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IN THE
COURT OF APPEALS OF INDIANA

C.M.M.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 09A04-0910-CV-564
	)	
D.D.F.,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CASS CIRCUIT COURT
The Honorable Leo Burns, Judge
Cause No. 09C01-8901-DR-10

July 2, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

C.M.M. ("Father") appeals the trial court's denial of his petition for hearing and modification of prior order based on actions of children. Father raises four issues which we consolidate and restate as whether the trial court erred when it determined that Father's adult children had not repudiated their relationship with Father and ordered Father to continue paying post-secondary education expenses for his children.

We affirm.

Facts and Procedural History

Father and D.D.F ("Mother") are the parents of two children, E.M., born February 10, 1988, and C.M., born September 8, 1989. Father and Mother divorced on March 31, 1989. Father was ordered to pay child support and post-secondary education expenses.

On August 12, 2008, a hearing was held on Mother's petition for enforcement of order on college expenses and Father's petition to modify child support and motion for relief from college expenses. During the hearing, E.M. testified that she still wanted to enjoy a relationship with Father. C.M. did not testify because of a schedule conflict. Following the hearing, Father and E.M. exchanged contact information and spoke about meeting. On November 10, 2008 the trial court entered an order requiring Father to pay post-secondary education expenses, which Father appealed.[1] fn 1.

Two months later, on January 12, 2009, Mother filed another motion to enforce Father's post-secondary education support obligations. While this appeal of the trial court's November 10, 2008 order was pending, Father filed his petition for hearing and for modification of the trial court's prior order based on the children's alleged repudiation. Following a hearing on February 26, 2009, the trial court granted Mother's

[1]See C.M.M. v. D.D.F., No. 09A02-0901-CV-51 (Ind. Ct. App. Aug. 31, 2009).

motion for enforcement. On May 1, 2009, the trial court held a hearing on Father's petition for modification. On August 7, 2009, the trial court denied Father's petition. Following the subsequent denial of Father's motion to correct error, Father appeals.

Discussion and Decision

Father argues that the trial court erred in concluding that C.M. and E.M. have not repudiated Father, and that therefore Father has no continuing duty to pay a portion of the children's post-secondary education expenses.

> In reviewing orders for apportionment of college expenses, we do not weigh the evidence or determine credibility, but consider only evidence and reasonable inferences favorable to the judgment. We will affirm the trial court unless its order is clearly erroneous. The decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances which were before the trial court.

Warner v. Warner, 725 N.E.2d 975, 978 (Ind. Ct. App. 2000).

"Indiana law recognizes that a child's repudiation of a parent – that is, a complete refusal to participate in a relationship with his or her parent – under certain circumstances will obviate a parent's obligation to pay certain expenses, including college expenses." Norris v. Pethe, 833 N.E.2d 1024, 1032 (Ind. Ct. App. 2005). However, case law clearly establishes that a child's repudiation of a parent-child relationship requires an affirmative action by the child to repudiate the relationship *after* the child has reached the age of majority. Id. at 1033; Scales v. Scales, 891 N.E.2d 1116, 1119 (Ind. Ct. App. 2008).

The trial court has previously determined that prior actions of C.M. and E.M. have not constituted repudiation, and we have affirmed those determinations in two

different appeals.[2] Father now appeals the trial court's order of November 10, 2008 alleging that the children's conduct after the underlying August 12, 2008 hearing, combined with the children's earlier conduct, amounts to repudiation. In this regard, he specifically points to his attempts to contact the children after the hearing and his difficulty in doing so.

At the most recent hearing in this matter, E.M. testified that, after attempting to return Father's calls, she had spoken with him. Tr. p. 44. Father does not recall this conversation. Also, E.M. and C.M. spoke with their paternal grandmother and Father's girlfriend about scheduling a time to meet with Father. Tr. pp. 44-45. Eventually, they agreed to meet on the day before Thanksgiving for an hour, because of scheduling issues. Also, E.M. explained that they could not eat with Father's family on Thanksgiving Day because of previous plans.

On the day before Thanksgiving, the children arrived, as agreed, at their paternal grandmother's house for the visit. After an hour long visit, Father gave each of the children a card and some money, asked to visit them at college, and asked for a more recent photograph. Also, Father asked if the children would call at Christmas to arrange another visit. At the end of the visit, the children hugged Father and their grandmother. Tr. p. 48. Father and the children have not had any further contact since that visit. Although E.M. felt that the visit went okay, Father felt that it was "unsatisfactory."

During the hearing and in the briefs, the parties refer to a letter written by a then fifteen-year-old E.M. telling Father that neither E.M. nor C.M. wanted to visit him. As

[2] See C.M.M. v. D.D.F., No. 09A02-0901-CV-51 (Ind. Ct. App. Aug. 31, 2009), and Myer v. Franklin, No. 09A05-0708-CV-433 (Ind. Ct. App. March 4, 2008).

we have noted in the two prior appellate decisions, E.M. and C.M. were minors at the time of the letter, and we will not now consider that letter as evidence of repudiation of Father by either E.M. or C.M. See C.M.M., slip op. at 4; Myer, slip op. at 2.

None of Father's perceived slights on the part of the children rise to the level of affirmative action required to establish repudiation. While Father does not believe that the Thanksgiving visit was satisfactory, his perception does not reflect the type of conduct that has amounted to repudiation. See McKay v. McKay, 644 N.E.2d 164, (Ind. Ct. App. 1994) (holding that a son had repudiated his father where the son consulted with his mother and stepfather on all of his college-related decisions, rejected all of his father's efforts to reconcile their relationship, and testified that he had no interest in reestablishing a relationship with his father and that nothing could be done to change his mind); Norris, 833 N.E.2d at 1032 (Ind. Ct. App. 2005) (father attempted to reestablish a relationship with the child but the child rejected all of father's overtures and made it clear during court-ordered counseling that she wanted no contact with father.)

Here, the children stated that they were open to a relationship with Father. They met with Father and their grandmother and had a relatively innocuous visit considering that Father had had no contact with either child for the previous, seven years. Neither child ever acted in a manner that was offensive or deplorable, and neither threatened Father or rejected his reasonable requests.

It is also important to observe that, while Father seeks to focus on the actions of the children, Father does not appear to have sought out a relationship with the children beyond a few phone calls. Unlike the fathers in McKay and Norris, Father did not

actively seek a relationship with the children. In fact, when asked if he sent his children a card at Christmas, he responded, "No. They never sent me one." Tr. p. 27. Father asked the children to call him about reestablishing contact and visiting for Christmas but did not affirmatively seek out a visit with the children. Rather, he sought to place the onus upon them to contact him.

Under the facts and circumstances before us, we conclude that Father has failed to show that the trial court erred when it determined that Father's adult children had not repudiated their relationship with Father and ordered Father to continue paying post-secondary education expenses for his children.

Affirmed.

RILEY, J., and BRADFORD, J., concur.