

NOT DESIGNATED FOR PUBLICATION

THEA MARVIN * NO. 2010-CA-0575
VERSUS *
ERNEST MARVIN * COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2009-628, DIVISION "F"
Honorable Christopher J. Bruno, Judge

Judge Max N. Tobias, Jr.

(Court composed of Judge Max N. Tobias, Jr., Judge David S. Gorbaty, Judge Paul A. Bonin)

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AFFIRMED.

Ernest Marvin appeals the 8 December 2009 judgment of the trial court requiring him to pay a proportionate share of his minor child's private school tuition in addition to his basic child support obligation. For the reasons that follow, we affirm.

Mr. Marvin and Thea Marvin were married in September 1985, and had three children. The parties were divorced by judgment dated 23 July 2009.

On 13 May 2009, Ms. Marvin filed a motion to establish child support for their minor daughter, the only remaining minor child of the marriage. At trial, the parties stipulated that Mr. Marvin's monthly basic child support obligation was \$675.52. The remaining issue to be determined was whether the expense of private school tuition should be borne by Mr. Marvin, who objected to paying it. Ms. Marvin testified that she paid \$560.00 per month (over ten months) for the minor daughter's tuition at Ecole Classique, a private school

Judgment was rendered ordering Mr. Marvin to pay his share of the tuition in addition to his basic child support obligation, resulting in a total monthly child support obligation of \$984.00. The judgment further ordered that the child support award was retroactive to the date of filing of the motion, 13 May 2009.

On appeal, Mr. Marvin asserts that the trial court erred by including the private school tuition expenses in the total support obligation, citing La. R.S. 9:315.6. He submits that the record is devoid of any testimony indicating that the minor child has particular educational needs that would be satisfied by attending a private school. He further avers that the trial court erred in making the tuition payments retroactive and that the retroactivity should only apply to the child support obligation and not to the private school tuition. (We note that Mr. Marvin fails to brief this last assignment of error. In accordance with Uniform Rules – Courts of Appeal, Rule 2-12.4, this assignment of error is deemed abandoned.)

Expenses associated with a private school are not automatically added to the basic child support obligation. La. R.S. 9:315.6(1); *Walden v. Walden*, 00-2911 (La. App. 1 Cir. 8/14/02), 835 So.2d 513. La. R.S. 9:315.6 provides, in pertinent part:

By agreement of the parties or order of the court, the following expenses incurred on behalf of the child *may* be added to the basic child support obligation:

- (1) Expenses of tuition, registration, books, and supply fees required for attending a special or private elementary or secondary school to meet the needs of the child. [Emphasis added.]

* * *

The trial court's decision to include the private school tuition in a child support obligation will not be disturbed absent an abuse of discretion. *Williams v. Williams*, 04-1624, pp. 2-3 (La. App. 4 Cir. 3/16/05), 899 So.2d 628, 630. "[A]n abuse of discretion occurs if the court was arbitrary or capricious in its decision." *Id.*, p. 3, 899 So.2d at 630.

We note that La. R.S. 9:315.6 was amended in 2001, removing the language requiring that a “particular educational need” to attend the special or private school must be shown in order to obtain a court’s order that a party must share in the expense. The statute is now less restrictive than it was previously, encompassing generally “the needs of the child.” This broader intent is illustrated by the comments to La. R.S. 9:315.6, which state in pertinent part: “The needs of the child met by the special or private school need not be particular educational needs but may include such needs of the child as the need for stability or continuity in the child's educational program.” *Comments-2001*, La. R.S. 9:315.6.

In the case at bar, Mr. Marvin maintains that the addition of private school expenses to his child support obligation requires a showing by Ms. Marvin that the minor child has a particular educational need, which would be satisfied by a private school education. Based upon the current version of La. R.S. 9:315.6, we find that such proof is not required. As we stated in *Williams*,

“Our review of the jurisprudence supports our conclusion that a child support award will be upheld upon a showing of consistent private school enrollment. Thus, a child support award specifying contribution to a child’s private school education, based upon a history of private school education, will not be disturbed unless the district court abuses its discretion in ordering the support award.”

Williams, 04-1624 at p. 6, 899 So.2d at 632.

Testimony in this case reveals that the minor attended Ecole Classique from Pre-K through kindergarten and attended Crescent City Baptist Elementary School for first and second grade. Hurricane Katrina struck the New Orleans area in August 2005, and after Hurricane Katrina, the parties separated and Ms. Marvin and the minor child moved to St. Charles Parish where she attended public school

for one and one-half years. In March 2008, Ms. Marvin and the minor child returned to live in Orleans Parish where she was again enrolled in Ecole Classique again to finish out that school year. (The minor child was in sixth grade at Ecole Classique at the time of trial court.)

At trial, Ms. Marvin stated that her minor daughter was happy at Ecole Classique and wanted to stay there and that the two older Marvin children had attended and graduated from high school at Ecole Classique. Ms. Marvin further testified that she had considered Lusher, a public charter school in her New Orleans neighborhood, but the child was not accepted there due to her low level of reading comprehension.

Mr. Marvin testified that he is unable to afford private school for his minor child and was never in favor of any of his children attending private school; the decision for the children to attend private school was that of Ms. Marvin.

Mr. Marvin has worked for U.S. Airways for twenty-four years. In 2009, his gross salary was \$51,000.00. In 2007, his gross income was \$56,000.00 because of overtime pay. He stated that he now lives in Columbia, South Carolina, where he rents a room in his girlfriend's home and contributes to the utilities expenses, for a total of approximately \$900.00 per month.

Mr. Marvin also testified that he had not investigated the public schools in Orleans Parish and could not provide the court with a viable alternative for schooling for the child in Orleans Parish. He further stated that since his separation in 2005, he has had no communication with Ms. Marvin regarding the minor child's schooling, does not visit her in New Orleans, and contributes no support for the child other than hospitalization through his employment.

Following the testimony of Mr. and Ms. Marvin, the trial judge ordered Mr. Marvin to pay his proportionate share of the private school tuition, stating:

As it pertains to the education of ... [the minor child], the Court finds that Mr. Marvin had knowledge that ... [the minor child] was being enrolled in a private school. In fact, his two other children had been enrolled in the same school. Mr. Marvin took no action to challenge the enrollment of ... [the minor child] until a request was made by his ex-wife for contribution to the educational expenses of ... [the minor child]. Ms. Marvin testified, and the Court believes her testimony, that her child is doing well in Ecole Classique School and that this child does have a history of changing schools. The Court finds it would be in the best interest of this child to remain in the current school she is enrolled in, and therefore, will continue her enrollment in that school.

We find the trial court's ruling is neither manifestly erroneous nor clearly wrong and is amply supported by the evidence; justification exists to add the private school tuition expenses to Mr. Marvin's support obligation. The minor is currently enrolled and has a history of enrollment in private school. Moreover, one may reasonably conclude that a continuation of the child's private school education could offer the stability that has been lacking in her family life in recent years. In sum, we find no abuse of discretion in the trial court's determination that remaining at Ecole Classique is in the child's best interest.

Finally, while it is well-established that any consideration by the trial court for extraordinary expenses must include the parents' ability to pay,¹ the record in this case shows that Mr. Marvin has sufficient income, despite his protestations to the contrary, to contribute to the minor child's private school education.

¹ *Sobers v. Sobers*, 98-0006 (La. App. 1 Cir. 12/28/98), 724 So.2d 278.

For the foregoing reasons, we find no error in the judgment of the trial court and affirm. All costs of this appeal are assessed to Mr. Marvin.

AFFIRMED