I Hate You, Dad! Now, Where's My Tuition Check?

by Allison C. Williams

New Jersey is one of the few states in the country to allow courts to impose an obligation upon divorced parents to contribute toward their children's college expenses. This minority view is often attributed to the seminal case of *Newburgh v. Arrigo*[1]; however, long before *Newburgh*, our courts had adopted the view that parents may be required to contribute financially to the cost of a college education for a child who had reached majority.[2] Pre-*Newburgh*, trial courts had even expanded the duty to contribute toward post-majority education to include a duty, in certain circumstances, to contribute toward graduate school expenses.[3]

Ross established a threshold inquiry for trial courts to consider before imposition of an obligation: Had there not been a divorce, would the parties, while living together, have contributed to the education expense?[4] However, this inquiry is no longer a 'threshold,' but rather is one of many factors to be considered by the trial court.[5]

Beyond the basic knowledge that trial courts had the authority to order a party to contribute to the cost of college, little guidance existed in case law regarding when, and under what circumstances, trial courts could make such an order. *Newburgh* provided this guidance, establishing the numerous factors the court *must* consider when establishing parents' obligations to contribute toward the cost of their children's college education. Those factors include:

1. whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education;
2. the effect of the background, values and goals of the parent on the reasonableness of the expectation of the child for higher education;
3. the amount of the contribution sought by the child for the cost of higher education;
4. the ability of the parent to pay that cost;
5. the relationship of the requested contribution to the kind of school or course of study sought by the child;
6. the financial resources of both parents;
7. the commitment to and aptitude of the child for the requested education;
8. the financial resources of the child, including assets owned individually or held in custodianship or trust;
9. the ability of the child to earn income during the school year or on vacation;
10. the availability of financial aid in the form of college grants and loans;
11. the child's relationship to the paying parent, including mutual affection and shared goals, as well as responsiveness to parental advice and guidance; and
12. the relationship of the education requested to any prior training and to the overall long-range goals of the child.

Not having a relationship with the child seeking contribution may have little success of defeating the request for college contribution; however, when coupled with the child's or custodial parent's failure to communicate with the estranged parent, trial courts have relieved noncustodial parents of the duty to contribute.

The trend in requiring noncustodial parents to contribute to the college education of their children has been judicially recognized.[6] *Newburgh* factors four and six (*i.e.*, the ability of the parent to pay and the financial resources of both parents) tend to inundate the analysis employed by many courts, in large part because many parents have already agreed in their matrimonial settlement agreements to provide a college education for their children, leaving only the question of how the expenses should be allocated between them. Even where an agreement has been made to contribute, however, the trial court is not bound to enforce the agreement if "circumstances have changed in

such a way that requiring [a parent] to pay for college would no longer be equitable and fair."[7]

Thus, the court's duty to perform a full *Newburgh* analysis is not obviated by the existence of a matrimonial settlement agreement. Further, in performing the *Newburgh* analysis, consideration of certain factors to the exclusion of others is impermissible under our case law.[8]

One factor that has had little success in defeating an application for college contribution has been the absence of relationship between the noncustodial parent and the child. Not having a relationship with the child seeking contribution may have little success of defeating the request for college contribution; however, when coupled with the child's or custodial parent's failure to communicate with the estranged parent, trial courts have relieved noncustodial parents of the duty to contribute.

The first significant published decision to address this *Newburgh* factor was *Moss v. Nedas, supra*.[9] In *Moss*, the trial court conducted a plenary hearing and ordered the noncustodial father to contribute toward his daughter Leigh's college expenses.[10] The father never objected to paying his fair share of the college expenses, but opposed contributing to the cost of Sara Lawrence College, which he had advised his daughter was too expensive.[11] At the time of the plenary hearing, the trial court noted that: "Leigh's relationship to her father [appeared to be] one of affection, care, shared goals as to her education, although it is not a close and intense relationship."[12]

