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### NON-CUSTODIAL PARENTS' RIGHTS TO THEIR CHILDREN'S COLLEGE RECORDS

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In the song “Gold Digger,” Kanye West laments, “18 years, 18 years [a]nd on her 18th birthday he found out it wasn't his.”<sup>1</sup> This represents the perception in American society that a parent’s legal obligation to support their child ends when the child reaches the age of majority. New Jersey has defined majority to be, “every person 18 or more years of age shall in all other matters and for all other purposes be deemed to be an adult...”<sup>2</sup> Pennsylvania defines majority as “either eighteen years of age or when the child graduates from high school, whichever comes later.”<sup>3</sup> Most other states, after the passage of the twenty-sixth amendment to the U.S. Constitution, lowered the age of majority from 21 to 18 as well.<sup>4</sup>

Since in most states the age of majority is 18, for parents who remain married throughout their children’s college years, for the most part, there is no legal requirement to contribute to the

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<sup>1</sup>KANYE WEST, *Gold Digger*, on LATE REGISTRATION (Roc-A-Fella, Def Jam 2005).

<sup>2</sup>See N.J. STAT. ANN. § 9:17B-3 (West).

<sup>3</sup>Style v. Shaub, 955 A.2d 403, 408 (Pa. Super. Ct. 2008) (citing Blue v. Blue, 616 A.2d 628 (1992)).

<sup>4</sup>See Marian F. Dobbs, *Determining Child & Spousal Support* § 4:84.

college expenses of their children.<sup>5</sup> However, people who divorce may end up having to pay a portion of their child's college expenses, even though college students are typically past the age of majority.<sup>6</sup> If a divorced parent is required to contribute to their child's college cost, should they be able to know what courses the student took and what grades they received? This is the question the court was faced with in *Van Brunt v. Van Brunt*.<sup>7</sup>

But first, as you are about to see Kanye West's lyric maybe should have been "22 years, 22 years and at her college graduation he found out it wasn't his."

**The responsibility of non-custodial parents to contribute to the costs of their children's college education.**

Family law differs state to state, so, a non-custodial parent's support obligation varies state to state. For example, in New Jersey a divorced parent is not always required to contribute to his or her child's education.<sup>8</sup> The New Jersey Supreme Court stated that the relevant factors to consider are:

(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.<sup>9</sup>

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<sup>5</sup>See, Jay M. Zitter, *Postsecondary education as within nondivorced parent's child-support obligation*, 42 A.L.R.4th 819 (1985)

<sup>6</sup>See *Responsibility of noncustodial divorced parent to pay for, or contribute to, costs of child's college education*, 99 A.L.R.3d 322 (1980).

<sup>7</sup>*Van Brunt v. Van Brunt*, 419 N.J. Super.327 (N.J. Super. Ct. Ch. Div. 2010).

<sup>8</sup>*Newburgh v. Arrigo*, 88 N.J. 529, 545 (1982).

<sup>9</sup>*Id.*

These factors, having been first set out in *Newburgh v. Arrigo*,<sup>10</sup> are referred to by courts as the *Newburgh* factors.

In *Kiken v. Kiken*, the Court referring to the *Newburgh* factors stated that “[s]ix years later, the Legislature essentially approved those criteria when amending the support statute.”<sup>11</sup> The support statute was amended to read, in pertinent part:

a. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, the court in those cases not governed by court rule shall consider, but not be limited to, the following factors: (1) Needs of the child; (2) Standard of living and economic circumstances of each parent; (3) All sources of income and assets of each parent; (4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment; (5) Need and capacity of the child for education, including higher education; (6) Age and health of the child and each parent; (7) Income, assets and earning ability of the child; (8) Responsibility of the parents for the court-ordered support of others; (9) Reasonable debts and liabilities of each child and parent; and (10) Any other factors the court may deem relevant.<sup>12</sup>

The *Kiken* Court further stated that:

The effect of the amendment is to provide an explicit statutory basis for a support order directing a parent to contribute to the education of a child. Thus, both this Court and the Legislature have confirmed a child's need for higher education as an appropriate consideration in determining the parental obligation of support.<sup>13</sup>

This indicates that, in New Jersey, a judge must balance the statutory factors with the factors set out by the New Jersey Supreme Court to determine whether a parent is obligated to support their child past the age of majority.

