

STATE OF MICHIGAN
COURT OF APPEALS

OTTILIE ENGELMEIER,

Petitioner-Appellant,

v

PATRICK WINNE,

Respondent-Appellee.

UNPUBLISHED
September 20, 2012

No. 303092
Barry Circuit Court
LC No. 07-000069-TM

Before: M. J. KELLY, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Petitioner Otilie Engelmeier appeals by leave granted the trial court's February 2011 Uniform Child Support Order and its order denying her motion to set aside a 2008 stipulated order amending the parties' 1998 Colorado divorce judgment. For the reasons more fully explained below, we reverse and remand for further proceedings consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

Engelmeier married respondent Patrick Winne in March 1989 and they divorced in Colorado in 1998. They had two children. The parties entered into a separation agreement that the Colorado district court accepted and referred to in the judgment of divorce, which it entered in January 1998. In the separation agreement, the parties settled the period during which their children would be entitled to support:

11. Emancipation. For purposes of this agreement, a child shall be deemed to be a minor until the first of the following:

a. Attainment of age nineteen (19), unless mentally or physically incapacitated to the degree of being legally mentally retarded and uneducable or handicapped and unable to care for him or herself.

* * *

e. Attainment of age nineteen (19) while still in high school or an equivalent program, in which case support continues until the end of the month following graduation.

* * *

g. The parties agree otherwise in a written stipulation.

* * *

15. Date Support Terminates. The sums set forth above as and for child support shall be payable for each child until each becomes emancipated, or until further [o]rder of this [c]ourt.

16. Support During Undergraduate Work. Should any child attain the age of nineteen (19), and be a full-time undergraduate student in good standing, and have attended such institution within six (6) months of her graduation from high school or the equivalent, then the above sum (set aside for said child) or the most recent support calculation prior to graduation from high school shall be payable until said child attains the undergraduate degree, for so long as said child continues to remain a full-time student in good standing.

In September 1998, the Colorado district court entered the parties' stipulated amendment to the separation agreement in which the parties agreed that Engelmeier could move to Michigan with the children. The stipulated amendment also revised Winne's parenting time schedule and addressed the travel arrangements and transportation costs associated with the exercise of his parenting time. The parties did not, however, amend the provisions governing child support and they expressly agreed that "[t]he provisions of the Separation Agreement not otherwise modified herein shall remain in full force and effect."

Engelmeier petitioned to have the Colorado custody determination registered in Barry Circuit Court and the trial court confirmed the registration in April 2007. Then, in May 2007, Engelmeier moved for a change of custody and parenting time. The parties came to an agreement on the issues Engelmeier raised in her motion; they agreed that Engelmeier would have sole legal and physical custody of the children and agreed to alter Winne's parenting time and to allocate certain other expenses for the children. They also provided for an increase in the amount of child support. In February 2008, the trial court entered a stipulated order amending the divorce decree as the parties agreed. In around October 2008, the parties signed a standard Uniform Child Support Order reflecting the increased support.

Winne reduced his child support payment in June 2010, after his oldest child turned 19. In response, Engelmeier filed a motion to show cause. Winne then moved to have his support obligation modified. After hearing these motions, the trial court determined that the 2008 Uniform Child Support Order, which both parties signed, but which the trial court did not enter, modified the separation agreement; specifically, the trial court determined that the order eliminated Winne's obligation under paragraph 16 to pay support while the child pursues an undergraduate degree.

Engelmeier then appealed to this Court.

II. ANALYSIS

A. STANDARDS OF REVIEW

This Court reviews a trial court's decision to modify child support for an abuse of discretion. *Burba v Burba (After Remand)*, 461 Mich 637, 647; 610 NW2d 873 (2000). This Court reviews de novo any attendant questions of law, including issues involving the trial court's interpretation of court rules or statutes. *Neville v Neville*, 295 Mich App 460, 466; 812 NW2d 816 (2012). This Court also reviews de novo a trial court's construction of a divorce judgment and settlement agreement. *Id.* at 466.

B. POST HIGH SCHOOL SUPPORT

The standard language in a Uniform Child Support Order provides that the order "continues until each child is age 18 or beyond 18, as provided in MCL 552.605b, whichever is later, but no longer than age 19 1/2." And, under MCL 552.605b(5), a trial court may enter and enforce an agreement by the parties to continue support after each child reaches age 18:

(5) A provision contained in a judgment or an order entered under this act before, on, or after September 30, 2001 that provides for the support of a child after the child reaches 18 years of age is valid and enforceable if 1 or more of the following apply:

(a) The provision is contained in the judgment or order by agreement of the parties as stated in the judgment or order.

(b) The provision is contained in the judgment or order by agreement of the parties as evidenced by the approval of the substance of the judgment or order by the parties or their attorneys.

(c) The provision is contained in the judgment or order by written agreement signed by the parties.

Here, the trial court determined that the 2008 Uniform Child Support Order modified the parties' original support agreement to eliminate Winne's obligation to pay post high school support. In reaching this conclusion, the trial court apparently accepted and found noteworthy Winne's lawyer's representation that such support was in Colorado. However, Colorado law does not in fact mandate such support:

(13) **Emancipation.** (a) For child support orders entered on or after July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates without either party filing a motion when the last or only child attains nineteen years of age *unless one or more of the following conditions exist:*

(I) The parties agree otherwise in a written stipulation after July 1, 1997;

* * *

(III) If the child is still in high school or an equivalent program, support continues until the end of the month following graduation. A child who ceases to attend high school prior to graduation and later reenrolls is entitled to support upon reenrollment and until the end of the month following graduation, but not beyond age twenty-one.

