Cite as 2010 Ark. App. 55

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-650

	Opinion Delivered January 20, 2010
DAVID BARKER APPELLANT	APPEAL FROM THE CRAWFORD COUNTY CIRCUIT COURT [NO. E-1989-240]
V.	HONORABLE MICHAEL MEDLOCK, JUDGE
SHERRY BARKER AVERY APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

The parties were divorced in 1989 by an order that granted custody of their minor child to appellee and required appellant to pay child support. The child turned eighteen years of age in February 2007. Appellant ceased paying child support at the end of the school year in May 2007. Appellee filed a petition for contempt, asserting that appellant was required to pay child support until the child graduated from high school in May 2008. At trial, appellant argued that his child-support obligation terminated by operation of law in May 2007 because the child should have graduated from high school in that year. The trial court found that appellant's child-support obligation continued until the child's graduation in May 2008. We affirm.

Pursuant to the law in effect in May 2007,[1] in the absence of an order to the contrary, an obligor's duty to pay child support automatically terminated by operation of law when the child reached eighteen years of age or should have graduated from high school, whichever occurred later. Ark. Code Ann. § 9-14-237(a)(1)(A) (Supp. 2005). Here, the order requiring appellant to pay child support did not specify when the support obligation would terminate, and appellant argues that it terminated by operation of law in May 2007 because the child would have graduated in that year had she not been held back to repeat kindergarten because of early learning difficulties. The question on appeal, then, is when the child "should have graduated" as defined in the statute.

In a case involving this identical issue, we said that the trial court did not err in finding that a child's actual year-late graduation date was when she "should have graduated" because the child-support obligor in that case consented to holding that child back to repeat second grade. *Office of Child Support Enforcement v. Calbert*, 70 Ark. App. 520, 20 S.W.3d 450 (2000). In the present case, appellee's supplemental abstract shows that, when the trial judge questioned appellee about appellant's involvement in the decision to have the child repeat kindergarten, appellee answered that she discussed holding the child back with appellant and

[1] The statute was substantially changed by amendments contained in Act 337 of 2007. This Act contained no emergency clause and therefore did not become effective until July 31, 2007. *See* Arkansas Attorney General Opinion No. 2007-164.

that appellant consented to it. Under these circumstances, we cannot say that the trial judge clearly erred in finding that the child "should have graduated" at the time of her actual high school graduation in May 2008.

Affirmed.

VAUGHT, C.J., and ROBBINS, J., agree.