

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)

OPINION

NADEAU, J.

Nadeau, J. The petitioner, Arthur J. Breault, appeals the order of the Superior Court (Burling, J.) modifying his child support obligation to require him to pay child support to the respondent, Denise M. Breault, until their daughter graduates from college.

We affirm. The record supports the following facts. The parties share legal custody of their daughter who was born in December 1983. In 1993, the court approved a stipulated amendment to the parties' agreement regarding child support. At that time, the parties agreed that the petitioner would pay child support through wage assignment in an amount established by the statutory child support guidelines until the parties' daughter was eighteen or until she graduated from high school, whichever was later.

Beginning in August 1993, the petitioner's weekly child support obligation was \$69.00. In January 2002, while the child was still in high school, the respondent petitioned for modification of the petitioner's child support obligation on the following grounds: (1) the petitioner's child support payments had not been increased in several years, although his financial situation had improved; and (2) their daughter planned to begin college in September 2002.

The respondent requested that the court require the petitioner to continue paying child support while the parties' daughter attended college. Following a hearing, the court ruled that the daughter's attendance at college was a substantial change in circumstances that justified a modification of petitioner's child support obligation.

The court ordered the petitioner to continue paying child support for four years at a rate of \$74.00 per week. The petitioner moved for reconsideration, which the court granted in part. Specifically, the court ordered the respondent to provide the petitioner by August 1 of every year through 2006, evidence that their daughter was attending a four-year college full-time.

The court further ordered that if the parties' daughter completed a two-year degree in 2004 and provided no evidence of full-time attendance at a four-year program, the petitioner's child support obligation would terminate. *361 Trial courts have broad discretion to review and modify child support awards. See *Nicolazzi v. Nicolazzi*, 131 N.H. 694, 696 (1989).

They are in the best position to determine the parties' respective needs and their respective abilities to meet them. *Id.* Accordingly, we will set aside a modification order "only if it clearly appears on the evidence" that the court's exercise of discretion was unsustainable. *Butterick v. Butterick*, 127 N.H. 731, 736 (1986) (quotations omitted); cf. *State v. Lambert*, 147 N.H.

295, 296 (2001) (explaining unsustainable exercise of discretion standard). The petitioner first asserts that, pursuant to RSA 458:35-c (1992), his child support obligation terminated, as a matter of law, when the parties' daughter graduated from high school in June 2002.

We disagree. "This court, of course, is the final arbiter of the legislature's intent as expressed in the words of the statute considered as a whole." In the Matter of *Coderre & Coderre*, 148 N.H. 401, 403 (2002) (quotation omitted).

We first examine the language of the statute, and, where possible, ascribe the plain and ordinary meanings to the words used. In the Matter of *Crowe & Crowe*, 148 N.H. 218, 224 (2002). "[W]hen a statute's language is plain and unambiguous, we need not look beyond it for further indication of legislative intent, and we refuse to consider what the legislature might have said or add language that the legislature did not see fit to incorporate in the statute." In re *Baby Girl P.*, 147 N.H.

772, 775 (2002). “Furthermore, we interpret statutes in the context of the overall statutory scheme and not in isolation.” Coderre, 148 N.H. at 403 (quotation omitted). RSA 458:35-c provides, in pertinent part: Unless the court or other body empowered by law to issue and modify support orders specifies differently, the amount of a child support obligation stated in the order for support shall remain as stated in the order until all dependent children for whom support is provided in the order shall terminate their high school education or reach the age of 18 years, whichever is later, or become married, or become a member of the armed services, at which time the child support obligation terminates without further legal action.

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.” Thus, consistent with the plain language of RSA 458:35-c, a trial court has the discretion to issue an original or modified child support order that terminates when the child graduates from college. *362 Nothing in the statute’s plain language prohibits a trial court from so doing.

Nor is there any such limiting language in RSA 458:17, I (Supp. 2002). RSA 458:17, I, allows the court to issue orders “in relation to the support, education, and custody of the children as shall be most conducive to their benefit and may order a reasonable provision for their support and education.” The word “minor” is absent from RSA 458:17, I. French v. French, 117 N.H.

696, 699 (1977). Thus, on its face, RSA 458:17,1, does not mandate that child support terminate when the child reaches the age of majority. See In the Matter of Gilmore & Gilmore, 148 N.H. 111, 113 (2002). The plain language of RSA 458:17,1, also does not require child support to terminate upon the child’s graduation from high school.

The term “education” is not limited to elementary and secondary school education. Had the legislature intended the term to be so limited, it could have so stated. See *id.*; see also *LeClair v. LeClair*, 137 N.H. 213, 220 (1993) (court has jurisdiction to originate child support order after child turned eighteen and graduated from high school).

The petitioner mistakenly relies upon *Gilmore* to argue that while the court had discretion to order the parties to contribute to their daughter’s college expenses, it had no discretion to order child support payments beyond her high school graduation. See RSA 458:20 (1992). *Gilmore* is distinguishable.

The trial court in *Gilmore* dismissed the custodial parent’s request for continued child support; that order was not appealed. See *Gilmore*, 148 N.H. at 112-14. Thus, in *Gilmore*, we did not address the questions raised by this appeal. Contrary to the petitioner’s assertions, a trial court has the discretion in both original and modified support orders to require divorced parties to contribute to their children’s college education, see *LeClair*, 137 N.H. at 218-19, and to require the non-

custodial parent to continue paying child support while the children are attending college, see *Heinze v. Heinze*, 122 N.H.

358, 360 (1982). As we explained in *Gnirk v. Gnirk*, 134 N.H. 199, 204 (1991): The decision of a child to attend college is an increasingly important election. When a child has made this decision, the circumstances of the parent with whom he or she lives, as well as his or her own circumstances, may mean that the decision will effect a change substantial enough for consideration by a trial court in a petition to modify the original support order. *363 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.” *Id.*; see *Heinze*, 122 N.H. at 360.

On appeal, the petitioner does not challenge the trial court’s determination that requiring him to continue paying child support was equitable under the circumstances. Relying upon *Morrill v. Millard (Morrill)*, 132 N.H. 685 (1990), the petitioner next argues that modifying his child support obligation was error because “the attendance of the parties[’] child at college should have been anticipated by the parties and incorporated into their stipulation[s].” The petitioner’s reliance upon *Morrill* is misplaced.

Although “the parties had an opportunity to negotiate the issue of paying for post-secondary education expenses,” they last negotiated in 1993, when their daughter was only ten, several years before her decision to attend college. *Gnirk*, 134 N.H. at 205. Her qualifications and desires for post-secondary education “would not have been apparent or reasonably foreseeable” in 1993.

Id. Under these circumstances, we hold that the trial court had the discretion to grant a petition to modify a support order to provide for continuation of child support while the adult child attends college. See *id.* at 205-06.

Finally, the petitioner argues that the trial court erroneously partially denied his motion for reconsideration. “A motion for reconsideration allows a party to present points of law or fact that the Court has overlooked or misapprehended.” *Webster v. Town of Candia*, 146 N.H. 430, 444 (2001) (quotation omitted).

We will uphold a trial court’s decision on a motion for reconsideration unless the decision is an unsustainable exercise of discretion. See *id.*; cf. *Lambert*, 147 N.H. at 296. The petitioner argues that the trial court should have fully granted his motion for reconsideration and recognized that its initial decision was legally erroneous.

Having determined that the trial court did not make the legal errors the petitioner identifies, we hold that its decision to deny his motion for reconsideration was a sustainable exercise of discretion. Affirmed. Brock, C. J., and Broderick, Dalianis and Duggan, JJ., concurred.

