

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002404-MR

WILLIAM HENRY MOSS

APPELLANT

APPEAL FROM WARREN FAMILY COURT
v. HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 92-CI-00424

SUSAN PATRICE MOSS

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: DYCHE AND GUIDUGLI, JUDGES; BUCKINGHAM, SENIOR JUDGE.¹

GUIDUGLI, JUDGE: William Henry Moss appeals from the September 3, 2004, and October 20, 2004, orders of the Warren Family Court addressing post-decree motions relating to various costs incurred by his son, Patrick Harrison Moss, relative to his college education and medical expenses. We affirm.

William and Susan Patrice Moss were married on June 19, 1982. Two children were born during the marriage. Patrick was born August 7, 1985, and Colin Bradley Moss was born August

¹ Senior Judge David C. Buckingham, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

2, 1989. William and Susan separated on August 18, 1991, and Susan filed a petition for dissolution on May 12, 1992. The parties entered into a settlement agreement resolving all issues relating to the dissolution on September 11, 1992, which was incorporated into the decree of dissolution entered September 14, 1992. On June 13, 2002, Susan filed a motion to enforce the settlement agreement concerning the issue of payment of Patrick's college education.

Susan's motion sought to enforce numerical paragraph two of the separation agreement addressing child support in general. Specifically, paragraph 2(c) dealt with college education in the following manner: "William shall pay for all the reasonable costs of a college education for both of the parties' children at the then prevailing tuition rate for Kentucky state colleges." Patrick had graduated from high school and was entering the University of Louisville, Speed School of Engineering, for the fall 2003 semester. Following a hearing on Susan's motion, the family court entered an order January 29, 2004, which held in relevant part:

(3) [William] is to pay the reasonable costs of a college education for Patrick Moss; (sic) in a manner and amount agreed upon between Patrick Moss and [William];

(4) [William] is to provide directly to Patrick Moss an amount agreed upon between Patrick Moss and [William] for additional reasonable educational expenses, said amount

not to exceed \$2,000.00 (two thousand dollars) per semester;

(5) No educational payments made by [William] for the benefit of Patrick Moss with respect to tuition, room and board or payments made for additional educational expenses shall pass through the Petitioner, Susan Patrice Moss (now Gardner);

(6) [William] is to provide proof of payments made on behalf of Patrick Moss for tuition, room and board, and any deposits into Patrick Moss' checking account for additional educational expenses, to [Susan].

Despite the entry of the above order the parties were soon back in court when on June 29, 2004, Susan alleged in a motion that William "ha[d] failed and refused to comply with the parties' previous agreement and [the] Court's order" concerning Patrick's college tuition. William responded by stating that Patrick had been on scholarship but had not done well and by the end of his first year in college, his G.P.A. was 1.53, that he had given \$2,000.00 to Patrick for his reasonable expenses, that he and Patrick had discussed the tuition, expenses and grades issues, and that William, as a father, had a duty to hold Patrick accountable for his poor academic performance. After numerous filings by the parties relative to their position on Patrick's college tuition, a hearing was held on July 21, 2004.² Thereafter, the family court entered an order on September 3,

² There is no transcript or video of this hearing in the appellate file.

2004, granting in part Susan's motion. The court held as follows:

[William] contends he complied with the January 4, 2004 Order in that he and Patrick agreed as to how much money Patrick would receive from him and that is the amount that was paid for the Fall of 2003 and Spring of 2004. However, [William] contends that due to Patrick's poor performance in school he should no longer be required to pay all of Patrick's reasonable educational expenses.

Patrick did perform quite poorly in college his first year. However, the Speed School at the University of Louisville, allowed Patrick to enroll again and retake some of his courses. The Court recognizes and commends Patrick for his determination to remain in school and not give up. However, the Court also recognizes [William's] contention in that he feels his son should take responsibility for his performance in school.

