SUPREME COURT OF VERMONT

Dyke v. Scopetti

199 Vt. 127 (2015) · No. 2014-232 · Decided April 3, 2015

SUMMARY

The Vermont Supreme Court affirmed an order requiring a father to pay specified college-tuition costs for his daughters under a Pennsylvania divorce agreement. The court held that the agreement was enforceable and that the father's acceptance of the institutions could not be unreasonably withheld. It also upheld the trial court's reasonableness analysis concerning the daughters' college choices, tuition costs, scholarships, and the father's ability to pay.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Robinson, J.; Reiber, C.J.; Dooley, J.; Skoglund, J.; Morris, Supr. J. (Ret.), specially assigned
JURISDICTION	Vermont
DECIDED	April 3, 2015
DOCKET	2014-232
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed a Vermont family-division order enforcing a Pennsylvania divorce-related child-support provision requiring him to pay college tuition for the parties' daughters.
STANDARD OF REVIEW	The court reviewed legal issues de novo and accepted the magistrate's factual findings unless clearly erroneous. The magistrate's conclusions concerning the reasonableness of the college choices and expenses were reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential Vermont Supreme Court opinion
PARTIES	Frank Scopetti v. Kimberley Dyke

TOPICS

family law procedure · child support · contract interpretation · contracts · appellate procedure

PRACTICE AREAS

family law · contracts · appellate procedure

QUESTIONS PRESENTED

1. Whether the phrase requiring the daughters to attend an institution acceptable to father created a condition precedent that allowed father to avoid all tuition obligations absent his approval.
2. Whether Pennsylvania law implies a reasonableness limitation on father's exercise of his discretion to accept or reject the daughters' college choices.
3. Whether the tuition provision was unenforceably indefinite or illusory.
4. Whether the magistrate abused its discretion in determining that the daughters' college choices and tuition expenses were reasonable.
5. Whether scholarships and grants should first be applied to the daughters' non-tuition costs before any excess was credited against father's tuition obligation.

HOLDINGS

1. The agreement did not expressly require advance consultation, and the daughters' failure to consult father before enrolling did not by itself defeat his obligation to pay.
2. The phrase requiring attendance at an institution acceptable to father created an enforceable condition, but father could not withhold acceptance unreasonably.
3. The tuition provision was neither unenforceably indefinite nor illusory.
4. The magistrate did not abuse its discretion in finding father's refusal and proposed $10,000 annual cap unreasonable and in requiring him to pay the tuition, fees, room, and board remaining after scholarships and grants, subject to the stated adjustment for the daughter's transfer year.
5. In the absence of contractual guidance, scholarships and grants should first be applied to the daughters' non-tuition costs, with any remaining amount credited against father's tuition obligation.

KEY QUOTATIONS

> *"Accordingly, we conclude that under Pennsylvania law, the condition that father is only required to pay for his daughters' tuition if they attend institutions acceptable to him is enforceable, but only insofar as father exercises that discretion reasonably."* (¶ 28)

> *"We conclude, therefore, that the agreement is not illusory and is not unenforceably indefinite."* (¶ 33)

> *"In the absence of such information, we conclude that the daughters should receive the benefit of grants and scholarships which they earned before the excess of those funds is applied as a credit to father's obligation."* (¶ 41)

FACTUAL BACKGROUND

The parties' 1998 separation agreement, incorporated into their 2000 Pennsylvania divorce decree, provided that father would provide college tuition for their two daughters at institutions acceptable to him. The daughters selected out-of-state programs suited to their career goals, received scholarships and grants, and incurred substantial educational expenses; father paid only portions of the tuition and disputed any obligation beyond a proposed $10,000 annual cap. Father had substantial income and resources, while the daughters and their mother had comparatively modest financial circumstances.

PROCEDURAL HISTORY

The Vermont magistrate granted the mother's motion to enforce the college-tuition provision and later determined the reasonable amount father was required to pay. The Vermont Superior Court, Orange Unit, Family Division, affirmed. Father appealed to the Vermont Supreme Court, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Pahnke v. Pahnke, 2014 VT 2, 195 Vt. 394, 88 A.3d 432
- Kripp v. Kripp, 849 A.2d 1159 (Pa. 2004)
- In re Estate of Smertz, 701 A.2d 268 (Pa. Super. Ct. 1997)
- Little v. Little, 657 A.2d 12 (Pa. Super. Ct. 1995)
- Fina v. Fina, 1999 Pa. Super. 201, 737 A.2d 760
- Wineburgh v. Wineburgh, 2002 Pa. Super. 415, 816 A.2d 1105
- Mazurek v. Russell, 2014 Pa. Super. 130, 96 A.3d 372
- Greene v. Oliver Realty, Inc., 526 A.2d 1192 (Pa. Super. Ct. 1987)
- In re Estate of Rosser, 2003 Pa. Super. 132, 821 A.2d 615
- Dahar v. Grzandziel, 599 A.2d 217, 221 (Pa. Super. Ct. 1991)
- Hathaway v. Hathaway, 98 S.W.3d 675 (Tenn. Ct. App. 2002)
- Mandel v. Mandel, 906 N.E.2d 1016, 1022 (Mass. Ct. App. 2009)
- Pharoah v. Lapes, 571 A.2d 1070 (Pa. Super. Ct. 1990)
- Spitzer v. Tucker, 591 A.2d 723 (Pa. Super. Ct. 1991)
- Norrell v. Norrell, 225 S.E.2d 305 (Ga. 1976)
- Weber v. Weber, 1998 WL 78669 (Ohio Ct. App. Feb. 11, 1998)
- S.B. v. J.R., 977 N.Y.S.2d 591, 597 (N.Y. Sup. Ct. 2013)
- Marriage of Gowdy, 816 N.E.2d 372 (Ill. Ct. App. 2004)
- Best v. Best, 470 N.E.2d 84 (Ind. Ct. App. 1984)
- Cavallari v. Martin, 169 Vt. 210, 218, 732 A.2d 739, 745 (1999)
- Hicks v. Feiock, 485 U.S. 624, 629-30 & 630 n.3 (1988)
- West v. AT&T Co., 311 U.S. 223, 237-38 (1940)