College Costs After Divorce: Agreement for Child to Take Out Loans Rendered Unenforceable

Once again, New Jersey provides a conflicting remedy for a child of divorce attending college compared to a child in an intact family. In an unpublished (non-precedential) decision, the Appellate Court affirmed a trial court order finding that a child was not bound by a property settlement agreement requiring her to apply for college loans. Carl J. Soranno, Esq. of the Family Law Department previously wrote on this issue for the New Jersey Law Journal in January of 2015. Unfortunately, it appears that the situation for divorced parents has only gotten worse.

The parents in M.F.W. v. G.O. were divorced in 2003. At the time their daughter was five years old. The parties entered into a property settlement agreement which required both parents to contribute toward college expenses. The Agreement also required their daughter to apply for all "loans, grants, aid, and scholarships available to her, the proceeds of which shall be first applied to college costs." In 2016, the daughter was accepted at Georgetown University – a school with a first semester tuition of over $30,000. The parties then filed motions over the payment of the daughter's education costs and child support (among other issues not addressed in this post).

On the issue of college costs, the trial court ruled that it was "unfair and unjust" to require the child to apply for and utilize "loans, grants, aid, and scholarships" before the parents would be required to contribute. The court also found a change in circumstances warranting a modification of the Agreement; i.e., both parents' incomes and assets had increased since the divorce. Consequently, the court determined that the parties could afford to send their daughter to Georgetown University without requiring their daughter to apply for loans first. The Appellate Division affirmed the trial court's decision, which was reached without a plenary hearing. The Court wrote that "because it was the parents' obligation to pay for college and they had the ability to do so" it was unfair for the daughter to obtain loans.

The M.F.W. v. G.O. decision is another blow to divorced parents. While intact families can make the decision about whether and how they want to contribute to their child's college education, divorced parents are forced to abide by a judge's determination on how to finance college. The parents in M.F.W. v. G.O. tried to make their own decision in their settlement agreement on how to pay for college, only to have the court reject their agreement in favor of the child. The provision included in the parties' settlement agreement was standard and is included in many settlements. Although the parents' income had increased (from approximately $130,000 per year combined to $300,000 per year combined), it will still be difficult to pay tuition of over $30,000 per semester with no financial contribution from the daughter. It is discouraging that parties could enter into these terms only to find out years later that they are unenforceable. In sum, divorced parents who litigate over college costs have little to no control over the outcome.

Although the bulk of the M.F.W. v. G.O. decision creates a legal headache for divorced parents and family law practitioners, the opinion did affirm the trial court's decision not to hold a plenary hearing on the issue of college costs and child support. Most prior decisions on similar issues confirmed the need for a plenary hearing – and thus created a significant cost to any litigant seeking the relief. Nevertheless, the M.F.W. v. G.O. decision confirms the risk for parents litigating college costs. Although avoiding a plenary hearing can save money for a client, the risk over what the judge will order regarding college costs outweighs any benefit.