed process for submitting a dispute to mediation. It is well-settled that where a document contains both general and specific provisions concerning the same issue, the specific provision controls. *Preuter v. State Officers Electoral Bd.*, 334 Ill. App. 3d 979, 992 (2002). Accordingly, the trial court did not err in denying Stephen's motion to dismiss and granting Teresa's motion for summary judgment on this legal issue.

¶ 49 B. Failure to Discharge or Deny Rule to Show Cause

¶ 50 Stephen next contends that the trial court erred in failing to discharge or deny the rule to show cause. He contends that since the condition precedent was not met, the rule should not have been entered, which was addressed and rejected above. Stephen also argues that after finding that his actions were not willful and he was not in contempt of court, he had met his burden of proof. Therefore, Stephen argues that when the trial court made that determination, it should have discharged the rule to show cause instead of examining whether Flashpoint was an appropriate school choice and ordering him to pay educational expenses.

¶ 51 Stephen also argues that Teresa's petition should have been denied as waived. Stephen notes that the MSA required consultation and agreement required consultation and agreement and that, as established by the parties' testimony and email correspondence, there was no agreement. He argues that, to the contrary, Teresa acted unilaterally and silently went about registering David at Flashpoint and paying his bills. Stephen contends that these actions and her delay in filing the instant petition waive her claim for expenses. Stephen further asserts that, in reliance on Teresa's actions and silence, he did not invoke the provisions under the MSA for mandatory mediation and concluded that Teresa had assumed responsibility for David's education and should not now benefit for her failure to comply with the MSA. Alternatively, Stephen argues that, under *Petersen v. Petersen*, 403 Ill. App. 3d 839 (2010), Teresa must be barred from recovering any expenses incurred prior to the date her petition was filed.

¶ 52 Stephen adds that the trial court erred in determining that Flashpoint was a vocational school and that it was proper under the MSA. Stephen argues that the trial court departed from the MSA to adopt its own meaning for the phrase "college, university or vocational school" instead of following well-established canons of contract interpretation. He argues that the trial court's final decision granted Teresa carte blanche to choose whatever option David wanted and then make Stephen pay for it.

¶ 53 Teresa argues that Stephen's waiver argument is precluded by *Blisset v. Blisset*, 123 Ill. 2d 161, 167-68 (1988). In *Blisset*, our supreme court noted that the modification of a child support obligation is a judicial function and may not be waived by the parties as it is an interest of the child. *Id.* at 167-68. Teresa also points out that there is no filing deadline requirement in the MSA for seeking resolution of a dispute and notes this court's recent ruling on petitions for

educational expenses under the Marriage Act in *In re Marriage of Chee*, 2011 IL App (1st) 102797. The *Chee* court rejected the father's contention that the Marriage Act required the adjudication of a petition for expenses prior to the child's graduation, finding that this would "indiscriminately inconvenience parents of divorced children, to disadvantage other litigants and to interfere with a court's efficient administration of its docket." *Id.* at ¶ 15. We note that *Petersen* involved the modification of the parties' judgment to assign the obligation of educational expenses, distinguishable from the instant scenario where the parties' obligations were part of their original MSA. Additionally, we agree that Teresa's arguments support rejecting Stephen's waiver argument.

¶ 54 Teresa next asserts that the trial court properly determined that Stephen was obligated to pay for David's educational expenses under the MSA and properly entered the rule because Stephen failed to meet his burden of proof as to why he did not pay the expenses. Teresa points to the evidence presented to the trial court that she attempted to have discussions with Stephen on the issue of educational expenses, Stephen's refusal to respond, Stephen's admission that he could pay the expenses and that he understood he was obligated to pay for the children's expenses. Teresa argues that Stephen cannot hide between his stated reasons for finding Flashpoint unacceptable because his factors are not contained in the MSA and he did not engage in any meaningful discussions concerning them.

