

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

In re the Marriage of
Shannon M. Bufano,
Appellant-Respondent

v.

Louis J. Bufano, Jr.,
Appellee-Petitioner



October 29, 2024

Court of Appeals Case No.
24A-DR-1428

Appeal from the Lake Circuit Court
The Honorable Shaun T. Olsen, Magistrate

Trial Court Cause No.
45C01-1608-DR-498

Memorandum Decision by Judge Bradford

Judges Bailey and Foley concur.

Bradford, Judge.

Case Summary

- [1] Louis Bufano, Jr., (“Father”) and Shannon Bufano (“Mother”) (collectively, “Parents”) were previously married and are the parents of two minor children (“the Children”). At the time of their divorce, Parents agreed to fund the Children’s 529 College Savings Accounts (“the 529 Accounts”) at a rate of \$700.00 and \$500.00 per month. In December of 2023, Father requested a modification of Parents’ obligations to fund the Children’s 529 Accounts, arguing that the balance of each account had increased in value to the point that each was sufficient to cover tuition and room and board for a four-year degree program at an in-state public university. Following an evidentiary hearing, the trial court granted Father’s petition. Mother appealed, arguing that the trial court erred in terminating Parents’ monthly obligations to fund the 529 Accounts. Concluding otherwise, we affirm.

Facts and Procedural History

- [2] Parents were married on September 1, 2007. The Children were born during Parents’ marriage, with V.B. being born in 2010, and S.B. being born in 2012. Parents divorced on October 11, 2017.

[3] At the time of their divorce, Parents entered into a settlement agreement (“the divorce agreement”), by the terms of which they agreed that they “shall be awarded joint legal custody” of the Children and that Mother “shall be awarded physical custody ... subject to [F]ather’s parenting time.” Appellant’s App. Vol. II p. 12. With respect to the Children’s future college expenses, the parties agreed to fund the Children’s 529 Accounts. Specifically, the parties agreed that

1. That the parties, and the [C]hildren’s contribution to the [C]hildren’s college and related expenses shall be deferred for further agreement of the parties or order of the court if the parties cannot agree, after the payment of said expenses from the [C]hildren’s individual 529 plans as more specifically set out below.

2. The parties’ son, [V.B.], holds a Michigan Education Savings Plan (MESP) and it shall be funded \$700.00 per month continuously until [V.B.’s] 20th birthday, and [F]ather shall be responsible for 92% and [M]other shall be responsible for 8% of such monthly funding.

3. That their son, [S.B.], holds two education savings plan[s], one in Michigan and one in Indiana which shall be funded \$500.00 per month in total (with \$417.00 per month paid to the Indiana Education Savings Plan and \$83.00 per month paid to the Michigan Education Savings Plan) continuously until [S.B.]’s 20th birthday, and [F]ather shall be responsible for 92% and [M]other shall be responsible for 8% as such monthly funding.

4. That for the Indiana Education Savings Plan used for the parties’ son, [S.B.] college payment, ‘[F]ather shall receive the tax credit on his individual tax return at that time and [M]other

waives same regardless of her contributing at the rate of 8% to both sons' funds each month as set out herein.

Appellant's App. Vol. II p. 15.

[4] On December 18, 2023, Father filed a petition seeking to modify the portion of the divorce agreement outlining Parents' monthly obligations to fund the Children's 529 Accounts. In his petition, Father claimed that

4. That based upon [Parents'] pre-dissolution and post[-]dissolution contributions, [V.B.'s 529 Account] presently hold a balance of approximately \$140,000.00.

5. That based upon [Parents'] pre-dissolution and post[-]dissolution contributions, [S.B.'s 529 Accounts] presently hold a balance of approximately \$135,000.00.

6. That [V.B.] is in 8th grade and [S.B.] is in 5th grade.

7. That [F]ather believes said funds appear to be sufficient to cover the cost of the [C]hildren's four[-]year[,] in[-]state undergraduate college education.

