

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0880

JAYNE HEADRICK

VERSUS

JAMES HEADRICK

Judgment Rendered: March 28, 2007

On Appeal from the 22nd Judicial District Court
In and For the Parish of St. Tammany, State of Louisiana
Trial Court No. 93-12939, Section "F"

Honorable Martin E. Coady, Judge Presiding

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BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

Handwritten initials 'TAP' and 'JHP' with a circled symbol above them.

HUGHES, J.

This is an appeal from a judgment denying a reduction in child support payable under a consent judgment for a child above the age of majority while a full-time college student. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Jayne and James Headrick were married in 1980. Three children were born of the marriage: Joshua, on September 8, 1984; Jill, on February 11, 1988; and Jacob, on July 5, 1990. Jayne Headrick (now Jayne Powers)¹ filed a petition to divorce James Headrick in 1993, and was named the domiciliary parent of the children.

In December of 1996, the parties entered into a consent judgment, in which James Headrick agreed to pay child support to Ms. Powers in the amount of \$1,500.00 per month “until the children graduate from college.” Mr. Headrick further agreed in the consent judgment to “contribute proportionately to the children’s educational needs.”

Thereafter, on January 7, 2004, Mr. Headrick filed a rule for the reduction of his child support obligation, asserting: a change in circumstances in the parties’ earnings, that one child had attained the age of 18, and that the provision in the consent judgment requiring his payment of child support “until the children graduate from college” was vague and ambiguous and should be deleted.

After a hearing on the matter and considering the stipulations of the parties, the trial court rendered judgment on July 26, 2004, ordering Mr. Headrick to pay monthly child support, for each child individually, as

¹ At some point following the parties’ divorce, Jayne Headrick remarried and moved with the children to Illinois; she now uses the name Jayne Powers.

follows: Jacob, \$935.00; Jill, \$415.00; and Joshua, \$325.00 (for a monthly total of \$1,675.00). It was further ordered that the monthly child support payments for Joshua were “abated” for the months of January through and including August of 2004, but were to recommence on September 1, 2004 “and continue thereafter month to month for so long as he remains enrolled as a full time student in an undergraduate college program even though he has reached the age of majority.” Mr. Headrick was also ordered to pay 70% of the children’s uninsured medical and dental expenses and 70% of the children’s undergraduate college costs (the obligation to pay these expenses was limited in duration, not to extend past June of 2010 for Joshua, and not to extend past five years commencing September 1st of the year Jill and/or Jacob graduate from high school, or whenever the children obtain their respective undergraduate degrees, whichever occurred first).

Another rule to reduce child support was filed by Mr. Headrick in February of 2005, asserting that Joshua Headrick was not a “full-time student” for some part of 2004, and that thereafter, he moved from his mother’s home, where he had previously resided while attending a local community college, to attend an out-of-town university, where he lived in a dormitory. Mr. Headrick contended that these circumstances warranted a reduction in his child support obligation for Joshua.

Following a hearing on June 22, 2005, the trial court ruled that Mr. Headrick was entitled to a credit in the amount of \$1,137.50, to be applied against future child support obligations, for child support he paid for the benefit of the major child Joshua, when Joshua was not a full-time student as required by the applicable consent judgment. The trial court denied Mr. Headrick’s request to reduce child support payable under the consent judgment for Joshua on account of Joshua’s subsequent full-time enrollment

in an out-of-town university and attendant campus residence during the school term.

Mr. Hedrick has appealed this judgment and asserts that the trial court erred in denying his request “to reduce or terminate child support while his major son, Joshua Headrick, is not living and residing with the respondent, Jayne Powers.”

LAW AND ANALYSIS

An award for support shall not be reduced or increased unless the party seeking the reduction or increase shows a *material* change in circumstances of one of the parties between the time of the previous award and the time of the motion for modification of the award. LSA-R.S. 9:311(A). A *material* change in circumstances is defined as a change in circumstances having real importance or great consequences for the needs of the child or the ability to pay of either party. LSA-R.S. 9:311, Comment (a).

It is well established that a child support amount stipulated in a consent judgment is a judicial admission that the recipient is entitled to that amount. A party seeking modification of a consent judgment bears the burden of proving that a modification is in order. **Stogner v. Stogner**, 98-3044, p. 2 n.2 (La. 7/7/99), 739 So.2d 762, 764 n.2.

