

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002290-MR

MICHELLE B. YARBER-NOWLIN

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE D. MICHAEL FOELLGER, JUDGE
ACTION NO. 99-CI-00937

DAVID LEE NOWLIN

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

** **

BEFORE: ACREE AND CAPERTON, JUDGES; ROSENBBLUM,¹ SPECIAL JUDGE.

CAPERTON, JUDGE: Appellant, Michelle Nowlin, appeals the October 17, 2007,

Order of the Campbell Family Court, in which the court interpreted the term

“tuition” as it existed in the separation agreement between Michelle Nowlin and

¹ Retired Judge Paul W. Rosenblum, sitting as Special Judge by Assignment of the Chief Justice Pursuant to Section 110 (5)(b) of the Kentucky Constitution.

her former husband, Appellee, David Nowlin. Upon review, we affirm in part and reverse in part and remand to the trial court for additional proceedings not inconsistent with this opinion.

The marriage between Michelle and David was formally dissolved by a Decree of Dissolution entered on February 1, 2000, by the Campbell Family Court. Upon the cessation of their marriage, Michelle and David entered into a Separation Agreement which included a provision pertaining to their respective responsibilities in funding the college education of their only daughter, Cory Nowlin (Cory). Paragraph Thirteen of the Agreement, the provision at issue, read as follows:

“College Tuition: Each party will be responsible for paying one-half of the college tuition for the minor child of this marriage.”

In August of 2007, Cory began attending college at Appalachian State University (ASU). The bill for the first semester at ASU outlined costs and fees as follows:

Orientation Charge: \$150.00
General Fees Undergraduate: \$1,000.00
SGA Fee: \$.50
Health Services Fee: \$97.00
Out of State Undergrad Regular Tuition: \$5,306.50
Out of State Undergraduate Cb Tuition: \$675.00
Meal Option – Standard: \$970.00
IPP Enrollment Fee: \$50.00
Housing Term (Double): \$1,625.00
Total: \$9,874.00

Michelle forwarded said bill to David and requested he pay one-half of the costs as outlined above. Upon receipt of the bill, David accepted

responsibility for one-half of the two line items in the bill which specifically included the word “tuition”, and which amounted to \$5,981.50. Consequently, David tendered to Michelle \$700.00 toward Cory’s first semester at ASU.²

On August 30, 2007, Michelle filed a motion in the Campbell Family Court requesting the Court to enforce Paragraph Thirteen of the Separation Agreement to require that David pay half of all of the expenses on the bill. David continued to assert that he was responsible only for paying one-half of the two line items which expressly included the word “tuition”. A hearing on the matter was held on October 2, 2007.

The Family Court issued an Order on October 17, 2007, concluding that David was responsible only for the two items in the bill which expressly included the word tuition. The Family Court did not believe David to be responsible for any of the other fees outlined on the bill, including not only room and board, but also costs associated with instruction received by Cory at college.

Michelle now appeals that determination, asserting that the Family Court’s interpretation of the word tuition as it was used in the Separation Agreement was contrary both to the intent of the parties and the definition of the word tuition as it is commonly understood and used. She now seeks a determination from this Court that the parties share equally in their daughter’s

² ASU apparently allows first quarter tuition to be paid in equal installments on September 1, October 1, and November 1. Likewise, in the second semester, tuition may be paid in four equal installments. The first \$700.00 payment made by David was apparently what he believed to be his appropriate share of the first installment.

college expenses. David maintains that he is only responsible for the two items in the bill which expressly include the word tuition.

Under KRS 403.180(5), terms of a separation agreement incorporated into a decree are enforceable as contract terms. Interpretation of a contract is a matter of law to be decided by the court, and thus the standard of review of such a decision is *de novo*. *Cinelli v. Ward*, 997 S.W.2d 474 (Ky.App.1998). In the instant matter, at issue is the proper interpretation of the provision pertaining to tuition in the settlement agreement between the parties.

Although we do not find any Kentucky case law which speaks precisely to the matters raised herein, we do note that there are several statutes which speak to the definition of tuition for higher education. We review those statutes for guidance in this matter.

KRS 164A.305 sets forth the definition of tuition as used in the Kentucky Educational Savings Plan Trust. That statute establishes that “tuition” means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment. Likewise, KRS 164A.700, defines tuition as that term is used in the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund as the prevailing tuition and all mandatory fees charged for a qualified beneficiary to attend an eligible educational institution. Finally, in defining tuition for purposes of the National Guard Tuition Program, KRS 164.516 describes it as the total semester, quarter, or classroom hour cost of instruction and

matriculation and other fees required of the student that are published in the catalog of the educational institution.

Having considered these statutory definitions, we note that they all determine tuition to include those costs which are mandatory for a student to receive instruction once present in the classroom. Therefore, we believe the term “tuition”, as it is generally used and understood, to be defined as all expenses imposed by the educational institution as a condition of full-time enrollment in an undergraduate program for an academic year.

Having so found, we affirm the trial court as to its finding the two items to be tuition, but reverse and remand this matter to the trial court with instructions to review the other various costs and fees assessed by ASU for Cory’s education in light of the definitions set forth above.

ACREE, JUDGE, CONCURS.

ROSENBLUM, SPECIAL JUDGE, CONCURS IN PART AND
DISSENTS IN PART.

ROSENBLUM, SPECIAL JUDGE, CONCURRING IN PART AND
DISSENTING IN PART: Merriam-Webster’s Online Dictionary defines tuition as “the price of or payment for instruction.” This definition would not encompass the Meal option and Housing Term fees sought by the appellant herein. Accordingly, I would exclude these two items from consideration upon remand to the Campbell Circuit Court. I believe that the majority opinion has properly determined that the trial court upon remand must consider whether the other items (excluding the two

items specifically designated as Tuition) fall under the umbrella of “tuition” in light of the definitions as set out in the majority opinion.

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