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ATTORNEY FOR APPELLANT:

JOHANNA D. RIPPEY
Allen Allen & Brown
Salem, Indiana

ATTORNEY FOR APPELLEE:

SALLY A. THOMAS
Lorch & Naville, LLC
New Albany, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
	)	
R. H.,	)	
	)	
Appellant-Respondent,	)	
	)	
and	)	No. 22A04-0812-CV-743
	)	
M. J.,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Susan L. Orth, Judge
Cause No. 22D01-0110-DR-236

July 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

R. H. ("Father") appeals an educational support order for the benefit of his child, C.H. We affirm.

Issue

Father presents the issue of whether the trial court abused its discretion by ordering him to pay a portion of C.H.'s educational expenses at a private college.

Facts and Procedural History

Before they divorced in 2002, Father and M. J. ("Mother") had three children, the eldest, D.H., and twins, B.H. and C.H. On February 20, 2008, Mother filed a Petition for Post-Secondary Educational Support, requesting a determination of each parent's responsibility for the three children's college expenses. On July 16, 2008, Father filed a petition seeking to emancipate D.H.

On July 21, 2008, the trial court conducted a hearing. Mother and Father agreed to the emancipation of D.H. for child support purposes. Additionally, the parents advised the court that the educational expenses of D.H. and B.H. were currently being paid in full, by an employer and an athletic scholarship, respectively. The trial court then heard evidence with respect to the parents' financial circumstances and C.H.'s educational aspirations and financial resources.

C.H. had been accepted by Otterbein College in Ohio, where he intended to pursue a theatre arts degree at an annual cost of $37,432. C.H. had auditioned and had received a music award and a theatre award. He also had applied for and been awarded financial aid,

including work-study and a student loan. Accordingly, C.H.'s educational expenses were offset by $22,200 in scholarships, grants, endowments, and financial aid. The trial court apportioned the remaining balance of $15,232 as follows: Father was to pay $9,111.20 and Mother was to pay $6,120.80. Father's basic child support payment was reduced from $182 weekly to $48 weekly.

Father filed a motion to correct error. At the hearing conducted on November 10, 2008, Father offered his affidavit listing his current expenses. His counsel argued that Father lacked sufficient assets or income to contribute toward a private college education, and that a public college, specifically Ball State University, offered similar educational opportunities and was more affordable. Father's motion to correct errors was denied. He now appeals.

Discussion and Decision

Indiana Code Section 31-16-6-2(a) provides that an educational support order may include amounts for the child's education at a post-secondary educational institution. Educational support orders must take into account the child's aptitude and ability; the child's reasonable ability to contribute to educational expenses through work, loans, and obtaining other sources of financial aid reasonably available to the child and each parent; and the ability of each parent to meet these expenses. Ind. Code § 31-16-6-2(a).

When the decision to order college expenses is challenged, we review for an abuse of discretion. Carr v. Carr, 600 N.E.2d 943, 945 (Ind. 1992). When apportionment of college expenses is at issue, a clear error standard governs review. Id. Accordingly, the trial court's decision concerning financial contributions to college endeavors will be affirmed unless the

decision is clearly against the logic and effect of the facts and circumstances which were before it. Gilbert v. Gilbert, 777 N.E.2d 785, 792-93 (Ind. Ct. App. 2002). Although a parent is under no absolute legal duty to provide a college education for his children, a court may nevertheless order a parent to pay part or all of such costs when appropriate. Id. Expenses may be capped based upon costs of attendance at a state-supported university. Snow v. Rincker, 823 N.E.2d 1234, 1240 (Ind. Ct. App. 2005), trans. denied.

Father does not contest C.H.'s aptitude and ability to pursue his chosen course of education. Indeed, Father testified that each of his children was "extremely gifted" and that he had expected each of them to go to college "since they were born." (Tr. 85, 90). However, Father argues that the trial court did not sufficiently consider his modest financial circumstances and limit any award of educational expenses to that necessary to attend a public institution.

He directs our attention to Hensley v. Hensley, 868 N.E.2d 910 (Ind. Ct. App. 2007), which involved the reversal of a college expenses order after a parent demonstrated that the trial court had placed an excessive obligation upon him by ordering his payment of 86% of college expenses remaining after a one-third allocation to each child, and also ordering his reimbursement of more than $60,000 in past college tuition to his former wife, who was voluntarily unemployed. Upon review of the evidentiary record, the Hensley Court concluded that the obligor would have less than $4,300 remaining with which to support himself, while his ex-wife could remain unemployed, a result both "inequitable and unjust." See id. at 916. The Court observed that Hensley already worked more than 60 hours per

week to support himself and his four children and "cannot be expected to do any more." Id. at 917.

Our review of the instant record does not disclose circumstances akin to those present in Hensley. Although the parents here are of modest means, they anticipated and agreed that their three children would attend college. Two of the three children have all of their educational expenses met without parental contribution. Neither Father nor Mother has subsequently born children, or is left without adequate income for personal support.

Father testified that he had been employed for twelve years at Eades, Incorporated. As of the hearing date, he earned $17.89 per hour. He testified that he had "received a considerable amount of overtime" in 2007 but, more recently, "the economy is bad and we've kinda shut down our overtime." (Tr. 60-61.) Father also receives approximately $600 per year as a basketball referee. He testified that he and his wife had incurred medical bills and lived in a mortgaged manufactured home. Father's household also includes an eleven-year-old stepdaughter.

Mother was working on a temporary basis for Cardinal Printing, earning $9.00 per hour. She had applied for permanent employment at Cardinal Printing, with anticipated earnings of $25,000 annually. Mother had assisted C.H. in his college applications. She testified that he had applied to Ball State University, a public college with an estimated annual cost of $16,000. Ball State University had offered financial aid amounting to $2,000, providing for a net cost of $14,000. Mother also testified that she had previously earned $64,000 annually, but that position was eliminated. Mother testified that her change in

financial status did not take place within the time frame to amend the FAFSA submitted for C.H.

In determining income available for child support and in apportioning educational expenses, the trial court elected not to include any of Father's overtime earnings or his occasional referee income. The trial court also imputed income of $25,000 annually to Mother, even though she had not yet been offered full-time employment. Moreover, although Father argued that a state college would have been less expensive had C.H. and Mother tried harder to obtain additional financial aid, Father did not offer evidence to contradict Mother's cost comparison or her testimony regarding the potential to submit amended financial information. In this instance, a state-supported university was not demonstrably more affordable than a private one. Father has not demonstrated that the trial court's order is clearly against the logic and effect of the facts and circumstances before it.

Affirmed.

DARDEN, J., and ROBB, J., concur.