In *Gac v. Gac* the plaintiff mother, attempted to recoup the college expenses from the defendant father, after their daughter, Alyssa, had already completed college.<sup>14</sup> The court held that

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<sup>10</sup>*Id.*

<sup>11</sup>*Kiken v. Kiken*, 149 N.J. 441, 449 (1997) (citing N.J. STAT. ANN. §2A:34-23(a) (West)).

<sup>12</sup>N.J. STAT. ANN. §2A:34-23(a) (West).

<sup>13</sup>See *Kiken*, *supra* note 10, at 561.

<sup>14</sup>*Gac v. Gac*, 186 N.J. 535, 537 (2006).

the father did not have to contribute to Alyssa's college expenses.<sup>15</sup> The court applied the *Newburgh* factors<sup>16</sup> and determined that had the parties not divorced, the defendant probably would not have contributed to Alyssa's college expenses.<sup>17</sup> The court further reasoned that:

“[t]he failure of both plaintiff and Alyssa to request that defendant assist in paying Alyssa's educational expenses at a time that would have enabled defendant to participate in Alyssa's educational decision as well as to plan for his own financial future weighs heavily against ordering him to contribute to her educational expenses.”<sup>18</sup>

This case demonstrates that a non-custodial parent's obligation to contribute is not automatic; in order for a parent to be required to contribute to college expenses they must be involved in the planning and decision making process leading up to the student/child's enrollment in college.

In New York, the first case to address the issue of whether a non-custodial parent has a support obligation including college tuition was the 1950 case *Herbert v. Herbert*.<sup>19</sup> The court stated that, “[o]ne must consider the actual people involved: the elements that make up their rearing, their breeding, their personality, their aptitudes, their ambitions, their environment.”<sup>20</sup> The court further opined, “[c]hildren of broken homes are entitled, from their parents, to even greater consideration than children, fortunately, in happy homes.”<sup>21</sup> Ultimately the court held that under the exceptional circumstances of the case, both parties' were college educated and came from wealthy backgrounds, a college education was a necessity for the parties' children.<sup>22</sup>

Later in *Hoffman v. Hoffman*, the court summarized the progression of college support litigation up to that point in New York.<sup>23</sup> Citing *Connolly v. Connolly*, the court stated “[a]bsent a voluntary agreement to furnish such expenses, a petitioner requesting college expenses must prove

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<sup>15</sup>*Id.* at 547.

<sup>16</sup>*See Kiken, supra* note 10.

<sup>17</sup>*Gac*, 186 N.J. at 547.

<sup>18</sup>*Id.* at 546.

<sup>19</sup> *Herbert v. Herbert* 98 N.Y.S.2d 846 (1950).

<sup>20</sup>*Id.* at 517.

<sup>21</sup>*Id.*

<sup>22</sup>*Id.* at 517-18.

<sup>23</sup> *Hoffman v. Hoffman*, 497 N.Y.S.2d 259 (Sup. Ct. 1985).

the existence of special circumstances.”<sup>24</sup> The court went on to list situations that other courts had deemed special circumstances.<sup>25</sup> Such as, both of the students’ parents were college graduates, both parents could clearly afford to support the children through college, the two oldest children of the marriage attended college prior to the divorce, the student possessed sufficient academic ability, the student had attended a private college preparatory school, the student had been raised in the type of economic environment where their parents not paying for college would be unreasonable, the student had been raised around other children who will go to college and it would be strange for the student not to go to college, the children had been spoiled and never denied anything within their parent’s resources, and within the student’s cultural, social or economic environment a college degree would be a prerequisite for attaining suitable employment.<sup>26</sup>

In *McKay v. McKay*, an Indiana case, the court reasoned that,

Under Indiana law, there is no absolute legal duty on the part of parents to provide a college education for their children. However, the statutory authorization for the divorce court to order either or both parents to pay sums toward their child's college education constitutes a reasonable manner in which to enforce the expectation that most families would encourage their qualified children to pursue a college education consistent with individual family values. In determining whether to order either or both parents to pay sums toward their child's college education, the court must consider whether and to what extent the parents, if still married, would have contributed to the child's college expenses.<sup>27</sup>