The standard of review in a child support case is manifest error. Generally, an appellate court will not disturb a child support order unless there is an abuse of discretion or manifest error. **State, Department of Social Services ex rel. D.F. v. L.T.**, 2005-1965, p. 6 (La. 7/6/06), 934 So.2d 687, 690. See also **Romanowski v. Romanowski**, 2003-0124, p. 8 (La. App. 1 Cir. 2/23/04), 873 So.2d 656, 662.

In the instant case, the trial court set forth its reasons for judgment as follows:

James Headrick has requested a credit on his child support obligation for the months of September through December 2004, alleging Joshua Headrick was not a full time student during those months. In support of this position, he introduced as evidence Headrick 1, a grade report which reflected Joshua earned ten hours of credit and that a four hour history course was withdrawn; Headrick 2, a Registration/Change of Schedule Form reflecting that Joshua dropped a four hour history course on September 14, 2004; and Headrick 3, page 54 of the Richland Community College catalog which shows an academic load of 12 to 17 hours is considered normal for a full-time student and that part-time students are those enrolled in less than the normal full load.

The Court has examined the evidence and testimony presented on this issue and finds that Joshua Headrick was a part-time student at Richland Community College from September 14, 2004 through December 2004. Therefore, based on the language in the consent judgment of July 26, 2004, James Headrick is entitled to a credit for child support from September 14, 2004 [through] December 2004 which amount of credit totals \$1,137.50.

James Headrick also seeks in his Rule for Reduction a reduction in child support from January 2005 since Joshua lived in a dormitory and not at home. Again, a strict reading of the consent judgment shows that James Headrick voluntarily agreed to pay child support of \$325.00 per month as long as Joshua remains a full time student. *There are no restrictions in this agreement that Joshua must be living at home for the obligation to be enforceable. The parties reached this agreement voluntarily.* Therefore, the Court finds based on the language of the July 26, 2004 consent judgment, the circumstances presented do not warrant a reduction in child support.

As to the request for a credit to James Headrick for a refund received by Joshua of \$222.00; a credit for scholarship funds received by Joshua; and whether a computer is a college expense, the “Rule for Reduction” does not raise these issues. Jayne Headrick Powers has objected to expanding the pleadings to address these issues, so the Court will not rule on these issues at this time. [Emphasis added.]

A consent judgment is a bilateral contract that is voluntarily signed by the parties and accepted by the court. It has binding force from the voluntary acquiescence of the parties, not from the court’s adjudication. **Gray v. Gray**, 37,884, p. 3 (La. App. 2 Cir. 12/12/03), 862 So.2d 1097, 1099. In the **Gray** case, a former spouse agreed in a consent judgment to “provide monies necessary for the college education of the minor children of

the marriage, same to be an enforceable obligation contractually even though the children have reached the age of majority prior to the completion of their educational endeavors.” **Gray v. Gray**, 37,884 at pp. 1-2, 862 So.2d at 1098. In **Gray**, the appellate court concluded that a former spouse should not be relieved of an obligation that he freely and voluntarily entered into absent evidence of a vice of consent, and absent such showing, the spouse was found to be bound by his agreement to fund the college educations of his children even after they reached the age of majority. **Gray v. Gray**, 37,884 at p. 4, 862 So.2d at 1099.

In the instant case, the consent judgment at issue reads as follows:

Upon consideration of the law and the stipulation of the parties, which the Court adopts as its judgment, accordingly:

1. IT IS ORDERED, ADJUDGED AND DECREED that the child support payable by James Headrick per month to Jayne Powers shall be as follows, effective January 7, 2004:

a.	Jacob	\$935.00
b.	Jill	\$415.00
c.	Joshua	<u>\$325.00</u>
		\$1,675.00

2. IT [IS] FURTHER ORDERED, ADJUDGED AND DECREED that the payment of the above for Joshua shall be abated for the months of January through and including August 2004, the payment by James Headrick to Jayne Powers for the benefit of Joshua shall commence on September 1, 2004 and continue thereafter month to month for so long as he remains enrolled as a full time student in an undergraduate college program even though he has reached the age of majority;

