STATE OF MICHIGAN

COURT OF APPEALS

JULIE A. CROSS,

Plaintiff-Appellant,

v

KENNETH GENE CROSS,

Defendant-Appellee.

UNPUBLISHED
November 25, 2008

No. 279286
Allegan Circuit Court
LC No. 90-012971-DM

Before: Hoekstra, P.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

In this action for child support, plaintiff Julia Cross appeals by leave granted the trial court's June 21, 2007 order. That order provided that defendant Kenneth Cross would pay child support commencing on February 9, 2006, and terminating on October 13, 2006, the child's 18th birthday. We reverse the trial court's June 21, 2007 order and remand to the trial court for further consideration.

I. Basic Facts And Procedural History

In September 1992, a judgment of divorce was entered relating to Julie Cross and Kenneth Cross and their minor child. The judgment of divorce granted Julie Cross sole legal and physical custody of the minor child. It further denied Kenneth Cross visitation, and restrained Kenneth Cross and his family from ever having contact with the child. The judgment of divorce also forever released Kenneth Cross from having to pay child support unless Julie Cross began receiving ADC, which was a form of welfare at the time, on behalf of the child. If, however, Julie Cross began receiving ADC, she would be entitled to child support and Kenneth Cross would be entitled to visitation.

In 2005, Julie Cross began having health issues and needed financial help in caring for the child. She applied for ADC or its equivalent, but asserted that she did not qualify because her grandmother set up a college trust fund for the minor child to receive when he turned 21 years old. However, Julie Cross receives Medicaid. The friend of the court (FOC) subsequently conducted a support review and recommendation. Kenneth Cross then objected to the FOC recommendation that he should pay child support and requested a hearing.

The trial court held arguments on two dates in April 2007. Testimony at the hearing indicated that the child was attending high school on a full-time basis. Because he was having

learning and comprehension problems, however, he was in a special class where he could receive one-on-one attention.

During the second hearing, the trial court indicated that it always had the right to modify child support orders and that the parties could not bargain away their child's right to support. However, it also noted that agreements between parties are enforceable. Additionally, the trial court commented that "being on Medicaid is probably sufficient to be on the public charge, because Medicaid is a federal program but it's payable through the state, so there's some federal money and there's also some state money involved in Medicaid, and therefore the child to that extent is a charge on the state."

In a June 1, 2007 opinion, the trial court interpreted the applicable statute, MCL 552.605b, as providing that in order for child support to continue past a child's 18th birthday, there must be a reasonable expectation that the child will graduate from high school by the time the child is 19-½ years old. The trial court indicated that it had received letters from the parties' attorneys indicating that the attorneys learned, after speaking with the child's primary teacher, that the child had only completed seven out of the 23-½ credits required to graduate. Therefore, according to the trial court, there was no reasonable expectation of the child graduating from high school before he was 19-½ years old. Consequently, the trial court indicated that it would not order Kenneth Cross to pay child support past the child's 18th birthday. The trial court memorialized its opinion in the June 21, 2007 order, which indicated that Kenneth Cross would pay child support commencing on February 9, 2006, and terminating on October 13, 2006, the child's 18th birthday. We subsequently granted Julie Cross's application for leave to appeal.

II. Interpreting The Statute

A. Standard Of Review

Julia Cross argues that the trial court misinterpreted MCL 552.605b when it held that there must be a reasonable expectation of the child graduating high school by age 19-½ for child support to be ordered past the child's 18th birthday. Statutory interpretation is a question of law that we review de novo.[1]

> The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature in enacting a provision. Statutory language should be construed reasonably, keeping in mind the purpose of the statute. The first criterion in determining intent is the specific language of the statute. If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. However, if reasonable minds can differ regarding the meaning of a statute, judicial construction is appropriate.[2]

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[1] *Lesner v Liquid Disposal, Inc*, 466 Mich 95, 99; 643 NW2d 553 (2002).

[2] *USAA Ins Co v Houston Gen Ins Co*, 220 Mich App 386, 389-390; 559 NW2d 98 (1996) (citations omitted).

If judicial construction is warranted, this Court should construe the statute according to its common meaning.[3]

B. MCL 552.605b

Under MCL 552.605b(1), child support may be awarded beyond a child's 18th birthday in certain circumstances. The statute provides:

> The court may order child support for the time a child is regularly attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate from high school while residing on a full-time basis with the recipient of support or at an institution, but in no case after the child reaches 19 years and 6 months of age. A complaint or motion requesting support as provided in this section may be filed at any time before the child reaches 19 years and 6 months of age.[4]

C. Interpreting The Statute

The specific statutory language of this statute is clear and unambiguous. As long as a child is regularly attending high school on a full-time basis and there is a reasonable expectation of his completing sufficient credits to graduate while residing full-time with the recipient of the of the support, support may be awarded beyond the child's 18th birthday. However, in no case can such support be extended beyond the age of 19-½. The phrase "but in no case after the child reaches 19 years and 6 months of age" provides a maximum age at which time child support payments will cease even if the child regularly attends high school on a full-time basis with a reasonable expectation of graduating. A comma from the main sentence separates the phrase "but in no case after the child reaches 19 years and 6 months of age." This punctuation reflects a qualifying clause serving as a ceiling beyond which no post-age of majority child support may be ordered, even if the child remains full-time in high school with a reasonable expectation of graduation. A comma setting off a modifying phrase is evidence that the phrase was intended to apply to all principles that came before it.[5]

Based on the foregoing, we conclude that the trial court improperly interpreted the meaning of the statute. A child can, while attending high school full time, receive the benefit of child support beyond that child's 18th birthday if there is a reasonable expectation that the child will complete sufficient credits to graduate from high school while residing on a full-time basis with the recipient of support (here, Julie Cross) or at an institution. There is no requirement for the receipt of such support that there must be a reasonable expectation that the child will graduate from high school by the time the child is 19 years and six months old. But in no event can such child support extend beyond the time the child is 19 years and six months old.

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[3] *Jordan v Jarvis*, 200 Mich App 445, 451; 505 NW2d 279 (1993).

[4] MCL 552.605b(2).

[5] *People v Rahilly*, 247 Mich App 108, 121; 635 NW2d 227 (2001).

In reaching our conclusion, we note that Kenneth Cross argues that he should not have been required to pay child support under the terms of the judgment of divorce. This issue is not properly before us because Kenneth Cross did not file a cross appeal.[6]

We reverse the trial court's June 21, 2007 order and remand for further consideration. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Michael J. Talbot

[6] *Barnell v Taubman*, 203 Mich App 110, 123; 512 NW2d 13 (1993).