Perhaps surprisingly, the Court in *McKay* held that the father did not have to further contribute to his son’s college expenses because, although the father attempted to establish a father/son relationship, the son was not interested.<sup>28</sup> Since the son had refused a relationship the court felt it was only fair to relieve the father of his support obligation.<sup>29</sup>

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<sup>24</sup>*Id.* at 703 (citing *Connolly v. Connolly*, 443 N.Y.S.2d 661 (N.Y. App. Div. 1981)).

<sup>25</sup>*Id.*

<sup>26</sup>*Id.*

<sup>27</sup>*McKay v. McKay*, 644 N.E.2d 164, 166 (Ind. Ct. App. 1994) (internal citations omitted).

<sup>28</sup>*Id.* at 165.

<sup>29</sup>*Id.*

The obligation to pay for college expenses is not solely a burden imposed on people of means. In a 2004 case in Iowa, a court held that a father's contribution to his children's college expenses should be \$300 a year.<sup>30</sup>

A student does not have to be continually enrolled for the parent's support obligation to continue.<sup>31</sup> In *Harris v. Williams*, a Missouri case, the court reasoned that, "[e]ven if attendance is not continuous, a court may find that a parent's support obligation shall continue if all of the following elements are present: 1) the interruption from enrollment is temporary; 2) there is an evident intent to re-enroll; and 3) there are manifest circumstances which prevented continuous enrollment."<sup>32</sup> In this case, the manifest circumstance was that the student lost his financial aid from the school, and truly did not know how else to secure funding.<sup>33</sup>

As is now readily apparent, each state sets out its own requirements of support during college, mainly based on the parent's ability to contribute. Although, there are many ways parents can be relieved of their obligation to pay their child's college expenses, the main way is for the child to be considered emancipated.

### **What constitutes emancipation?**

Emancipation is "the conclusion of the fundamental dependent relationship between parent and child."<sup>34</sup> In New Jersey, emancipation does not occur when the child reaches the age of majority.<sup>35</sup> In some cases a parent may have a child that never becomes emancipated.<sup>36</sup> In *Newburgh*, the court reasoned that, "[e]mancipation can occur upon the child's marriage, induction into military

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<sup>30</sup>In re Marriage of Neff, 675 N.W.2d 573, 580 (Iowa 2004).

<sup>31</sup>*Harris v. Williams*, 72 S.W.3d 621, 624 (Mo. Ct. App. 2002).

<sup>32</sup>*Id.* at 624.

<sup>33</sup>*Id.*

<sup>34</sup>*Dolce v. Dolce*, 383 N.J. Super.11, 17 (App.Div.2006).

<sup>35</sup>*Id.*

<sup>36</sup> "The obligation to pay support for a child who has not been emancipated by the court shall not terminate solely on the basis of the child's age if the child suffers from a severe mental or physical incapacity that causes the child to be financially dependent on a parent. The obligation to pay support for that child shall continue until the court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent." N.J. STAT. ANN. § 2A:34-23.

service, by court order based on the child's best interests or by attainment of an appropriate age. Although emancipation need not occur at any particular age, a rebuttable presumption against emancipation exists prior to attaining the age of majority, now 18."<sup>37</sup>

In New York, "emancipation has been defined as the renunciation of legal duties by a parent and the surrender of parental rights to a child. Emancipation of a child may occur by operation of law as where the parent's conduct is inconsistent with the performance of parental obligations. The burden of proof as to emancipation is on the one asserting it."<sup>38</sup>

In Indiana, the duty to support a child ceases when a child turns 21 or under the following circumstances: "(1) is on active duty in the United States armed services;(2) has married; or(3) is not under the care or control of:(A) either parent; or (B) an individual or agency approved by the court; the court shall find the child emancipated and terminate the child support."<sup>39</sup> However, the statute also states that a child will not be deemed emancipated if any of those circumstances has not occurred and the child has been enrolled in secondary or post-secondary school within the past four months.<sup>40</sup>

### **Public Policy: Why Do Courts Expect Parents to Contribute?**

The most apparent reason courts would compel parents to contribute to their child's college expense is that, as a society, we value college education. The most common argument is that a college education is important because college graduates significantly out earn high school graduates. A Bureau of Labor Statistics study showed that on average college graduates, in 2009, earned \$1,025 a week, while high school graduates on average earned \$626 a week.<sup>41</sup> That same report showed that

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<sup>37</sup>Newburgh, 88 N.J. at 543 (internal citations omitted).