After the plenary hearing, Leigh and her mother made numerous decisions about her education, including Leigh's transfer to a different college, without consulting or involving the father.[13] This ultimately resulted in additional litigation, leading the trial court to enter a very specific order compelling communication between the mother or child and the father regarding college issues.[14] Given the first failure to communicate, the trial court reduced the father's obligation.[15] The practice of not involving the father continued, causing further litigation and eventually leading the trial court to terminate the father's obligation to contribute.[16]

In upholding the trial court's ruling, the Appellate Division noted the trial court's finding that the noncustodial father was "viewed solely as a 'wallet' in regard to his obligation for college contribution."[17] It was not only the absence of relationship between Leigh and her father, but her refusal to communicate with him and involve him in the process that ultimately led the trial court to eliminate the obligation. The interplay between the absence of relationship between the noncustodial parent and child and the lack of communication are routinely addressed in tandem, with the former often causing the latter. This interplay was addressed by the New Jersey Supreme Court in *Gac, supra*.[18]

Unlike the noncustodial father in *Moss*, the noncustodial father in *Gac* had absolutely no relationship and no parenting time with his daughter, Alyssa, from the time he and Alyssa's mother divorced. Alyssa remained angry with her father following the divorce due to his acts of domestic violence during the marriage, and she rebuffed all efforts he made to remediate the relationship.[19] The father was never consulted regarding Alyssa's choice of college, and only inadvertently learned that she was even attending college.[20] Upon Alyssa's graduation, the father filed a motion to emancipate her, which prompted Alyssa's mother for the first time to seek retroactive college contribution.[21] The trial court ordered the father to contribute, and the Appellate Division affirmed.

The Supreme Court reversed the Appellate Division and vacated the father's duty to contribute. In so doing, the Court reiterated the Appellate Division's interpretation of the *Moss* decision:

> We do not read *Moss* as holding that a child's rejection of a parent's attempt to establish a mutually affectionate relationship invariably eradicates the parent's obligation to contribute to the child's college education. In this case, for example, a judge could reasonably find from the evidence that defendant's abusive conduct during the marriage so traumatized the children as to render nugatory any real possibility of a rapprochement. In that event, it would not be reasonable to penalize Alyssa for the defendant's misconduct. Nor would it be reasonable to reward defendant by removing his financial obligation to contribute to his daughter's college costs.[22]

The *Gac* Court was principally concerned that the father was not contacted for contribution until after the college expenses had been incurred, thereby depriving him of any possibility to plan his finances. While acknowledging that "[t]here are indeed circumstances where a child's conduct may make the enforcement of the right to contribution inequitable," this was not the basis for alleviating *this father's* obligation since it was "claimed that it was [the father] himself who was the architect of his own misfortune." The absence of communication, rather than the estranged relationship, ultimately led the Court to extinguish the obligation:

> As soon as practical, the parent or child should communicate with the other parent concerning the many issues inherent in selecting a college. At a minimum, a parent or child seeking contribution should initiate the application to the court before the expenses are incurred. The failure to do so will weigh heavily against the grant of a future application.[23]

A series of unreported decisions have addressed the extent to which an estranged relationship bears upon the duty to contribute toward college expenses, following the principles delineated in *Gac*. In

Bullwinkel v. Bullwinkel,[24] a noncustodial father, following a series of unsuccessful supervised visits with his son, terminated his efforts to exercise parenting time. In opposing the custodial mother's eventual request for college contribution, the father cited *Moss* and *Gac* for the proposition that his non-existent relationship with his son obviated his duty to contribute toward his college expenses.

