IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Marriage of: MARIELLE J. EHRESMAN fka MARIELLE J. STEPHENS, Respondent, and DAVID A. STEPHENS, SR., Appellant.	No. 37768-3-II UNPUBLISHED OPINION

Bridgewater, J.—David Stephens appeals a Pierce County Superior Court order holding that he continued to be obligated to pay child support for his son even though his son was eighteen and had been expelled from high school before his eighteenth birthday. We find that the court properly interpreted the pertinent provisions of the support order.[1] Affirmed.

[1] A commissioner of this court considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

FACTS

David Stephens and Marielle Ehresman are the parents of two children, Cassondra, now 22, and David, now 19. At issue here is a 2002 child support order that required the payment of child support "[u]ntil the children reach the age of 18, or as long as the children remain enrolled in high school, whichever occurs last. . . ." Clerk's Papers (CP) at 10 (Paragraph 3.13).

On September 20, 2007, Enumclaw High School placed David on emergency expulsion for weapons possession and possession of a controlled substance with intent to deliver. The letter of notification directed that David not be on or about school premises, or at any district-sponsored activity "until this matter [was] resolved." CP at 37.

On October 23, 2007, David turned 18. Five days later, he entered an inpatient alcohol and drug rehabilitation program at Sundown Ranch and began classes at Selah Academy, a high school for children in the treatment program. He was able to transfer the credits he earned at the Academy to Enumclaw High School. In November, after completing the Sundown Ranch program, David enrolled in an independent online study program through Brigham Young University. He undertook this program on the advice of counselors from Enumclaw High School, and the four credits he earned also counted toward his high school diploma. David re-enrolled in Enumclaw High School on January 28, 2008, and graduated on schedule.

Stephens had stopped making support payments after September 2007. On January 18, 2008, Ehresman filed a Motion for an Order to Show Cause re Contempt because Stephens was refusing to pay support.[2] A Pierce County Superior Court commissioner issued an order on April

3, 2008, finding no contempt, but finding that the 2002 order had not terminated. The commissioner ordered Stephens to pay back support totaling $5,895, and to continue paying support until David graduated. On Stephens's motion for revision, a superior court judge held that the 2002 order remained in effect, but lowered the amount of back support owing.

ANALYSIS

Stephens contends that the court had no jurisdiction to order either past or future support payments because the 2002 order terminated on David's eighteenth birthday. He relies upon what he considers the plain language of the support order, asserting that there could be no extension to accommodate the four or five days between David's eighteenth birthday and the date of his enrollment in Selah Academy because the order did not provide for it. We disagree. The language of the order and the circumstances of this case create an ambiguity, which was properly interpreted by the superior court.

Where a court's order is ambiguous, the reviewing court seeks to ascertain the intention of the court that entered the original decree and does so as a matter of law. *Gimlett v. Gimlett*, 95 Wn.2d 699, 704-05, 629 P.2d 450 (1981). Questions of law are subject to de novo review by the appellate court, and intent may be ascertained using general rules of construction applicable to statutes and contracts. *In re Marriage of Thompson*, 97 Wn. App. 873, 877-78, 988 P.2d 499 (1999). Contracts are construed to give reasonable, fair, just, and effective meaning to all

[2] She also filed a Petition for Modification of Child Support because she and Stephens disagreed about the amount of the monthly payments. Stephens does not challenge the court's decision on that issue.

manifestations of intent. *In re Marriage of Nielsen*, 52 Wn. App. 56, 58, 757 P.2d 537, *review denied*, 111 Wn.2d 1023 (1988).

The support order required that David be enrolled in high school. "Enrolled" is not a very precise term. As defined, it simply means to be included on a list. *See* Webster's Third New International Dictionary 755 (1969). In the context of a child support order, the most reasonable construction is that the child is a student, attending school with the purpose of obtaining a diploma. School attendance is routinely interrupted by summer vacations or illnesses, and often by transfers from one school to another. As long as the child's purpose continues to be completion of his education in a timely manner, short-term interruptions should not affect his status as a student.

Here, David's expulsion was clearly expected to be temporary. It appears that Enumclaw High School worked with the parents throughout the fall to enable David's reinstatement, meeting with them on several occasions and recommending the courses at Brigham Young University. In addition, the school accepted all of the credits that David earned at Selah Academy and Brigham Young University. David, himself, pursued his education assiduously. He made good grades in his fall classes and re-enrolled at Enumclaw H.S. in January 2008, graduating at the time originally contemplated.

Termination of the child support obligation because of the temporary and brief interruption in enrollment would not comport with a reasonable, fair, or just reading of the child support order. The trial court correctly interpreted the intent of the order.

Both parties have asked that this court exercise its discretion to award attorney fees

pursuant to RCW 26.09.140. Ehresman has additionally alleged intransigence. Intransigence includes the bringing of an action without a reasonable basis. *Bay v. Jensen*, 147 Wn. App. 641, 660, 196 P.3d 753 (2008). Stephens made a legitimate argument. We find no intransigence. As to RCW 26.09.140, neither party has demonstrated that the other party's ability to pay is measurably greater than his or her own.

The judgment is affirmed. Both requests for attorney fees are denied.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Quinn-Brintnall, J.

Van Deren, C.J.