

SUPREME COURT OF NEW HAMPSHIRE

In re Breault

149 N.H. 359 (2003) · Decided April 22, 2003

SUMMARY

The New Hampshire Supreme Court affirmed an order requiring a parent to continue paying child support while the parties’ daughter attended college. The court held that New Hampshire statutes permit a trial court, in an original or modified support order, to require continued child support beyond high school when equitable under the circumstances.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Nadeau, J.; Brock, C. J.; Broderick, J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	April 22, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	The petitioner appealed a Superior Court order modifying his child support obligation to require continued payments while the parties' daughter attended college, and partially denying his motion for reconsideration.
STANDARD OF REVIEW	A child-support modification order and ruling on reconsideration will be set aside only if it clearly appears from the evidence that the trial court's exercise of discretion was unsustainable.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Arthur J. Breault v. Denise M. Breault

TOPICS

- child support
- family law procedure
- statutory interpretation
- plain meaning rule

PRACTICE AREAS

- family law
- child support
- statutory interpretation

QUESTIONS PRESENTED

1. Whether RSA 458:35-c required child support to terminate when the parties' daughter graduated from high school.
2. Whether a trial court may order, in an original or modified support order, continued child support while an adult child attends college.
3. Whether the daughter's anticipated college attendance was insufficiently foreseeable to constitute grounds for modifying the parties' prior support agreement.
4. Whether the trial court unsustainably exercised its discretion by partially denying the petitioner's motion for reconsideration.

HOLDINGS

1. RSA 458:35-c permits a trial court to specify that child support will continue beyond the statutory termination events; therefore, the statute did not require support to terminate upon the daughter's high-school graduation.
2. A trial court has discretion, in both original and modified support orders, to require the noncustodial parent to continue paying child support while the child attends college when continued support is equitable under the circumstances.
3. The trial court had discretion to modify the support order because the daughter's qualifications and desires for post-secondary education were not apparent or reasonably foreseeable when the parties negotiated their 1993 agreement.
4. The trial court sustainably denied the motion for reconsideration in part because its initial ruling did not contain the legal errors asserted by the petitioner.

KEY QUOTATIONS

“Trial courts have broad discretion to review and modify child support awards.” (149 N.H. at 361)

“Pursuant to this statute, child support terminates as a matter of law upon the occurrence of the statutorily-specified events, “[u]nless the court ... specifies differently.”” (149 N.H. at 361)

“The term “education” is not limited to elementary and secondary school education.” (149 N.H. at 362)

“Accordingly, the trial court may order the parties to contribute to the costs of post-secondary education and/or may order the non-custodial parent to continue paying child support to the custodial parent, if doing so “is equitable in light of the circumstances of all of the parties.”” (149 N.H. at 363)

FACTUAL BACKGROUND

The parties share legal custody of their daughter, who was born in December 1983. Their 1993 stipulated support agreement required the petitioner to pay support until the daughter turned eighteen or graduated from high school, whichever was later. While the daughter was still in high school, the respondent sought modification because the petitioner's financial circumstances had improved and the daughter planned to attend college. The trial court ordered the petitioner to pay \$74 per week for four years, subject to annual proof that the daughter was attending a four-year college full-time.

PROCEDURAL HISTORY

The parties had agreed in 1993 that child support would continue until their daughter turned eighteen or graduated from high school, whichever was later. In 2002, the respondent petitioned to modify support based on the petitioner's improved financial circumstances and the daughter's planned college attendance. The Superior Court found a substantial change in circumstances, ordered continued support for four years, and on reconsideration required annual proof of full-time college attendance. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Nicolazzi v. Nicolazzi, 131 N.H. 694, 696 (1989)
- Butterick v. Butterick, 127 N.H. 731, 736 (1986)
- State v. Lambert, 147 N.H. 295, 296 (2001)
- In the Matter of Coderre & Coderre, 148 N.H. 401, 403 (2002)
- In the Matter of Crowe & Crowe, 148 N.H. 218, 224 (2002)
- In re Baby Girl P., 147 N.H. 772, 775 (2002)
- French v. French, 117 N.H. 696, 699 (1977)
- In the Matter of Gilmore & Gilmore, 148 N.H. 111, 113 (2002)
- LeClair v. LeClair, 137 N.H. 213, 218-220 (1993)
- Heinze v. Heinze, 122 N.H. 358, 360 (1982)
- Gnirk v. Gnirk, 134 N.H. 199, 204-206 (1991)
- Morrill v. Millard, 132 N.H. 685 (1990)
- Webster v. Town of Candia, 146 N.H. 430, 444 (2001)

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