The Appellate Division disagreed, citing *Gac* for the opposite view:

> [c]ontrary to [the father's] position, a relationship between a non-custodial parent and his child is not a prerequisite for the custodial parent to see the non-custodial parent's financial assistance to defray college expenses.[25]

In *Winans v. Winans*,[26] the noncustodial father's relationship with his son became strained once the father remarried. By the time college contribution was sought, the relationship was hostile and acrimonious. In affirming the trial court's imposition of an obligation upon the father, the Appellate Division noted that the *Gac* decision was not based *solely* upon the relationship between parent and child, but upon the specific actions of the child and the custodial parent in ignoring the father in the choice and cost of college and attempting to simply bill him after the fact. The appellate panel further explained that the outcome reached in *Moss* relied heavily upon the child and the custodial parent's repeated violations of court orders explicitly requiring communication with the noncustodial parent. Again, the duty to communicate with the noncustodial parent regarding college carried more significance than the status of the parent-child relationship.

In *Anderson v. Anderson*,[27] although the trial court strongly criticized the noncustodial father for "aggressive litigation," which it found to have caused the rift between father and daughter, the Appellate Division reversed and remanded where the record below was inadequate for the trial court to make the findings it made regarding the noncustodial father's relationship with his daughter. Without a plenary hearing, the trial court found that "any existing strain on the relationship between [father] and [daughter] resulted from the [father's] engagement in aggressive litigation and resistance in supporting [his daughter's] education."[28]

Seeming somewhat impervious to the policy considerations implicated by the trial court's apparent punishment of a litigant for pursuing arguments allowed by existing case law (namely, the estranged relationship), the Appellate Division required that a plenary hearing be conducted to address the scope and cause of the estrangement and its impact upon any obligation of the father to contribute.[29]

This decision is harmonious with the recurring theme throughout cases addressing the impact of alienated relationships upon the parent's duty to contribute. Plainly stated, a parent found to have caused the rift in the parent-child relationship, as in *Gac*, is not likely to prevail on an argument that the resulting estrangement nullifies the duty to contribute. The strong public policy of ensuring support for academically inclined children seeking higher education permeates our jurisprudence and is difficult to overcome. However, although an estranged parent-child relationship often results in the failure to communicate so fervently denounced by *Gac*, custodial parents and children seeking contributions to college costs must be mindful that the estranged relationship is not an excuse not to communicate with the other parent. Failure to do so can negatively impact the claim.

The family law practitioner should be mindful of these principles when presenting applications to the court seeking or opposing college contribution. ■

ENDNOTES

1. 88 N.J. 529, 443 A.2d 1031 (1982).
2. *See, Jonitz v. Jonitz*, 25 N.J. Super. 544, 96 A.2d 782 (App. Div. 1953).
3. *See, Ross v. Ross*, 167 N.J. Super. 441, 400 A.2d 1233 (Ch. Div. 1979).
4. *Id.* at 445.
5. *See, Gac. v. Gac*, 186 N.J. 535, 897 A.2d 1018 (2006).
6. *Sakovits v. Sakovits*, 178 N.J. Super. 623, 429 A.2d 1091 (Ch. Div. 1981); *Gac, supra*, 186 N.J. 535 (2006).
7. *Moss v. Nedas*, 289 N.J. Super. 352, 674 A.2d 174 (App. Div. 1996), *citing Lepis v. Lepis*, 83 N.J. 139, 161 (1980).
8. *See, Raynor v. Raynor*, 319 N.J. Super. 591, 726 A.2d 280 (1999); *Gac, supra*, at 545.
9. 289 N.J. Super. 352 (1996).
10. *Id.* at 354.
11. *Id.*
12. *Id.* at 355.
13. *Id.*
14. *Id.*
15. *Id.* at 356.
16. *Id.* at 358.
17. *Id.* at 356.
18. 186 N.J. 535 (2006).
19. *Id.* at 538.
20. *Id.* at 539.
21. *Id.*
22. *Id.* at 544.
23. *Id.* at 546-547.
24. 2006 WL 3511432 (App. Div.).
25. *Id.* at 2.
26. 2007 WL 4270351 (App. Div.).
27. 2008 WL 4703221 (App. Div.).
28. *Id.* at 2.
29. *Id.* at 5.

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