

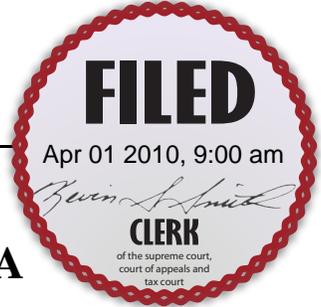
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**IN THE
COURT OF APPEALS OF INDIANA**

STEVEN K. LIKE,)

Appellant-Respondent,)

vs.)

No. 71A04-0910-CV-570)

JANE E. LIKE,)

Appellee-Petitioner.)

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT
The Honorable Michael G. Gotsch, Judge
The Honorable Larry L. Ambler, Magistrate
Cause No. 71C01-9608-DR-598

April 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Steven K. Like (“Father”), *pro se*, appeals the trial court’s denial of his motion to modify his post-secondary educational support obligation for his daughter. Finding that the trial court’s order is against the logic and effect of the circumstances before the court, we reverse and remand.¹

Facts and Procedural History

Father and Jane E. Like (“Mother”) dissolved their marriage in 1997. Father and Mother entered into a settlement agreement that was approved by the trial court and incorporated into the dissolution decree. Among other things, the agreement requires Father to pay the college expenses of each of their three children up to the cost of attending Indiana University – Bloomington.

Father was a general manager for a manufacturing plant in Texas when he was laid off in February 2009. He has since been receiving \$392 each week in unemployment benefits. In March 2009 Father filed a *pro se* verified petition for modification of child support, wherein he requested modification of both his weekly child support obligation and his post-secondary educational support obligation for their youngest child, S.L., born March 12, 1990. Although the trial court permitted Father, *pro se*, to submit evidence at two hearings, Father was not sworn at either hearing. Regarding his financial resources, Father testified,

¹ We hereby deny Mother’s Motion to Strike Appellant’s Brief. Although we acknowledge that Father’s six-sentence Statement of Facts does not comply with Indiana Appellate Rules 22(C) and 46(A)(6)(a), which require factual statements to be supported by citations to the record or appendix, we have a preference for resolving a case on its merits. For the same reason, we decline to address Mother’s first two arguments, which contend that we should strike Father’s brief and dismiss his appeal for his failure to comply with these rules.

I currently have about a thousand dollars in a checking and savings account and another thousand dollars in a Vanguard investment account. I don't really have any other -- I don't have any other investments other than a 401(k) plan. I don't have any equity, any marketable real estate or other property.

Appellant's App. p. 78. After taking the matter under advisement, the trial court entered an order which granted Father's request for modification of child support but denied Father's request for modification of post-secondary educational support. Father filed a motion to correct error, which was denied. Father now appeals.

Discussion and Decision

Father contends that the trial court erred by denying his request to modify his post-secondary educational support obligation. Neither party requested findings of fact, as permitted by Indiana Trial Rule 52, nor did the trial court enter findings *sua sponte*. Father thus appeals from a general judgment. We will affirm a general judgment if it can be sustained on any legal theory consistent with the evidence, and we will presume the trial court followed the law. *Sims v. Sims*, 770 N.E.2d 860, 863-64 (Ind. Ct. App. 2002).

An order to pay post-secondary educational expenses is in the nature of a child support order and is therefore modifiable. *Walters v. Walters*, 901 N.E.2d 508, 511 (Ind. Ct. App. 2009). Support orders, including orders to pay post-secondary expenses, may be modified even if the order is the result of an agreement between the parties. *Id.* On appeal from the denial of a petition to modify, we review the trial court's decision under the clearly erroneous standard. *Hay v. Hay*, 730 N.E.2d 787, 792 (Ind. Ct. App. 2000). We will reverse a decision regarding modification of child support only where it is clearly against the logic and effect of the facts and circumstances before the trial court.

Id. Indiana Code section 31-16-8-1, which governs the modification of support orders, provides in pertinent part:

(a) Provisions of an order with respect to child support . . . may be modified or revoked.

(b) Except as provided in section 2 of this chapter, modification may be made only:

(1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable

Although child support orders and educational support orders are separate and distinct, they are linked and not subject to separate analysis as to when modification is appropriate. *Walters*, 901 N.E.2d at 512. In *Walters*, the trial court found a substantial change in circumstances warranting a modification in the father’s child support existed where the mother was now employed. *Id.* at 510. The trial court did not likewise modify the father’s post-secondary educational support. *Id.* On appeal, this Court concluded that there had been a substantial change in circumstances sufficient to modify post-secondary educational support where the trial court properly determined that there had been a substantial change in circumstances sufficient to modify child support and there was no indication in the trial court’s findings that it considered the overall financial condition of the parents when refusing to modify the educational support. *Id.* at 512; *see* Ind. Code § 31-16-6-2(a)(1)(C) (providing that a court must take into account “the ability of each parent to meet these expenses” when ordering educational support).

Here, the trial court granted Father’s request for modification of his child support. Indeed, the record is clear that Father’s income was drastically reduced when he lost his job and that he has no substantial assets. As in *Walters*, we find the substantial change in

circumstances sufficient to modify Father's child support was also sufficient to modify Father's educational support.²

Mother's sole argument addressing this issue is that Father, as the party petitioning to modify support, has not carried his burden of proof. Specifically, Mother argues that because the trial court declined to set an evidentiary hearing and because Father was not sworn at either hearing, his statements at those hearings do not constitute evidence. Appellee's Br. p. 6-7. Failure to object to the admission of evidence results in waiver of the error. *Raess v. Doescher*, 883 N.E.2d 790, 796 (Ind. 2008), *reh'g denied*. Mother does not direct us to anything in the record, and we find none, indicating that she objected when Father presented evidence at the hearings. Her argument is thus waived.

We thus conclude that the denial of Father's request to modify his post-secondary educational support was clearly against the logic and effect of the facts and circumstances before the trial court.³

² In his brief, Father provides evidence of the estimated yearly cost of attending Indiana University – Bloomington. We agree with Mother that this is evidence outside the record and thus improper, and we do not rely on it in reaching our decision.

³ The trial court's order stated, "Should Mother be forced to make educational payments because of Father's failure to so pay, any such payments may be reduced to a judgment in favor of Mother and against Father, said judgment not being subject to discharge under the United States Bankruptcy Code." Appellant's App. p. 27. Father contends and Mother concedes that the trial court erred by determining that such debt would not be subject to discharge under federal bankruptcy law. We agree. Indiana courts have recognized the supremacy of the federal courts in matters related to bankruptcy proceedings. *See Hammes v. Brumley*, 659 N.E.2d 1021, 1027 (Ind. 1995), *reh'g denied*. State courts nonetheless have concurrent jurisdiction with federal courts to determine what constitutes a nondischargeable maintenance or support obligation. *Hammes*, 659 N.E.2d at 1027 n.7; *Bean v. Bean*, 902 N.E.2d 256, 260 (Ind. Ct. App. 2009). Here, however, since Father had not filed for bankruptcy and may never do so, any determination as to the dischargeability of this potential debt was not ripe for the trial court's consideration.

Reversed and remanded.⁴

NAJAM, J., and BROWN, J., concur.

⁴ As we reverse and remand, we need not address Father's contention that remand is necessary because the trial court failed to consider a verified post-secondary expense worksheet or make any findings based on the requirements of the worksheet.