The Court finds that [William] shall be responsible for the reasonable educational expenses of Patrick Harrison Moss for the Fall 2004 semester. This amount shall include: tuition, books, housing ([William] shall only be required to pay the amount required for double occupancy, as a private room is not a reasonable educational expense), parking permit, meal plan, books, school supplies, and student club dues. The Court takes into consideration the increase in the educational expenses [William] will pay as a result of Patrick losing his scholarship and other supplemental funds. [William] shall provide Patrick with additional spending money in the amount of one thousand five hundred dollars (\$1,500.00) per semester. Patrick shall use these funds for any other expenses he may have such as his cell phone, travel, extra food, etc. In addition, [William] shall

continue to cover Patrick on his medical insurance and pay for Patrick's doctor visits and prescriptions. Patrick shall make every attempt to contact [William] concerning his health care needs to determine if his condition is something that can be treated by [William].

The above stated arrangement shall continue for any and all subsequent semesters that Patrick is a full-time student. However, should Patrick obtain less than a 2.0 (C) grade point average for the Fall 2004 semester or any subsequent semester, [William] shall no longer be required to pay the reasonable educational expenses or other related expenses of Patrick Harrison Moss, except medical expenses.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that [Susan's] motion is **GRANTED IN PART**. [William] shall pay the reasonable educational expenses of Patrick Harrison Moss as set forth hereinabove. The payment of these educational expenses is dependent upon Patrick Harrison Moss maintaining at least a 2.0 (C) grade point average.

IT IS FURTHER ORDERED AND ADJUDGED that [Susan's] motion for attorney fees is **DENIED**.

Each party filed a motion to alter, amend, or vacate the September 3, 2004, order for various reasons. The family court held a hearing on the motions on October 6, 2004, and then entered an order entitled "Order Regarding Various Motions" on October 20, 2004. Although the order is five pages long, we believe it is necessary to set forth the majority of the well-reasoned order entered by the family court. The order stated:

Petitioner moves the Court to alter, amend, or vacate the Court's Order of September 3, 2004, to provide for the Respondent to reimburse the parties' son, Patrick Moss, for educational expenses incurred by him and not previously paid by Respondent. The Court agrees with Petitioner's assertion. In the parties' Settlement Agreement entered September 11, 1992, Respondent agreed to pay for all the reasonable costs of a college education at the then prevailing tuition rate for Kentucky state colleges. At the previous hearing, Respondent stated his concern for Patrick's grades and how he did not believe Patrick should be rewarded for failing to perform well in school. While the Court agreed with a portion of Respondent's argument and set out certain guidelines for Patrick to comply with, the Court does not find that Patrick bears responsibility for payment of the semesters for which Respondent previously failed to pay prior to the Court's decision on the motion to enforce the Settlement Agreement. Although, Respondent had his reasons for declining to pay Patrick's school tuition and expenses, the fact remains that Respondent was and remains contractually obligated to pay for Patrick's tuition and reasonable school expenses. An agreement is an enforceable contract between parties, and it is not the place of the courts to disturb it absent some showing of fraud, undue influence, overreaching or manifest unfairness. See, Rupley v. Rupley, Ky. App., 776 S.W.2d 849 (1989); McGowan v. McGowan, Ky. App., 663 S.W.2d 219 (1983); Peterson v. Peterson, Ky. App., 583 S.W.2d 707 (1979). The parties entered into a Settlement Agreement in which Respondent agreed to provide more than was statutorily required of him when he agreed to pay for the college education of the parties' two (2) children. The Court reviewed the Settlement Agreement and found the agreement was entered into absent fraud, undue influence, overreaching or manifest

unfairness. Thus, the agreement is binding upon Petitioner and Respondent. The fact that the portion of the agreement relating to reasonable college expenses was subject to interpretation by the Court does not make the agreement invalid as it related to Patrick's previous college expenses. Petitioner filed a motion for Respondent to pay according to the Settlement Agreement and Patrick's tuition had to be paid before a hearing on the matter. Thus, the Court finds that Respondent shall be responsible for payment of the previous college tuition and expenses of Patrick. Patrick shall provide receipts to Respondent for the amounts he previously paid.

The second issue addressed by Petitioner in her motion was payments made directly from Respondent to Patrick. Petitioner contends the payments should be made to her or another party rather than directly to Patrick. The Court does not agree with Petitioner's contention, Respondent shall continue to pay for Patrick's tuition and reasonable college expenses as previously ordered by the Court.

