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IN THE
COURT OF APPEALS OF INDIANA

RITA K. MANNS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 37A04-1009-JP-573
	)	
RICHARD A. FALER,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE JASPER CIRCUIT COURT
The Honorable John D. Potter, Judge
Cause No. 37C01-9105-JP-13

February 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Rita K. Manns ("Mother") appeals the order of the trial court emancipating her son, Coty Faler ("the child"), and terminating the support obligation of Richard A. Faler ("Father"), pro se.[1] Mother presents the following issues for review:

1. Whether the trial court erred when it found the child to be emancipated.

2. Whether the trial court erred when it terminated Father's support obligations.

We reverse and remand.

FACTS AND PROCEDURAL HISTORY[2]

Mother and Father are parents of the child. Father has established paternity and pays court-ordered child support. On May 24, 2010, Father filed in the trial court a "communication requesting that the support order b[e] terminated and [the] child [be] emancipated."[3] Appellant's App. at 3. On June 29, the parties appeared pro se for a hearing on Father's request. Father and Mother each testified at the hearing.

After the hearing but on the same date, the court issued a written order granting Father's request ("Order"). The Order provides, in relevant part:

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[1] In paternity matters, case records created after July 1, 1941[,] are confidential. Ind. Administrative Rule 9(G)(1)(b)(vii). Thus, we normally use initials to refer to parties in paternity cases. However, information in case records that is admitted into evidence in proceedings open to the public shall remain excluded from public access "only if a party or a person affected by the release of the information, prior to or contemporaneously with its introduction into evidence, affirmatively requests that the information remain excluded from public access." Admin. R. 9(G)(1.2). The parties did not request that any information in this case, including their identities, remain confidential. Therefore, we do not use initials to refer to the parties in this case.

[2] The parties appeared pro se in the trial court, and the record on appeal contains scant details about the history of this case.

[3] The record on appeal does not contain a copy of Father's request to terminate child support and emancipate the child.

1. The parties' child, Coty A. Faler, is over the age of 18 years.

2. The parties' child was suspended from school in October[] 2009[] and has not attend[ed] school since said time. The parties' child participates in Nova Net, an on-line self-directed program to obtain credits needed to complete his high school education[;] however, the child has not completed said program.

3. The parties' child is employed at McDonald's and earns income, which the child has used to help [Mother] pay her bills.

4. The parties' child is facing two separate adult criminal charges and a petition to revoke probation in the Jasper Superior Court.

The Court therefore finds that the parties' child is emancipated and that [Father']s request to vacate support should be granted.

Appellant's App. at 6. Mother now appeals.

DISCUSSION AND DECISION

Mother contends that the trial court erred when it emancipated the child and terminated Father's child support obligation. Specifically, Mother argues that the evidence in the record does not support either the emancipation of the child or the termination of Father's support obligation absent emancipation. We address each contention in turn.

Standard of Review

Indiana Code Section 31-16-6-6(a) provides that a parent's support obligation terminates when the child reaches age twenty-one, with the following exceptions:

(1) The child is emancipated before becoming twenty-one (21) years of age. In this case the child support, except for the educational needs outlined in [Indiana Code Section 31-16-6-2(a)(1)] terminates at the time of emancipation[.]

(2) The child is incapacitated. . . .

(3) The child:

(A) is at least eighteen (18) years of age;

(B) has not attended a secondary school or postsecondary educational institution for the prior four (4) months and is not enrolled in a secondary school or postsecondary educational institution; and

(C) is or is capable of supporting himself or herself through employment.

Ind. Code § 31-16-6-6(a). As relevant here, a child is emancipated if the court finds that the child is "not under the care or control of . . . either parent[.]"[4] Ind. Code § 31-16-6-6(b)(3)(A).

The standard of review for emancipation and related child support cases has been described as follows:

> What constitutes emancipation is a question of law, while whether an emancipation has occurred is a question of fact. Courts cannot presume emancipation. Rather, it must be established by competent evidence by the party seeking emancipation. On appeal, we review rulings regarding emancipation and child support for clear error. Only where there is a complete lack of supporting evidence or where the evidence is undisputed and leads to a contrary conclusion will we find that the trial court's judgment is clearly erroneous. On appeal, we neither reweigh the evidence nor judge the credibility of witnesses.

Liddy v. Liddy, 881 N.E.2d 62, 66 (Ind. Ct. App. 2008) (quotation marks and citations omitted), trans. denied.

