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IN THE
COURT OF APPEALS OF INDIANA

C.M.M.	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 09A02-0901-CV-51
	)	
D.D.F.	)	
	)	
Appellee-Petitioner.	)	

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

August 31, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent C.M.M. ("Father") appeals the trial court's order that he pay a portion of his children's college expenses. 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. It is undisputed that the children have had very little or no contact with Father since March of 2003 when the children each wrote Father a letter indicating that they did not wish to see him anymore because they were afraid of him. Neither Father nor the children have since made any effort to establish a relationship with one another.

Both E.M. and C.M. attend Indiana University and have been named 21st Century Scholars. The children's tuition is paid as part of the 21st Century Scholars program, however, the children incur expenses relating to their room and board, books, and transportation, as well as various other miscellaneous expenses. To date, Mother and the children have taken out loans to cover these expenses. In addition, Father has previously been ordered to pay a portion of E.M.'s college expenses.

On June 23, 2008, Mother filed a Petition to Modify, requesting that the trial court modify its prior order regarding Father's obligation to pay a portion of E.M.'s college expenses to include C.M., who had since enrolled in college. Father subsequently filed a verified petition requesting that the trial court relieve him from the obligation to pay a portion of his children's college expenses because he had been temporarily unable to work as a result of an ongoing illness. The trial court conducted a hearing on these motions, and on

November 10, 2008, ordered Father to pay a portion of the children's college expenses. Father now appeals.

DISCUSSION AND DECISION

Father contends that the trial court erred in ordering that he pay a portion of his children's college 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).

An order to pay educational expenses is separate and distinct from a child support order. *Knisely v. Forte*, 875 N.E.2d 335, 340 (Ind. Ct. App. 2007). Indiana Code section 31-16-6-2 (2008) states that an educational support order may include amounts for a child's postsecondary education, taking into account "the child's aptitude and ability; the child's reasonable ability to contribute to educational expenses through work, obtaining 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." Further, the commentary to the Child Support Guidelines relating to post-secondary educational expenses provides as follows:

> [T]he court should consider post-secondary education to be a group effort, and weigh the ability of each parent to contribute to payment of the expense, as well as the ability of the student to pay a portion of the expense.
>
> If the court determines that an award of post-secondary educational expenses is appropriate, it should apportion the expenses between the parents and the child, taking into consideration the incomes and overall financial condition of

> the parents and the child, education gifts, education trust funds, and any other education savings program. The court should also take into consideration scholarships, grants, student loans, summer and school year employment and other cost-reducing programs available to the student.

Ind. Child Support Guideline 6, cmt.

I. Father's Ability to Pay a Portion of Children's College Expenses

Father claims that the trial court erred in failing to relieve Father of his obligation to pay a portion of his children's college expenses and in imputing wages of $400 per week to him in light of his continuing health problems which have resulted in a reduction of his ability to work. Indiana Code section 31-16-8-1 (2008) provides that a modification of child support, including an order to pay educational expenses, may be made only upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable. "A trial court is vested with broad discretion in imputing income to a child support obligor in order to ensure that the obligor does not evade the obligation." *Lloyd v. Lloyd*, 755 N.E.2d 1165, 1169 (Ind. Ct. App. 2001).

Father argues that his financial circumstances have changed substantially in light of his ongoing illness and that as a result, he should be relieved from his obligation to pay a portion of his children's college expenses. In support, Father relies on this court's conclusion in *Schacht v. Schacht*, 892 N.E.2d 1271 (Ind. Ct. App. 2008), in which this court affirmed the trial court's determination that Mother had shown a substantial and continuing change to her overall financial condition. In *Schacht*, Mother presented extensive evidence relating to the substantial and continuing change in her financial position. Specifically, Mother presented evidence that her husband had recently been diagnosed with lung cancer and a brain tumor,

that as a result of his illness her husband was unable to work and had exhausted his short-term disability benefits, nearly $20,000 in funds received by Mother and her husband from charity and an insurance policy would soon be exhausted, and that she was paying an extra $200 per month to maintain her and her husband's medical insurance policies. 892 N.E.2d at 1276.