<sup>38</sup>Gittleman v. Gittleman, 81 A.D.2d 632, 633 (App.Div.1981).

<sup>39</sup>IND. CODE. § 31-16-6-6 (2008).

<sup>40</sup>*Id.*

<sup>41</sup>*Education pays: More education leads to higher earnings, lower employment*, OCCUPATIONAL OUTLOOKS QUARTERLY, Summer 2012, BUREAU OF LABOR STATISTICS (2010), <http://www.bls.gov/opub/ooq/2010/summer/oochart.pdf>.

the unemployment rate, in 2009, was 5.1% for college graduates, and 9.7% for high school graduates.<sup>42</sup>

According to Marcelina Hardy, in her article “7 Benefits of Earning a College Degree,” in addition to earning potential, there are six other benefits of a college degree.<sup>43</sup> One reason is health benefits, citing a 30 year study conducted by BMI Health, having a college degree has been linked to lower blood pressure;<sup>44</sup> also a 2006 study published by Carnegie Mellon University found that people with a college degree have lower levels of a stress hormone called cortisol.<sup>45</sup> Furthermore, according to a 2008 study published in the Journal of the National Cancer Institute, both men and women with a college degree have a lower risk of developing prostate, colorectal, breast and lung cancer, than their non-degree holding counterparts.<sup>46</sup> In addition, according to a College Board report college graduates are less likely to smoke and more likely to exercise than high school graduates.<sup>47</sup> Another College Board report stated that 70% of college graduates have employer provided health benefits in comparison to only 50% of high school graduates.<sup>48</sup> To round out the list college graduates also enjoy better job satisfaction, better job security and healthier children.<sup>49</sup>

The question still remains whether it is fair for divorced people to be mandated to contribute to their child’s college expenses. According to U.S. News and World Report, 63% of college graduates received some support from their parents.<sup>50</sup> The study also showed that only 42% of students that didn’t receive any financial support from their parents were able to graduate.<sup>51</sup> Also according to U.S. News and World Report, 34% of college students do not borrow any money at all

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<sup>42</sup>*Id.*

<sup>43</sup>Marcelina Hardy, *7 Benefits of Earning a College Degree*, YAHOO! EDUCATION, available at [http://education.yahoo.net/articles/benefits\\_of\\_higher\\_education.htm](http://education.yahoo.net/articles/benefits_of_higher_education.htm).

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*

<sup>46</sup>*Id.*

<sup>47</sup>*Id.*

<sup>48</sup>*Id.*

<sup>49</sup>*Id.*

<sup>50</sup>*Should Your Kids Pay for College Themselves?*, <http://www.usnews.com/education/articles/2009/12/11/should-your-kids-pay-for-college-themselves>.

<sup>51</sup>*Id.*



for college.<sup>52</sup> Since a majority of students receive support, and since without the support the odds of the student graduating are not in the student's favor, a parent's mandatory contribution, when financially feasible, does appear fair.