Respondent also filed a motion to alter, amend, or vacate the Court's Order of September 3, 2004. Respondent contends he should be limited to paying only six (6) additional semesters of Patrick's education. The Court disagrees with Respondent's contention. As stated hereinabove, Respondent is contractually obligated to pay for the reasonable costs of Patrick's education. In its order of September 3, 2004, the Court set forth certain guidelines for Patrick to follow in order to receive the financial support of Respondent. Should Patrick comply with these guidelines, then Respondent will not be required to pay more than he bargained for in the parties' Settlement Agreement. Should Patrick fail to follow the guidelines set forth in the Court's September 3, 2004 Order, Respondent

will no longer be required to pay the reasonable costs of Patrick's college education. Thus, limiting Respondent's payments to six (6) semesters is unnecessary.

Respondent next contends that he should be given the PIN and password necessary to access Patrick's grades. Respondent asserts that if he had access to Patrick's grades, he would be able to help him should he see that Patrick's grades are not what they need to be. The Court agrees with Respondent's contention. Due to Patrick's dishonesty in the past concerning his grades and the failure of the parties and Patrick to effectively communicate concerning this area, the Court finds that Patrick shall provide his PIN and password to Respondent. Respondent shall only have access to Patrick's grades but shall not be privy to any other information concerning Patrick at the University of Louisville.

Respondent further contends Patrick should provide receipts to him for the one thousand five hundred dollars (\$1,500.00) the Court previously ordered him to pay each semester. The Court disagrees with Respondent's contention. To require Patrick to account for every dollar spent would be an unnecessary burden to him. The responsibility to ensure the money is spent appropriately is on Patrick. Should Patrick spend the money unwisely, it is Patrick who will suffer the consequences when he fails to have money to meet his needs.

The next issue Respondent contends should be altered or amended is the insurance coverage for Patrick. Respondent contends KRS §403.211(7)(a) and (c)(2) require Petitioner also be responsible for a portion of the insurance costs. In its order of September 3, 2004, the Court ordered that Respondent continue to cover Patrick on his medical insurance. In his

affidavit of July 19, 2004, Respondent stated:

I have provided Patrick's health insurance coverage since he was born and continue to do so to this day even though not mandated by the courts to do so after the age of 17. Due to his condition of cystic fibrosis, his premium cost is approximately \$500 (five hundred dollars) extra per month. Since Patrick entered college, I have paid approximately \$6,000.00 (six thousand dollars) in insurance premiums for Patrick.

Respondent's affidavit was filed along with his Response and Objection to Petitioner's Motion for Court to Enforce Previous Orders for Payment of Attorney Fees. In his response, Respondent did not object to paying Patrick's insurance, nor did he move the Court to require Petitioner to pay a portion of the insurance costs. Respondent stated that he was the party who had always paid for Patrick's health insurance. The Court is not requiring Respondent to pay for more insurance coverage than he previously paid, the Court simply ordered Respondent to continue providing health insurance coverage for Patrick in the same manner as he has always done. Patrick is a college student without access to better or equal health insurance that is supplied by Respondent. Thus, the Court finds Respondent shall continue to provide health insurance coverage for Patrick in the same manner as he previously provided health insurance coverage until Patrick completes his college education.

Respondent's final contention was that the September 3, 2004 Order should be vacated as to the portion requiring Respondent to pay for Patrick's doctor visits and prescriptions. The Court again

disagrees with Respondent's contention. Due to Patrick's health condition he has reasonable and necessary expenses associated with his well being that other college students may not have. Thus, the Court finds doctor visits and prescriptions to be a part of the reasonable expenses associated with Patrick attending college. Respondent contends the case of Young v. Young, Ky., 413 S.W.2d 887 (1967), prevents the court from having authority to impose a duty of support upon a parent after a child has reached their eighteenth birthday. However, the court in Young also stated, "[I]n the absence of a contract the legal obligation of a father to support his children terminates upon their reaching their eighteenth birthday." Id. at 888. Here the parties contracted that Respondent would provide for the reasonable costs of a college education. The Court finds doctor visits and prescriptions are part of the reasonable costs associated with Patrick's college education. Thus, Respondent is legally responsible for providing these services to Patrick. The Court has not placed an undue burden on Respondent as Patrick was ordered to make every attempt to contact Respondent concerning his health care needs to determine if his condition is something that can be treated by Respondent. Thus, Respondent shall be responsible for payment of Patrick's doctor visits and prescription costs.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Petitioner's motion to alter, amend, or vacate is **GRANTED IN PART**. Respondent shall be required to reimburse Patrick for payment of the previous college tuition and expenses paid by Patrick. Patrick shall provide receipts to Respondent for the amounts he previously paid.