* * *

(b) Nothing in paragraph (a) of this subsection (13) or subsection (15) of this section [neither of which are applicable here] *shall preclude the parties from agreeing in a written stipulation or agreement . . . to continue child support beyond the age of nineteen or to provide for postsecondary education expenses for a child . . .* [Colo Rev Stat § 14-10-115 (emphases added).]

Consistent with this statute, the parties agreed in their separation agreement to provide for the emancipation of the minor children at 19 or graduation from high school and for the termination of Winne’s support obligation upon the children’s emancipation, except as “[t]he parties agree otherwise in a written stipulation.” The parties also agreed—in writing—to extend Winne’s support obligation through the children’s undergraduate studies as stated in paragraph 16. This paragraph was entirely consistent with Colorado law and enforceable under a Uniform Child Support Order that met the criteria stated under MCL 552.605b(5)(a)-(c).¹

The only basis for limiting the support order would be to conclude that the standard language age restriction contained in paragraph 1 of the 2008 Uniform Child Support Order limits MCL 552.605b(5) such that, without regard to the parties’ agreement to the contrary, child support is simply not payable any “longer than age 19 1/2.” See MCR 3.211(D). But such a reading would render the Uniform Child Support Order inconsistent with, and more restrictive than, the statute itself. Because the Legislature has determined that Michigan courts should enforce an agreement by the parties to provide child support after age 19 1/2, and that decision is a matter of substantive law, the statute controls. *McDougall v Schanz*, 461 Mich 15, 26-36; 597 NW2d 148 (1999). Moreover, as Engelmeier notes, paragraph 8 of the Uniform Child Support Order expressly provides that “[e]xcept as changed in this order, prior provisions remain in effect. Support payable under any prior order is preserved.” This language preserved Winne’s obligation to pay post high school support as provided in paragraph 16. Accordingly, the trial court erred when it concluded that the 2008 Uniform Child Support Order superseded the parties’ separation agreement.

¹ We note that there was much discussion below as to when the trial court obtained jurisdiction given that the Colorado district court did not formally surrender its jurisdiction until June 2010. However, on appeal, Engelmeier acknowledges that the trial court had jurisdiction by February 2011, when it entered the Uniform Child Support Order at issue here.

We also conclude that the 2008 Stipulated Order did not modify Winne's obligation to provide post high school support under the conditions set forth in paragraph 16. As Engelmeier correctly notes, the parties expressly agreed in their separation agreement that it should be construed under Colorado law. However, Michigan law applies to the construction and effect that the parties' subsequent actions taken in Michigan courts have on the agreement. *Scott v Scott*, 182 Mich App 363, 366-367; 451 NW2d 876 (1990). Moreover, both Colorado law and Michigan law provide that settlement agreements are to be interpreted using common law contract principles, the primary goal of which is to give effect to the intent of the parties as determined from the language of the agreement itself. *Myland v Myland*, 290 Mich App 691, 700-701; 804 NW2d 124 (2010); *Yaekle v Andrews*, 195 P3d 1101, 1107 (Colo, 2008); *Ad Two, Inc v City & Co of Denver*, 9 P3d 373, 376 (Colo, 2000). Accordingly, under both Michigan and Colorado law, courts will give the words of a settlement agreement their plain and ordinary meanings, and where the language of the agreement is unambiguous, it reflects the intention of the parties as a matter of law and must be enforced as written. *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008); *Montemayor v Jacor Communications, Inc*, 64 P3d 916, 920 (Colo App, 2002).

As this Court explained in *Neville*, 295 Mich App at 469-470, "[i]n order to determine the parties' agreement, a court must consider all of its terms, including any modifications agreed to by the parties." Accord *Fibreglas Fabricators, Inc v Kylberg*, 799 P2d 371, 374 (Colo, 1990) (stating that courts will interpret contracts as a whole); *Colowyo Coal Co v Colorado Springs*, 879 P2d 438, 443 (Colo App, 1994) (noting that a contract can be modified by mutual consent). With paragraph 16 of the separation agreement the parties' unambiguously agreed that Winne would pay child support after the children reached age 19, so long as the conditions set forth in that paragraph were met.² *In re Smith Trust*, 480 Mich at 24; *Montemayor*, 64 P3d at 920. As to support matters, the 2008 stipulated order simply provided for an increased support amount on the basis of the parties' updated information. Nothing in the order addressed a revised age limit for the support or the provision of post high school support. Therefore, this modification did not alter the terms provided under paragraph 16 and that paragraph continued to be operable after the 2008 stipulated order.

Further, as already discussed, the 2008 Uniform Child Support Order cannot be read to modify or eliminate Winne's obligations under paragraph 16. The 2008 Uniform Child Support Order explicitly recognized the exceptions to the standard age limitation set forth in MCL 552.605b. Because the separation agreement otherwise met the requirements stated in MCL 552.605b(5), Winne's obligation to pay post high school support was not modified by the Uniform Child Support Order. And the trial court erred when it determined otherwise. Accordingly, we reverse the trial court's February 2011 order to the extent that it provides that Winne is not responsible for post high school support.

² It is undisputed that the parties' oldest child met the criteria set forth in paragraph 16.

Finally, in their separation agreement, the parties agreed that, “[i]n the event that it shall be necessary for either party hereto to institute legal proceedings to enforce any provision of this Agreement, . . . the successful party in such action shall be awarded reasonable attorney’s fees incurred, plus costs, in the bringing of such action.” Therefore, on remand, the trial court shall order Winne to pay Engelmeier’s reasonable attorney’s fees incurred during the course of these proceedings, including those incurred on appeal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Engelmeier, being the prevailing party, may tax her costs. MCR 7.219(A).

/s/ Michael J. Kelly

/s/ Joel P. Hoekstra

/s/ Cynthia Diane Stephens