### Marital Settlement Agreements

Settlement of litigation before trial is an important public policy concern.<sup>53</sup> For example, in New Jersey attorneys must advise their clients about Complimentary Alternative Dispute Programs.<sup>54</sup> In *N.H. v. H.H.*, the court stated “[s]ettlement of litigation ranks high in the pantheon of public policy. This is particularly true in matrimonial matters, where settlement agreements, being ‘essentially consensual and voluntary in character [,] ... [are] entitled to considerable weight with respect to their validity and enforceability.’”<sup>55</sup> Settling matrimonial cases through incorporating a marital settlement agreement in the divorce decree is especially attractive to parties in a divorce for many reasons. First, like all settlements, marital settlement agreements save the parties money by minimizing the issues that need to be litigated. Second, a marital settlement agreement allows parties to decide the terms of the divorce rather than having to live with a judge's decision about, among other things, which party gets which assets and what the parties' visitation schedule with their children will be. Marital settlement agreements are important in cases involving college expenses because often a non-custodial parent's college contribution obligation is not court mandated, but incorporated into their marital settlement agreement.<sup>56</sup> However, whether court mandated or incorporated into a Marital Settlement Agreement, the obligation is still the same, and for purposes of non-custodial parents' rights is indistinguishable.

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<sup>52</sup>*A Degree is Well Worth the Time, Cost and Effort*, <http://www.usnews.com/debate-club/is-a-college-degree-still-worth-it/a-degree-is-well-worth-the-time-cost-and-effort>.

<sup>53</sup>*N.H. v. H.H.*, 418 N.J. Super. 262, 279 (2011).

<sup>54</sup> R. 1:40-1.

<sup>55</sup>*N.H.*, 418 N.J. Super. at 279 (internal citations omitted).

<sup>56</sup> See *Van Brunt, Infra*, note 61.

A key aspect to marital settlement agreements is their likelihood of enforcement. In *Ocean County Chapter, Inc. of Izaak Walton League of America v. Department of Environmental Protection*, the court stated, “[s]ettlements are generally upheld absent clear and convincing evidence of fraud or other compelling circumstances.”<sup>57</sup>

### **The Federal Educational Rights and Privacy Act (FERPA)<sup>58</sup>**

As defined by the Department of Education, “[t]he Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level.”<sup>59</sup> FERPA provides that, “a school may not generally disclose personally identifiable information from an eligible student's education records to a third party unless the eligible student has provided written consent.”<sup>60</sup> In other words, the parent of a high school student has the right to request information such as grades and courses taken, but when the student enters college, that right transfers from the parent to the student and the school may not release such information as grades or courses undertaken to a parent or any other third party without the student's consent.

### **Van Brunt v. Van Brunt**

In *Van Brunt v. Van Brunt* the competing interests of a college student's privacy in her collegiate records and a parent's desire to have information about the student's college performance,

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<sup>57</sup>*Ocean Cnty. Chapter, Inc. of Izaak Walton League of America v. Dep't of Environmental Protection*, 303 N.J. Super. 1, 10(1997).

<sup>58</sup>Family Educational Rights and Privacy Act, 20 U.S.C.A. § 1232(g).

<sup>59</sup>UNITED STATES DEP'T OF EDUC., *Family Educational Rights and Privacy Act* (Apr. 8, 2011), <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

<sup>60</sup>UNITED STATES DEP'T OF EDUC., *FERPA General Guidance for Students* (Feb. 28, 2011), <http://ed.gov/policy/gen/guid/fpco/ferpa/students.html>.

that the was funding, came to a head.<sup>61</sup> In *Van Brunt*, the Plaintiff was the custodial parent, and mother, and the Defendant, the father, of two children, K.V. and Melissa.<sup>62</sup> The parties were divorced on April 10, 2008.<sup>63</sup> In their marital settlement agreement, the parties “incorporated consensual provisions for child support, college contribution and emancipation relative to both parties’ children.”<sup>64</sup> The parties also agreed that Plaintiff would consult Defendant on all matters of importance related to their children’s education.<sup>65</sup> The parties’ agreement provided a definition of emancipation of, “a child would remain unemancipated if a child continued to attend four academic years of college.”<sup>66</sup> In 2010, Melissa was over 18 years old and attending Stockton College.<sup>67</sup>

The case brought two issues of first impression in New Jersey:

(a) Does a court order requiring an unemancipated college student to produce proof of college attendance, course credits and grades to his/her parents as a condition for ongoing child support and college contribution violate the student's right to privacy under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C.A. § 1232g, and 34 C.F.R. § 99.31.