We also note that the trial court made special findings sua sponte. In such cases, our standard of review is as follows:

[4] Emancipation may also be proved by showing either that the child is on active duty in the United States armed forces or married. Ind. Code § 31-16-6-6(b)(1), (2). Neither of those definitions apply in this case.

> Sua sponte findings control only as to the issues they cover and a general judgment will control as to the issues upon which there are no findings. A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence. When a court has made special findings of fact, an appellate court reviews sufficiency of the evidence using a two-step process. First, it must determine whether the evidence supports the trial court's findings of fact; second, it must determine whether those findings of fact support the trial court's conclusions of law. Findings will only be set aside if they are clearly erroneous. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. In order to determine that a finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made.

Town of Cloverdale v. Renner, 901 N.E.2d 524, 526 (Ind. Ct. App. 2009) (internal quotation marks and citations omitted).

Issue One: Emancipation

Mother first contends that the trial court erred when it concluded that the child is emancipated. Again, in order to establish emancipation in this case, Father was required to show that the child is "not under the care or control of . . . either parent[.]"[5] Ind. Code § 31-16-6-6(b)(3)(A). "In order to prove that a child is not under the care or control of either parent, our supreme court has found that the child must (1) initiate the action putting himself or herself outside the parents' control and (2) in fact be self-supporting." Butrum v. Roman, 803 N.E.2d 1139, 1146 (Ind. Ct. App. 2004), trans. denied.

We initially observe that the trial court did not reach any conclusion as to whether the child is under the care or control of a parent. However, the court did make two

[5] Emancipation may also be proved by showing either that the child is on active duty in the United States armed forces or married. Ind. Code § 31-16-6-6(b)(1), (2). Neither of those definitions apply in this case.

findings that are applicable to a determination that the child is under a parent's care or control. Specifically, the court found:

> 3. The parties' child is employed at McDonald's and earns income, which the child has used to help [Mother] pay her bills.
>
> 4. The parties' child is facing two separate adult criminal charges and a petition to revoke probation in the Jasper Superior Court.

Appellant's App. at 6.

Here, the findings above support a determination that the child is still under the care of Mother. The finding that the child is employed and earns income that he uses to help Mother pay her bills does not speak to whether the child is employed full- or part-time, the amount of his income, or whether his income meets or exceeds his and/or Mother's needs. Thus, the findings do not support a conclusion that the child is in fact self-supporting. Moreover, the evidence shows that the child lives with Mother; works only part-time; and earns $6.55 per hour, or $108.50 per week. These facts also do not support a finding that the child is in fact self-supporting. Thus, neither the findings nor the evidence in the record support a conclusion that the child is emancipated.[6] See Butrum, 803 N.E.2d at 1146.

Still, Father contends that the child is emancipated because he has placed himself outside the control of his parents, as evidenced by the child's criminal and academic records. But, again, the statute requires a showing of lack of control or care by a parent. See Ind. Code § 31-16-6-6(b)(3). We have already determined that the evidence supports

[6] The two-part test in Butrum is stated in the conjunctive. Finding that the "in fact self-supporting prong" has not been met, we need not consider the other prong.

a finding that Mother is still providing care for the child. Thus, the issue of control is not dispositive. The trial court's judgment that the child is emancipated is clearly erroneous.

Issue Two: Termination of Child Support

Mother also contends that the trial court erred when it terminated Father's child support. Indiana Code Section 31-16-6-6 sets out that a parent's child support obligation may be terminated when the child reaches age twenty-one, except if:

> (1) The child is emancipated before becoming twenty-one (21) years of age. In this case the child support, except for the educational needs outlined in [Indiana Code Section 31-16-6-2(a)(1)] terminates at the time of emancipation[.]
>
> (2) The child is incapacitated. . . .
>
> (3) The child:
>
> (A) is at least eighteen (18) years of age;
>
> (B) has not attended a secondary school or postsecondary educational institution for the prior four (4) months and is not enrolled in a secondary school or postsecondary educational institution; and
>
> (C) is or is capable of supporting himself or herself through employment.

Ind. Code § 31-16-6-6(a). We have already determined that the child is not emancipated, and there is no evidence or argument that the child is incapacitated. Thus, we consider the exception under Indiana Code Section 31-16-6-6(a)(3).