3. IT [IS] FURTHER ORDERED, ADJUDGED AND DECREED that James Headrick shall pay to Jayne Powers 70% of all medical and dental expenses uncovered by medical and dental insurance related to the receipt of medical and dental care or services by the parties’ children even though they will have reached the age of majority;

4. IT [IS] FURTHER ORDERED, ADJUDGED AND DECREED that James Headrick shall pay 70% of the costs for the undergraduate college costs for the parties’ children even though they will have reached the age of majority, Jayne powers will be responsible for the remaining 30%;

5. IT [IS] FURTHER ORDERED, ADJUDGED AND DECREED that the obligation of James Headrick to pay child support, medical and dental expenses, and undergraduate college costs pursuant to the foregoing paragraphs shall remain in full force and effect as follows:

a. Joshua for a period of approximately six years from September 2004 through and including June 2010 or his obtaining an undergraduate degree, whichever occurs first.

b. Jill and Jacob for a period of five years commencing on September 1st of the year each of them graduat[es] from high school or their respective obtaining of an undergraduate degree, whichever occurs first.

6. IT [IS] FURTHER ORDERED, ADJUDGED AND DECREED that the abatement provided for in paragraph 2 above has resulted in a credit due James Headrick for child support payments made by him during the abatement period. In order to satisfy that credit, James Headrick shall pay Jayne Powers the following amounts set forth below:

a.	July 2004	\$1,675.00
b.	August 2004	\$1,375.00
c.	September 2004	\$1,050.00
d.	October 2004	\$1,050.00
e.	November 2004 and thereafter	\$1,675.00

7. IT [IS] FURTHER ORDERED, ADJUDGED AND DECREED that should any of the parties' children withdraw [from] an undergraduate college program once enrolled or fail to enroll during the time period provided for in paragraph 5 above, the obligation of James Headrick to pay child support as provided for herein shall abate pursuant to [LSA-]R.S. 9:315.22 as amended or revised;

8. IT [IS] FURTHER ORDERED, ADJUDGED AND DECREED that the abatement provided for in the foregoing paragraph shall cease upon the child's enrollment or re-enrollment in an undergraduate program and thereafter be governed by the provisions of this judgment;

9. IT [IS] FURTHER ORDERED, ADJUDGED AND DECREED that James Headrick reserves the right to return to Court to challenge the reasonableness of the expenses for which he is 70% responsible as set forth in paragraphs 3 and 4 above;

10. IT [IS] FURTHER ORDERED, ADJUDGED AND DECREED that Jayne Powers shall maintain medical insurance on the parties' children through her place of employment;

11. IT [IS] FURTHER ORDERED, ADJUDGED AND DECREED that this Court's Judgment of December 17, 1996 shall otherwise remain in full force and effect except as specifically modified, revised or amended herein.

Clearly under the terms of this consent judgment, the obligation of Mr. Headrick to pay Ms. Powers \$325.00 per month in child support for Joshua (set out in paragraph 1) is a separate obligation from his agreement to pay 70% of Joshua's undergraduate college expenses (set out in paragraph 4).²

Jayne Powers testified at the trial of this matter that she maintains Joshua's room at her home, where he returns for weekend visits, birthdays, holidays, and school breaks. Thus, Joshua continues to reside with Ms. Powers although he may also reside in his college dormitory while in school. Ms. Powers also testified that she pays for Joshua's automobile insurance, clothing, and other personal expenses. Therefore, the separate payment of support, which assists Ms. Powers in the maintenance of a home for Joshua when he is not in school and in meeting his personal needs, is justifiable in addition to the payment of a percentage of Joshua's college expenses, even though a dormitory is encompassed in those expenses. Mr. Headrick has not alleged an inability to financially meet these obligations. Further, challenging the reasonableness of the college expenses is an option that has been reserved to Mr. Headrick.

Therefore, after a thorough review of this case, we can find no abuse of discretion or other error in the judgment of the trial court denying Mr. Headrick's request to reduce or terminate child support on account of Joshua Headrick's residence in a college dormitory while school is in session.

² Similarly, the original 1996 consent judgment, stipulated to by Mr. Headrick, included separate obligations to pay child support until the children graduate from college *and also* to contribute proportionally to the children's educational expenses.

CONCLUSION

For the reasons assigned herein, the judgment of the trial court is affirmed. All costs of this proceeding are to be borne by James Headrick.

AFFIRMED.