(b) When a non-custodial parent pays court-ordered child support and/or college costs for an unemancipated college student, is the responsibility to provide that parent with ongoing proof of college attendance/credits/grades that of (a) the student, (b) the custodial parent, or (c) both?<sup>68</sup>

In April 2010, the Defendant brought a “motion to compel Plaintiff to disclose Melissa’s college records or to otherwise emancipate Melissa.”<sup>69</sup> At the time, Melissa was 21 years old, thus, Defendant’s obligation to pay child support was contingent upon Melissa’s status as an unemancipated college student.<sup>70</sup> The Court ordered plaintiff to submit proof of Melissa’s full time college status, including “(a) a list of all courses taken by Melissa and credits as verified by Melissa's

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<sup>61</sup>*Van Brunt v. Van Brunt*, 419 N.J. Super. 327 (N.J. Sup. 2010).

<sup>62</sup>*Id.* at 329.

<sup>63</sup>*Id.*

<sup>64</sup>*Id.* at 330.

<sup>65</sup>*Id.*

<sup>66</sup>*Id.*

<sup>67</sup>*Id.*

<sup>68</sup>*Id.* at 329.

<sup>69</sup>*Id.* at 330.

<sup>70</sup>*Id.*

college; (b) copies of Melissa's report cards; and (c) verification of Melissa's school enrollment."<sup>71</sup> Plaintiff did not supply the documentation and Defendant again filed a motion for emancipation.<sup>72</sup>

In Plaintiff's response, she attached only some of the required documents, and the Court denied Defendant's motion, stating Melissa "attempted to take a full-time course load in the spring of 2009 and the fall of 2009, but had not completed the necessary credits."<sup>73</sup> Although the Court denied Defendant's motion, they ordered Plaintiff to provide Defendant with documentation from the spring 2010 semester, amongst other proofs, and directed Plaintiff to furnish defendant with a copy of Melissa's report card after each semester."<sup>74</sup>

The present action commenced when Defendant filed another motion which alleged that Plaintiff had still not provided him with required proofs of Melissa's full-time enrollment.<sup>75</sup> Plaintiff replied that she was unable to obtain the necessary paperwork because of "Melissa's privacy rights."<sup>76</sup> Plaintiff argued that she should not be penalized for Melissa's failure to provide the proofs because the obligation to provide the proof of attendance belonged to Melissa.

The Court reasoned that "if, hypothetically, Melissa were not attending college on a fulltime basis, then absent extenuating circumstances she should be emancipated and defendant's ongoing financial obligation to plaintiff should cease. Accordingly, it is critical that defendant has a right to receive ongoing confirming documentation/information relative to Melissa's collegiate status."<sup>77</sup>

Generally, FERPA provides Melissa with privacy in her college records.<sup>78</sup> For example the college could not, without Melissa's written authorization, provide a grade report to a potential

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<sup>71</sup>*Id.*

<sup>72</sup>*Id.*

<sup>73</sup>*Id.* at 331.

<sup>74</sup>*Id.*

<sup>75</sup>*Id.* at 331-32.

<sup>76</sup>*Id.* at 332.

<sup>77</sup>*Id.*

<sup>78</sup>*Id.* at 333.

employer.<sup>79</sup>The court reasoned, “[w]hile FERPA may prevent a parent from obtaining documentation from a child's college without the child's authorization, the Act does not immunize an unemancipated student from his/her ongoing responsibility to provide a supporting parent with verifying documentation of college attendance and performance.”<sup>80</sup>The court also reasoned that, “[a] parent who is compelled to pay child support or college contribution has a right to ongoing verification of the child's collegiate status. This information is necessary to determine whether the child should remain unemancipated. FERPA does not diminish this right.”<sup>81</sup>

The court held that, “Melissa has an ongoing obligation to provide defendant with verification of her collegiate status—including enrollment, course credits, and proof of academic performance via report cards.”<sup>82</sup> The court also held, “plaintiff has an independent obligation to obtain the court-ordered educational information from Melissa and to provide this information to defendant. Since plaintiff is receiving ongoing child support paid by defendant, she has a reciprocal ongoing duty to provide information to defendant concerning Melissa's full-time collegiate status.”<sup>83</sup> Finally the court stated that, “[s]hould plaintiff and Melissa fail to comply, defendant may file a new application for Melissa's emancipation.”<sup>84</sup>

Here, the court came to the most fair and equitable resolution. It was unfair for Melissa's father to continue to contribute to her college expenses without knowing her grades, course work, or enrollment status. Although Melissa is entitled to privacy protection under FERPA, as the court correctly pointed out, the privacy protection she is afforded is not from having to disclose her grades from her parents, but rather her school not being allowed to divulge her grades to her parents. FERPA is a shield that can protect a student from unauthorized dissemination of his or her

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<sup>79</sup>See 20 U.S.C.A. § 1232g.

