

SUPREME COURT OF NEW HAMPSHIRE

In the Matter of Janice Johnson and Mark Johnson

158 N.H. 555, 969 A.2d 365 (2009) · No. Nos. 2008-012, 2008-548 · Decided April 9, 2009

SUMMARY

The New Hampshire Supreme Court affirmed orders addressing a divorced father's child-support and college-education obligations. The court held that preexisting orders requiring support during full-time college attendance were not automatically terminated by later statutory amendments, but that the trial court could modify the obligation to distinguish child support from college contributions. The court also upheld termination of the child-support obligation, dismissal of the mother's cross-petition, and a separate college-contribution arrangement.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, C.J.; Duggan, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	April 9, 2009
DOCKET	Nos. 2008-012, 2008-548
DISPOSITION	affirmed
PROCEDURAL POSTURE	In two related appeals, the husband challenged an order denying his petition to terminate child support, and the wife challenged a later order terminating the husband's child support obligation, modifying his college contribution, and dismissing her cross-petition to modify child support.
STANDARD OF REVIEW	The Supreme Court affords broad discretion to the trial court in divorce matters and will not disturb child-support rulings absent an unsustainable exercise of discretion or an error of law. The party challenging the order bears the burden of showing that it was improper and unfair. Without a transcript, the court assumes that the evidence supported the trial court's result.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire
PARTIES	Mark Johnson, Janice Johnson v. Janice Johnson, Mark Johnson

TOPICS

child support family law procedure statutory interpretation standard of review appellate procedure

PRACTICE AREAS

family law child support post-secondary educational expenses statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Whether the statutory amendment governing the duration of child-support obligations automatically terminated the husband's obligation when the children turned eighteen or graduated from high school, notwithstanding pre-amendment orders requiring support during full-time college enrollment.
2. Whether the husband could obtain modification of the college-related obligation based on the clarification that child support and college contributions are distinct obligations.
3. Whether the trial court properly terminated the child-support obligation, established a separate college contribution, and dismissed the wife's cross-petition to modify child support.
4. Whether the wife demonstrated that the trial court's modification order was an unsustainable exercise of discretion or unsupported by the evidence.

HOLDINGS

1. RSA 461-A:14, IV did not automatically terminate the husband's obligation to pay support while a daughter was enrolled full-time in college because the obligation arose from orders issued before the statutory amendment and the amendment applied prospectively only.
2. The husband's continuing payment was not transformed into an exclusive college-expense contribution subject to restrictions limiting expenses to tuition, books, room, board, directly related fees, or particular payment recipients.
3. The husband was entitled to petition for modification because the earlier orders conflated child support with college contributions, contrary to the clarification in *Jacobson & Tierney* that the two obligations are distinct.
4. The trial court retained authority to examine the parties' circumstances anew, distinguish the college contribution from child support, and order contributions toward college expenses under the original divorce decree.
5. The wife failed to show that the trial court's decision was an unsustainable exercise of discretion or unsupported by the evidence, particularly because she proceeded without a transcript.

KEY QUOTATIONS

"In 2004, however, we made clear that child support and educational expenses are not synonymous and are not to be conflated." (158 N.H. at 565)

"Thus, under the facts of this case, we conclude that in substance, both parties remained obligated to contribute to college expenses in 2001, prior to the 2004 enactment of RSA 458:17, XI-a (recodified as RSA

FACTUAL BACKGROUND

Janice and Mark Johnson divorced in 1993 and have three daughters, born in 1981, 1984, and 1989. Their divorce decree required both parents to contribute to their children's college expenses, while a later 1999 order required Mark to pay child support for any daughter enrolled as a full-time college student. A 2001 modification set that support at \$222 per week. After the daughters reached college age, Mark sought to terminate or modify the obligation; the trial court ultimately terminated the child-support mechanism and ordered a separate college contribution for the youngest daughter.

PROCEDURAL HISTORY

The parties' 1993 divorce decree incorporated a permanent stipulation requiring contributions toward their children's college expenses. In 1999, the trial court ordered the husband to pay child support while a daughter was enrolled full-time in college, and in 2001 the parties modified the child-support amount. The trial court denied the husband's 2007 petition to terminate support, but in 2008 granted his petition to modify his college contribution, terminated his child-support obligation, fixed a separate college contribution, and dismissed the wife's cross-petition. Both parties appealed.

DISPOSITION

affirmed

CASES CITED

- In the Matter of Donovan & Donovan, 152 N.H. 55, 871 A.2d 30 (2005)
- In the Matter of Goulart & Goulart, 158 N.H. ___, 965 A.2d 1068 (2009)
- In the Matter of Gilmore & Gilmore, 148 N.H. 111, 112, 114, 803 A.2d 601 (2002)
- In the Matter of Forcier & Mueller, 152 N.H. 463, 466, 879 A.2d 1144 (2005)
- In the Matter of Jacobson & Tierney, 150 N.H. 513, 517, 842 A.2d 77 (2004)
- Snyder v. Clifton, 139 N.H. 549, 551, 659 A.2d 899 (1995)
- In the Matter of Cole & Ford, 156 N.H. 609, 612, 939 A.2d 750 (2007)
- In the Matter of Jerome & Jerome, 150 N.H. 626, 628, 843 A.2d 325 (2004)
- Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250, 855 A.2d 564 (2004)
- State v. Lambert, 147 N.H. 295, 296, 787 A.2d 175 (2001)