Appellant's App. Vol. II p. 39. The trial court conducted a two-day evidentiary hearing on Father's petition on March 7, and April 17, 2024.

[5] During the evidentiary hearing, Father testified that both he and Mother were current on their payments to the Children's 529 Accounts through December of 2023. Father further testified that he had monitored the growth of the accounts since his and Mother's divorce. Father indicated that he had not had "any idea of what the growth would be on any gains," and that the "growth of the

accounts ha[d] changed beyond” what Parents had expected. Tr. Vol. II pp. 31, 55. Father also testified that he believed that the Children’s 529 Accounts were fully funded for an in-state, four-year program at either Indiana University, Ball State University, or Purdue University.

[6] On May 31, 2024, the trial court issued an order in which it found the following:

18. [T]he Court takes judicial notice of the total cost of attendance reported by Indiana University in Bloomington, Indiana (IU), Purdue University in West Lafayette, Indiana (Purdue), Indiana State University in Terra Haute, Indiana (ISU), and Ball State University in Muncie, Indiana (BSU) under Ind. R. Evid. 201.

19. The annual estimated total cost to attend IU, Purdue, ISU, and BSU is \$30,600.003, \$22,812.004, \$24,664.005, and \$26,958.006, respectively.

20. Put differently, the current cost of four years of post-secondary education at IU, Purdue, ISU, and BSW would range from at least \$91,000 to \$122,000.00.

21. It is unlikely that the [C]hildren of the marriage will receive significant, if any, needs-based financial aid to attend any post-secondary education.

22. Father demonstrated that the [C]hildren’s 529 [A]ccounts:

- a. Have accumulated more principal and earnings to contribute towards the [C]hildren’s post-secondary education before they began to attend their post-secondary education than the amounts the parties originally intended to have available; and
- b. Are sufficient to pay a substantial majority of the expected post-secondary education costs for the

[C]hildren of the marriage even when considering the likelihood that the cost of attendance and the earnings on the principal in the account will increase.

23. The accumulation of principal and earnings on the principal within the [C]hildren's 529 [A]ccounts is a substantial and continuing change of circumstances warranting a modification of the parties' agreed educational support order under the facts and circumstances of this case.

24. Father proved that a modification of the agreed educational support order is appropriate by a preponderance of the evidence.

Appellant's App. Vol. II pp. 68–69.

Discussion and Decision

[7] Mother contends that the trial court erred in modifying Parents' prior agreement to contribute monthly to the Children's 529 Accounts.

When reviewing judgments with findings of fact and conclusions of law, Indiana's appellate courts "shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A).... "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997) (quoting *Estate of Reasor v. Putnam County*, 635 N.E.2d 153, 158 (Ind. 1994)). Appellate deference to the determinations of our trial court judges, especially in domestic relations matters, is warranted because of their unique, direct interactions with the parties face-to-face, often over an extended period of time. Thus enabled to assess credibility and character through both factual testimony and intuitive discernment, our trial judges are in a superior position to

ascertain information and apply common sense, particularly in the determination of the best interests of the involved children.

Best v. Best, 941 N.E.2d 499, 502 (Ind. 2011).

[8] Indiana Code section 31-16-8-1(b)(1) provides that a child-support order may be modified or revoked “upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable.” When reviewing a trial court’s order modifying a parent’s child-support obligation,

“We place a ‘strong emphasis on trial court discretion in determining child support obligations’ and regularly acknowledge ‘the principle that child support modifications will not be set aside unless they are clearly erroneous.’” *Lea v. Lea*, 691 N.E.2d 1214, 1217 (Ind. 1998) (quoting *Stultz v. Stultz*, 659 N.E.2d 125, 128 (Ind. 1995)). “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. *Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1210 (Ind. 2000), *reh’g denied*. We give due regard to the trial court’s ability to assess the credibility of witnesses. *Id.* While we defer substantially to findings of fact, we do not do so to conclusions of law. *Id.* We do not reweigh the evidence; rather we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Yoon v. Yoon*, 711 N.E.2d 1265, 1268 (Ind. 1999).

