

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

546

CA 15-01332

PRESENT: WHALEN, P.J., SMITH, LINDLEY, NEMOYER, AND SCUDDER, JJ.

DORI R. (HOBICA) MARSHALL, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

GEOFFREY G. HOBICA, DEFENDANT-RESPONDENT.

FREID AND KRAWON, WILLIAMSVILLE (WAYNE I. FREID OF COUNSEL), FOR PLAINTIFF-APPELLANT.

CHARLES A. MESSINA, BLASDELL (JAMES P. RENDA OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (John F. O'Donnell, J.), entered December 11, 2014. The order determined that each party should contribute equally to the college expenses of their daughter.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In this post-divorce proceeding, plaintiff mother and defendant father each sought a determination of their respective obligations to contribute to the cost of their eldest daughter's college education. Pursuant to their "Child Support Agreement" (Agreement), the parties contemplated that their children would attend college, and they agreed that the costs would be divided "between the parties as they shall then agree or as shall then be determined by a Court of competent jurisdiction." The parties further agreed that, "[i]n the event a child shall attend Nichols [School], the respective contributions of the parties to the cost of said schooling shall be a factor in determining the contribution of each party to said child's college expenses."

The record belies the mother's contention that Supreme Court failed to consider the respective contributions of the parties to the cost of each child's attendance at Nichols School as a factor when it directed the parties to contribute equally to the eldest daughter's college expenses (see *Bennett v McGorry*, 34 AD3d 1290, 1291). Contrary to the mother's further contention, the court's statement in its decision concerning the mother's willingness to pay a greater share of the costs of the children's education at Nichols School is also supported by the record, including the terms of the Agreement. In addition, inasmuch as the parties' respective contributions to those costs was but one factor to consider in determining their

obligations to pay college expenses, the court also properly considered "the circumstances of the case, the circumstances of the respective parties, and the best interests of the child" (*Cimons v Cimons*, 53 AD3d 125, 131). Finally, we reject the mother's contention that the order is inconsistent with the court's prior order directing the father to pay 60% and the mother 40% of the eldest son's college expenses. The prior order was based upon different evidence, and it explicitly contemplated "a need for modifications of . . . the parties' obligation to contribute toward college as the younger children[, including the eldest daughter,] matriculate."

Entered: June 10, 2016

Frances E. Cafarell
Clerk of the Court