¶ 55 Teresa adds that of further importance are the requirements of the MSA that the children continue their secondary education immediately as well as scholarship opportunities that resulted in an award of $15,000 for David that was not guaranteed if David waited to enroll. Therefore, because evidence supported the finding that Flashpoint was a vocational school, the trial court

determined that Stephen was obligated to pay David's educational expenses above those covered by his scholarship and school loan.

¶ 56 As addressed in full below, we agree with Stephen that the trial court properly determined that he did not act willfully and contumaciously and had compelling cause to refuse payment. We disagree with Stephen and agree with the trial court that the evidence and MSA support a finding that he must pay educational expenses. Stephen did and does present rational arguments in support of his stated factors or preferences for David's continuing education and also correctly remarks that the parties did not come to an agreement as required by the MSA. However, David's actions did not allow for discussions to come to any agreement on this issue and he cannot act in violation of the spirit of the MSA only to hold other terms of that agreement up in support of his position.

¶ 57 Stephen argues now that Flashpoint is not a proper choice because it is not an accredited vocational school. He maintains that it is implicit in the MSA that any vocational school must be accredited and sufficiently provide for future opportunities. However, the evidence indicates that Stephen maintained that his support was conditioned upon David's acceptance into a traditional four-year college. This obviously runs counter to the terms of the MSA and, as the trial court concluded, is a mistaken position taken by Stephen. As advanced by Teresa, there were time constraints necessitating David's enrollment from not only the availability of scholarship funds, but within the terms of the MSA that required their actions.

¶ 58 Furthermore, the instant case is distinguishable from *Petersen*. The *Peterson* court did reject the petitioner's request for prepetition educational expenses; however, prior to the petition in that case, there was no concrete obligation established by the terms of the decree and the

Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101, *et seq.* (West 2010)) (Marriage Act) provides that a judgment may only be modified as to subsequent payments. *Petersen*, 2011 IL 110984, ¶18. In this case, the MSA clearly lays out the obligation of Stephen to pay educational expenses and there has been no modification of its terms. This case involves an action to enforce the terms of the MSA and hold Stephen to his obligation to pay for vocational school expenses. Accordingly, the trial court properly awarded expenses, less scholarship and loan funds received by David.

¶ 59 C. Finding Actions Not Willful and Contumacious

¶ 60 Teresa argues in her counterappeal that the trial court erred in finding that Stephen's actions were not willful and contumacious. She argues that Stephen unilaterally imposed conditions that he knew contradicted what David wanted and were not part of the MSA. Further, he refused to even review information or tour the facilities to see what Flashpoint offered to David. Teresa contends that the evidence shows that the trial court erred in holding that Stephen was mistaken that the MSA allowed him to take the position he took in imposing the unilateral conditions.

¶ 61 We agree with Stephen that Teresa presents insufficient and conclusory arguments based on conjecture in support of this claim and hold the trial court properly rejected this claim. The trial court heard the parties testify at trial and reviewed the correspondence between the parties. Ast the trier of fact in a bench trial, the trial court is in the best position to assess and evaluate the parties' temperament, personality and generally credibility at trial and its credibility determinations are viewed with great deference by this court. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007).

¶ 62 Teresa argues that Stephen's stance placed David in an untenable position as he was ill-suited for the type of school Stephen was demanding - despite the fact that Stephen's requirements were not part of the MSA. She claims that Stephen did this on purpose because he "probably had ulterior motives." Teresa argues that there was no evidence of mistake by Stephen as found by the trial court and then goes on to argue this was a calculated move to avoid paying for educational expenses and to punish David for threats he made to his stepmother. However, these claims are specious at best. Conversely, the trial court's determination that Stephen was acting out of concern for David's best future options is not against the manifest weight of the evidence, but based on the evidence at trial and its determination of Stephen's credibility. We do not disturb that finding and affirm the trial court's holding.

