

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[John Narron](#) is a Board Certified Family Law Specialist and has been practicing law in North Carolina since 1977, with a practice concentration in all manner of civil disputes that frequently involve complex equitable distribution proceedings, alimony trials, will caveats, employment disputes, personal injury trials and negotiations, and a wide variety of commercial business disputes. John has served as a mediator in more than 200 family law disputes in Wake County, Franklin County, Johnston County, Wayne County, Guilford County, Forsyth County, and Pender County.

College Expenses – In The News Again

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In a previous post, I noted that the legal obligation to support a child in North Carolina generally ends when either the child obtains the age of eighteen or graduates from high school, whichever last occurs. When parents separate, in many cases they nevertheless expect each other to contribute to the college education of the children. When separating parents agree to such an obligation and put the terms of the obligation in either a Separation Agreement or Consent Order, they have created a legal obligation for themselves that did not otherwise exist.

I also noted the issues that can arise from such obligations and the care necessary when drafting such agreements. The North Carolina Court of Appeals was recently called upon to again address just such an issue. In this case, the parties had entered into a Consent Order that provided the father would pay 90% and the mother would pay 10% of the “Tuition, room and board costs (college expenses)” for the children’s college education, as long as the children “diligently apply” themselves to the pursuit of education. Perhaps you can already detect the problems with this agreement – follow along, below, to see how this particular case unfolded.

When their child enrolled in a private college in the fall of 2010, the father paid 90% of the tuition and room and board for the first year. During the first year, the child maintained a 1.908 GPA. She returned to school in the fall of 2011, enrolled in 16.5 hours but only finished 7.5 hours of credit and her GPA dropped to 1.658. In the spring semester for the 2011-2012 school year, the student did much better in that she completed all of the hours she attempted and raised her GPA to 2.0. However, the father did not believe she was diligently applying herself to her schoolwork and refused to pay his 90% of the 2011-2012 tuition, room and board until he saw a transcript of her grades.

The mother filed a motion asking the Court to require the father to pay. At hearing, the Court found that the father had the ability to pay the 90% of tuition and room and board but had refused to do so. The Court also interpreted the student’s performance support that she **had** “diligently applied herself in the pursuit of her education,” and therefore the father was obligated to pay under the agreement. He was ordered to pay \$15,150 immediately, or be jailed for contempt.

The issue in this case was clearly one of interpreting the term “diligently applied.” The father, perhaps somewhat reasonably, felt that the daughter had not done so based on her grades in the first year. The Court, however, noting the improvement in her grades by the end of the second year, determined this satisfied the subjective standard of “diligently applying” herself. On review, The North Carolina Court of Appeals agreed that the evidence indicated the student was diligently applying herself, and affirmed the original ruling.

The lesson for parents contemplating a college expense component in a divorce or separation agreement is this – be sure the language dealing with the payment of tuition is clear and objective. Alternatively, it may be best in some cases to leave such a requirement completely out of an agreement and trust the good judgment of both parents to do the right thing for their college bound children. As always, consulting with an experienced attorney on matters such as these may likely avoid headaches down the road.

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