Panfil v. Fell, 19 N.E.3d 772, 776 (Ind. Ct. App. 2014), *trans. denied*.

[9] “[P]rovisions for the payment of educational expenses are also modifiable because educational expenses are in the nature of child support.” *Svenstrup v.*

Svenstrup, 981 N.E.2d 138, 145 (Ind. Ct. App. 2012). “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.” *Panfil*, 19 N.E.3d at 778. Thus, although Mother argues in her Reply Brief that it was improper for the trial court to “rewrite” the terms of Parents’ divorce agreement, Appellant’s Reply Br. p. 6, we have previously concluded that “the fact that a child support order has been entered pursuant to the terms of a settlement agreement, even where, as here, it is intended as forever determinative by the parties, is of no consequence to the question whether the order should be subsequently modified.” *Moell v. Moell*, 84 N.E.3d 741, 744 (Ind. Ct. App. 2017) (quoting *Meehan v. Meehan*, 425 N.E.2d 157, 160 (Ind. 1981)).

[10] In challenging the trial court’s order, Mother argues that Father had failed to prove that there had been a substantial change in circumstances such to warrant modification of the prior agreed-upon order. In support, Mother focuses on the fact that while the Children’s 529 Accounts may currently hold sufficient funds to cover the costs for an in-state, public university, there is the possibility that the Children may choose to go to college out-of-state or at a private university. While this may be true, a fact that Father acknowledged, Father is not asking that his contribution to the Children’s post-secondary education be capped at his current level of contribution, but rather merely that the parties’ obligation to fund the Children’s 529 Accounts be suspended until such time as it becomes clear that additional funds will be needed to pay for the Children’s post-secondary educations. Given that the Children were in eighth and fifth grades

at the time of the evidentiary hearing, there is no way to know where the Children may choose to seek post-secondary education. The trial court's order does not rule out the possibility that Parents, or, more specifically Father, may have an additional financial obligation when the Children begin their post-secondary studies.

[11] In granting Father's request to suspend Parents' monthly obligation to fund the Children's 529 Accounts, the trial court concluded that the "accumulation of principal and earnings on the principal within the [C]hildren's 529 [A]ccounts is a substantial and continuing change of circumstances warranting a modification of the parties' agreed educational support order under the facts and circumstances of this case." Appellant's App. Vol. II p. 69. In support, the trial court found that the Children's 529 Accounts had "accumulated more principal and earnings to contribute towards the [C]hildren's post-secondary education before they began to attend their post-secondary education than the amounts the parties originally intended to have available" and are already "sufficient to pay a substantial majority of the expected post-secondary education costs for the [C]hildren of the marriage even when considering the likelihood that the cost of attendance and the earnings on the principal in the account will increase." Appellant's App. Vol. II pp. 68–69.

[12] The trial court's findings are supported by Father's testimony. Again, Father testified that he had monitored the growth of the accounts since his and Mother's divorce, had not had "any idea of what the growth would be on any gains," and that the "growth of the accounts ha[d] changed beyond" what

Parents had expected. Tr. Vol. II pp. 31, 55. Father also testified that he believed that the Children's 529 Accounts contained sufficient funds, notwithstanding any future gains, to cover an in-state, four-year program at either Indiana, Ball State, or Purdue. The trial court took judicial notice of the fact that the funds were also sufficient to cover a four-year program at Indiana State. Given the evidence before the trial court relating to Father's request to suspend Parents' monthly obligation to fund the Children's 529 Accounts, we conclude that the evidence is sufficient to support the trial court's conclusion that there had been a substantial change in circumstances such to warrant modification of Parents' support obligations. Mother's claim to the contrary effectively amounts to a request to reweigh the evidence, which we will not do. *See Panfil*, 19 N.E.3d at 776 (citing *Yoon*, 711 N.E.2d at 1268).

[13] The judgment of the trial court is affirmed.

Bailey, J., and Foley, J., concur.

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