IT IS FURTHER ORDERED AND ADJUDGED that Respondent's motion to alter, amend, or vacate is **GRANTED IN PART**. Patrick shall

provide Respondent his PIN number and password so Respondent will have access to Patrick's grades. Respondent shall not be entitled to access any other information pertaining to Patrick at the University of Louisville.

This appeal followed.

On appeal, Williams sets forth three claims of error. He contends the family court erred: 1) by ordering him to pay for Patrick's health insurance, doctor visits and prescription costs while he remains in college and by ruling that these health care costs are reasonable costs associated with Patrick's college education; 2) by not limiting the number of college semesters he must pay; and 3) by depriving him of parental control over his son. We believe KRS 403.211(7)(c) is applicable to the first issue raised by William. It states:

(c) The court shall order the cost of health care of the child to be paid by either or both parents of the child regardless of who has physical custody. The court order shall include:

1. A judicial directive designating which parent shall have financial responsibility for providing health care for the dependent child, which shall include, but not be limited to, insurance coverage, payments of necessary health care deductibles or copayments; and
2. A statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried

children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.

A review of the record clearly shows that William has never seriously contested his duty to provide health insurance or cover necessary and reasonable medical expenses incurred by Patrick. In fact, the record indicates that William, a physician who specializes in emergency and internal medicine, not only regularly covered these medical costs but encouraged Patrick to see him for treatment. This was in line with William's desire to develop a better father-son relationship with Patrick which is apparent throughout the record. Despite William's argument to the contrary, the family court did not err in ordering him to pay these medical expenses nor in finding that they were "reasonable costs associated with Patrick's college education" because Patrick suffers from cystic fibrosis which has to be regularly treated to ensure Patrick can attend classes and keep up with all necessary school work. William sought assurances that Patrick would be successful in college and this was a reasonable order to assist in achieving this goal.

William next contends that the family court erred by not restricting his obligation to pay for only eight semesters

of college. However, this argument is again in contrast to his stated desire to see Patrick succeed in college and be successful in general. The settlement agreement placed no limitations on the number of semesters but the court order that Patrick be a full-time student and maintain a 2.0 grade point average will ensure that Patrick improve his academic standing and finish college within a reasonable time frame.³ We believe the family court's order on this issue was reasonable and in line with the agreement and intent of the parties.

The crux of the appeal appears to be the final issue raised by William. William contends that the order denies him "the effective ability to parent, discipline, supervise, and oversee his son's progress in college, and implement measures which [he], as a father, believes will serve his son's best interests." William argues that the Court's orders undermine his "ability to teach Patrick accountability and responsibility for his actions, including poor choices he has previously made." William contends the family court abused its discretion because he has lost the ability to impose reasonable limitations on Patrick and to make Patrick accountable for his own behavior. Susan, on the other hand, points out various actions taken by William she believes has caused the father-son relationship to deteriorate and why court intervention was necessary to ensure

³ This Court notes that today many college students do not achieve a college degree in only four years as was the norm in previous years.

William would comply with his legal obligations as set forth in the settlement agreement entered years previously. While we applaud William's concern and commitment toward his son's success, we believe the family court order more than adequately addressed his concerns while enforcing the terms of the settlement agreement. Patrick is required to maintain a full-time student status and at least a 2.0 G.P.A. per semester. William is to pay necessary and reasonable expenses and to have direct contact with Patrick without having to go through Susan. We believe the family court's order was drafted with considerable thought and insight and was not an abuse of discretion.

For the foregoing reasons we affirm the orders of the Warren Family Court.

DYCHE, JUDGE, CONCURS.

BUCKINGHAM, SENIOR JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

David A. Lanphear
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

David F. Broderick
Bowling Green, Kentucky