Mother contends that the evidence is insufficient to establish the exception under Section 31-16-6-6(a)(3). The elements of the exception in Section 6(a)(3) are stated in the conjunctive. Thus, Father was required to show each of the elements in order for the exception to apply in this case. The parties agree that the child is at least eighteen years

of age. As such, we need only determine whether the child meets either the enrollment requirement under Section 6(a)(3)(B) or the self-support element under Section 6(a)(3)(C). Because we consider the enrollment requirement in Section 6(a)(3)(B), we need not consider the parties' arguments on whether the child is or is capable of supporting himself under Section 6(a)(3)(C).

To satisfy Section 6(a)(3)(B), Father was required to show that the child "has not attended a secondary school or post-secondary educational institution for the prior four (4) months and is not enrolled in a secondary school or postsecondary educational institution[.]" On this point, the trial court found as follows: "The parties' child was suspended from school in October, 2009, and has not attend[ed] school since said time. The parties' child participates in Nova Net, an on-line self-directed program to obtain credits needed to complete his high school education[;] however, the child has not completed said program." The evidence supports the trial court's finding that the child was suspended in October 2009, although both parties agree that he attended high school at least part of December and January. Thus, the trial court's finding that the child has not attended high school since October 2009 is not supported by the evidence.

In any event, the trial court also found that the child participates in an online, self-directed program to accrue the high school credits necessary to complete his high school education. Thus, there is no dispute that the child is enrolled in an educational program. The issue is whether enrollment in an online, self-directed program to complete one's high school education constitutes enrollment in a secondary school under Section 31-16-

6-6(a)(3)(B). The parties cite no authority, nor have we found any, on this issue. However, we find case law discussing home schooling to be instructive.

In Ratliff v. Ratliff, 804 N.E.2d 237, 242 (Ind. Ct. App. 2004), a father requested in post-dissolution proceedings a determination that his son was emancipated. The nineteen-year-old son lived with the mother, was home schooled, and worked full-time at Wal-Mart earning $8.50 or $8.75 per hour. The evidence showed that the son was a senior in high school but had not yet completed his junior year requirements. Nevertheless, this court affirmed the trial court reversed but the trial court's determination of partial emancipation,[7] reasoning as follows:

> Father, who had the burden of proving that [the son] was emancipated, presented no evidence that [the son] had not attended school for the prior four months and no evidence that [the son] was not enrolled in school. Although [the son] was working full-time, the evidence presented showed that he was still enrolled in school. Thus, the trial court's finding that [the son] was partially emancipated is not supported by the evidence and is clearly erroneous.

Id. at 248.

Participation or enrollment in an online course to complete high school studies is analogous to home schooling. Neither requires attendance in a brick-and-mortar building, but both involve some level of self-directed study for the purpose of completing a high school education. Here, the trial court found that the child was participating in an online program for the purpose of completing his high school education. We conclude that such evidence satisfies Section 31-16-6-6(a)(3)(B).

[7] "Partial emancipation" is used in Ratliff to describe the cessation or reduction of a child support obligation under Section 31-16-6-6(a)(3).

Still, Father asserts that the child had not been "proven to be attending any online G.E.D. classes as of the hearing date nor [had] he since attended any G.E.D. classes or secondary education classes." But Father does not argue that enrollment in an online program cannot satisfy Section 31-16-6-6(a)(3)(B). Again, the trial court found that the child was participating, or enrolled, in a program to complete his high school education. And Mother testified that the child was only a few credits short of that goal. In any event, Father bore the burden of showing that the child had not been enrolled in a secondary school for the preceding four months. Father did not meet that burden.

Again, the elements in Section 31-16-6-6(a)(3) are conjunctive. Father has not proved that the child has not been enrolled in a secondary or post-secondary educational institution for the preceding four months. Because Father has not demonstrated that element, Father has not established that his child support obligation should be terminated under Indiana Code Section 31-16-6-6(a)(3).

Conclusion

In sum, the evidence shows that the child lives with Mother, assists her with her bills, and is employed part-time for $6.55 per hour. The evidence, without more, shows that the child remains in the care of his Mother. As such, the trial court erred when it found that the child was emancipated. Also, the record contains no evidence showing that the child had not been enrolled in a secondary school or post-secondary educational institution for the preceding four months. Thus, Father has not shown that he his child support obligation for the child should be terminated under Indiana Code Section 31-16-6-6(a)(3), and the trial court erred when it granted Father's request to vacate the support

order. As such, we reverse the trial court's Order and remand for further proceedings consistent with this decision.

Reversed and remanded.

DARDEN, J., and BAILEY, J., concur.