Here, unlike in *Schacht*, the trial court found that while Father's ability to earn income had been *temporarily* limited, his overall financial condition had not changed substantially so as to warrant a modification of his obligation to pay a portion of his children's college expenses. With respect to his employment, Father testified that he was employed by Tweedy Electric, a company owned and operated by his Mother through a trust from his late father, and that his home was paid for through this trust. Father presented evidence that as of July 1, 2008, he had earned only $1,208.54 and testified that his vertigo made it difficult if not impossible for him to work safely with electricity. Father, however, presented no medical records relating to his alleged condition or to the extent his alleged condition hampers his ability to earn a living. Likewise, Father presented no evidence relating to the expected duration of his alleged inability to work but testified that he hoped to return to work "as soon as possible." Tr. p. 20.

The trial court determined that the evidence relating to Father's financial condition did not demonstrate a substantial and continuing change sufficient to relieve Father from his obligation to pay a portion of his children's college expenses and found it reasonable to impute income to Father in the amount of $400 per week based on Father's prior earning

history and his experience as an electrician. Upon review of the record, we conclude that such findings are not clearly erroneous.

II. Repudiation of Father

Father next claims that the trial court erred in concluding that C.M. has not repudiated Father, and therefore that Father has a continuing duty to pay a portion of C.M.'s college expenses. "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).

In support of his claim that C.M. has repudiated him, Father relies on this court's conclusions in *Norris* and *Scales* that the children had effectively repudiated their parents and as a result, parents should not be held liable for college expenses for the children. In both *Norris* and *Scales*, the parents indicated a willingness to engage in a relationship with their children. 833 N.E.2d at 1033; 891 N.E.2d at 1120. However, in *Norris*, Daughter, after having reached an age of majority, clearly indicated to the therapist assigned to assist the family that she wanted nothing more to do with Father, returned all cards sent by Father without opening them, and, after noticing Father at one of her school events, approached Father and loudly demanded that Father leave. 833 N.E.2d at 1033-34. Likewise in *Scales*,

Daughter was confrontational with and intimidating to Mother and Son told Mother "I hate you you [f****** b****]. I hope you die." 891 N.E.2d at 1120. This court concluded that these behaviors exhibited by the children toward their parents after having reached the age of majority sufficiently demonstrated repudiation of the parents by the children. Here, however, C.M. has displayed no such behavior.

Father claims that C.M.'s alleged repudiation of him is shown by C.M.'s failure to invite Father to his high school graduation. Mother, however, testified that she, not C.M., was "in charge of mailing out [C.M.'s] graduation announcements" and that she did send a graduation announcement to Father. Tr. p. 56. Father also claims that C.M.'s alleged repudiation of him is shown by C.M.'s reaction to seeing Father once at C.M.'s place of employment, at which time C.M. and Father merely said "hi" to one another. Father claims that he expected C.M. to call him "dad" and initiate a conversation and argues that C.M.'s failure to do so demonstrates that C.M. has repudiated Father. C.M., however testified that he was disappointed that Father said no more than "hi" and stated that Father did not seem to recognize him. Father subsequently admitted that he had not seen C.M. for some time and that he was not even certain that he was speaking to C.M. In addition, C.M., who was eighteen years old at the time of the hearing, testified that although he had not spent time with Father since he was twelve or thirteen years old, he was willing to try to establish a relationship with Father. C.M. has since briefly visited with Father on at least one occasion. These facts do not establish that C.M. has repudiated Father. Thus, the trial court's findings as such are not clearly erroneous.

Father also relies on a letter sent to Father by C.M. in March of 2003 stating that C.M. did not wish to have any contact with Father to show that C.M. has repudiated Father. We note that C.M. was still a minor at the time he sent the alleged letter to Father, and thus we will not consider said letter as evidence of a repudiation of Father by C.M. *See Norris*, 833 N.E.2d at 1033 (providing 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).

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.