<sup>80</sup>*Van Brunt*, 419 N.J. Super at 334.

<sup>81</sup>*Id.* at 333.

<sup>82</sup>*Id.* at 334.

<sup>83</sup>*Id.*

<sup>84</sup>*Id.* at 336.

grades, but cannot be used as a barrier to a court requiring the student to furnish their grades, especially when the student's transcript is directly relevant to whether they should remain unemancipated.<sup>85</sup> Here, the Court has given Melissa the choice of disclosing her school records to her father and receiving his continued support or maintaining the privacy of her records and becoming emancipated.

Melissa's father agreed in his marital settlement agreement that he would contribute to Melissa's college expenses until she was emancipated, which put both of her parents in an unenviable situation. Melissa's mother was tasked with generating the necessary documents to keep Melissa unemancipated and Melissa's father was left with only one recourse when he did not receive these documents, to petition the court for Melissa's emancipation. However, he filed three motions in 2010 to get Melissa emancipated and was unsuccessful each time.<sup>86</sup> Had Melissa's parents stayed married, FERPA would still protect Melissa's privacy in that Stockton College could not release her grades to her parents. However, both of her parents could have decided to stop paying her college expenses immediately upon her refusal to divulge her grades. Presumably, if a student, of two married parents, refused to tell their parents what classes they were taking and what their grades were the parents could at least threaten to cease paying the student's college expenses. With the court's decision that option has been restored to non-custodial parents as well.

*Van Brunt* is the only published case to deal with the issue of non-custodial parent's right to their children's college transcripts in New Jersey, New York, Pennsylvania or Connecticut. However, Missouri faced a similar issue to *Van Brunt* in *Colborne v. Colborne*<sup>87</sup> and *Mandel v. Eagleton*.<sup>88</sup>

### Missouri's Response to the Same Issue

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<sup>85</sup>See *id.* at 329-30.

<sup>86</sup>*Id.*

<sup>87</sup>*Colborne v. Colborne*, 337 S.W.3d 158 (Mo. Ct. App. 2011).

<sup>88</sup>*Mandel v. Eagleton*, 90 S.W.3d 527 (Mo. Ct. App. 2002).

In *Colborne*, the parties were divorced in 1996.<sup>89</sup> The parties' marital settlement agreement provided that each would pay half of the college expenses for their children.<sup>90</sup> In August 2007, the parties' daughter enrolled in college.<sup>91</sup> The mother paid both her share of the college expenses and the father's share and then unsuccessfully attempted to obtain a reimbursement.<sup>92</sup> In 2008, she filed a motion to get the father to pay his share.<sup>93</sup> The father in turn filed a motion to compel the court to modify his obligation to pay for his children's college expenses.<sup>94</sup> The court found that the father should not have to pay for his daughter's college expenses because she had failed to meet the notification requirements to continue receiving child support payments after eighteen, and her parents were not given college transcripts showing which courses she had taken and what grades she had earned.<sup>95</sup> The mother appealed.

The court cited the Missouri Statute relating to the situation, which states:

To remain eligible for such continued parental support, at the beginning of each semester the child shall submit to each parent a transcript or similar official document provided by the institution of vocational or higher education which includes the courses the child is enrolled in and has completed for each term, the grades and credits received for each such course, and an official document from the institution listing the courses which the child is enrolled in for the upcoming term and the number of credits for each such course.

Noncompliance with this section relieves the parent from the obligation to pay child support for the term in which the child failed to provide the parent with the proper documentation.<sup>96</sup>

The mother and father both testified that they had not seen an official transcript.<sup>97</sup> The father asserted that the daughter failed the notification requirement at the beginning of each of her

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<sup>89</sup>*Colborne*, 337 S.W.3d at 160.