¶ 63 D. Compelling Cause or Justification to Refuse Payment for Educational Expenses

¶ 64 Teresa's next argument closely follows her first claim. She asserts that the trial court erred in concluding that Stephen had compelling cause or justification to refuse paying educational expenses required under the MSA. Teresa argues that this court should find that Stephen should be imposed attorney fees under 750 ILCS 5/508(b) and *In re Marriage of Berto*, 340 Ill. App. 3d 705, 717 (2003).

¶ 65 Teresa argues that the compelling evidence in support of a finding that Stephen's failure to pay was knowing and contumacious is applicable to this issue. She cites that there was no evidence that Stephen's stance was mistaken or that his actions were for the purpose of ensuring David received a quality education. Rather, without any of this proof or evidence that he attempted to discuss or work through issues with her or David, Stephen failed to meet his burden of proof that his stated reason was compelling or justified.

¶ 66 As above, we agree with Stephen that the trial court had ample support to find that he did not act without cause or justification. Stephen provided rational reasons for his stance against Flashpoint as David's school of choice. The school's lack of history and accreditation should not be discounted as Teresa does in her conclusory claim that Stephen's failure to pay was not based on these factors. While, ultimately, Stephen's refusal to pay did not comport with the MSA, the trial court heard the testimony of the parties and, despite Teresa's claims on appeal, reasonably determined that his concerns were formulated in good faith and with cause. Further, Teresa's claims that allowing this behavior grants the payor" carte blanche to make up any plausible excuse" to avoid paying required expenses is negated by the final determination that Stephen was required to discuss this issue and ordered to pay the expenses outlined by the MSA.

¶ 67 Teresa's reliance on *Berto* is unavailing. As noted by Stephen, the trial court painstakingly distinguished the ruling in that case and we agree with that analysis. In *Berto*, the appellate court found that the record clearly indicated the respondent was able and aware of his financial obligation and yet refused to pay, necessitating legal action by the petitioner and supporting an order to pay attorney fees under section 508(b). *Id.* at 718-19. Because we affirm the trial court's finding that Stephen's actions were not without cause or justification in this case, *Berto* is distinguishable and does not support reversal.

¶ 68 E. Computation of Educational Expenses

¶ 69 Finally, Teresa argues that the trial court erred in reducing Stephen's obligation by the $20,000 school loan secured by David with Teresa's co-signature. Teresa argues that, but for Stephen's obstinate refusal to discuss David's education, the parties could have sat down together and figured out what scholarships, loans or other financial aid David could take advantage of.

Teresa maintains that if Stephen had allowed such a conversation to occur, the issue of guaranteeing a loan and how much to borrow. As such, Teresa adds that Stephen's actions put her squarely within the horns of a dilemma and had no choice but to cosign the loan because her finances were tight for various reasons. She concludes that the MSA language considering reducing Stephen's obligation by any loans obtained by David is illusory because of the modern reality of a co-signor being required for a student to secure a loan, thereby extending the obligation to the loan amount.

¶ 70 We agree with Stephen's response that the MSA clearly supports the trial court's conclusion on this issue. Article 8.1 of the MSA clearly provides that "STEPHEN'S obligation shall be reduced by the availability of funds for the children's college expenses, including, but not limited to, scholarships, grants-in-aid, student loans, fellowships, other financial assistance, trust funds, or other monies designated for the children's education." The trial court, following this article, reduced the amount of Stephen's obligation by the amount of David's school loan.

¶ 71 Teresa's argument that she was forced to guarantee the loan has no merit. David remains the primary obligor of the loan and there was no evidence that he had not complied with repayment of the loan and paying Teresa would not comport with the evidence or the clear intent of the MSA. Teresa's argument is an attempt to rewrite this provision of the MSA and we reject this claim. The trial court's reduction of Stephen's obligation by the amount of David's school loan is properly supported by the MSA and we affirm that conclusion.

¶ 72 III. CONCLUSION

¶ 73 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 74 Affirmed.