<sup>90</sup>*Id.*

<sup>91</sup>*Id.*

<sup>92</sup>*Id.*

<sup>93</sup>*Id.*

<sup>94</sup>*Id.*

<sup>95</sup>*Id.* at 161,

<sup>96</sup>MO. STAT. ANN. § 452.340 (West 2012).

<sup>97</sup>*Colborne*, 337 S.W.3d at 162.

semesters of college.<sup>98</sup> First, the Court ruled that unofficial transcripts printed off the university's website and mailed to the father would satisfy the notification requirement.<sup>99</sup> The court then held that the matter would need to be remanded to the trial court because they had erroneously based their ruling on the unofficial transcripts being invalid.<sup>100</sup> On remand, the court reasoned that the trial court would have to determine if the notification requirement was met, and that remand was necessary because this would be a finding of fact.<sup>101</sup>

In *Mandel*, the parties had one child during their marriage.<sup>102</sup> The parties were divorced in 1985.<sup>103</sup> In 2000, the parties' son enrolled in college.<sup>104</sup> During the fall semester their son completed fourteen hours of coursework, in the spring semester he dropped two courses before finals and only completed ten hours of coursework.<sup>105</sup> In March 2001, the father petitioned the court for termination of the son's support, alleging that his son had not provided him with documentation confirming his college attendance, as required by statute.<sup>106</sup> The trial court found that the father did not have to pay for the son's college expenses for the spring 2001 semester because the son violated the statute by not completing the minimum twelve hours of coursework.<sup>107</sup> The court, however, stated that the son was not emancipated and the father would be obligated to resume contribution when the son reached full-time status again.<sup>108</sup> The father appealed.

On appeal, the Court held that the son was emancipated.<sup>109</sup> The Court reasoned that the son's noncompliance with the statute was not based on previously accepted manifest circumstances, stating, "[h]ere, Son dropped two courses at the end of the semester when he realized his grades

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<sup>98</sup>*Id.* at 162-63.

<sup>99</sup>*Id.* at 163.

<sup>100</sup>*Id.*

<sup>101</sup>*Id.*

<sup>102</sup>*Mandel*, 90 S.W.3d at 528.

<sup>103</sup>*Id.*

<sup>104</sup>*Id.*

<sup>105</sup>*Id.* at 529.

<sup>106</sup>*Id.*

<sup>107</sup>*Id.* at 529.

<sup>108</sup>*Id.* at 529-30.

<sup>109</sup>*Id.* at 532.



would be unsatisfactory. Such situations are within a student's control; thus, Son's departure was voluntary. Accordingly, the fact that the interruption in Son's enrollment was only temporary does not justify waiver of the continuous enrollment requirement because the interruption was voluntary.<sup>110</sup>

### Conclusion

The issue of whether a non-custodial parent, who is compulsorily contributing to their child's college expenses, is entitled to their child's college records is a fresh issue in both New Jersey and throughout the country. With the divorce rate at 50%,<sup>111</sup> which is inconsistent with the marriage rate over the last ten years,<sup>112</sup> and more students entering college each year,<sup>113</sup> the issue is bound to become increasingly more relevant. The number of people in undergraduate institutions rose 39% between 1999 and 2009.<sup>114</sup> As enrollment rises, it is natural that a significant portion of these enrollees will be coming from divorced parents. It may be only a matter of time before the issue the Court was faced with in *Van Brunt*, will be challenged before the New Jersey Supreme Court.

If confronting this issue, the Supreme Court should follow the Court in *Van Brunt*. In *Van Brunt*, the ruling was fair to both parties and promoted the public policies of both encouraging college education and allowing students their privacy. Instead of giving Melissa the best of both worlds by allowing her to not have to disclose her college records to her father and continue to force him to fund her college experience, the Court followed the intended purpose of FERPA, to prevent schools from releasing information to third parties, and gave Melissa the choice of either turning her records over to her father or no longer forcing him to support her. Melissa erred in

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<sup>110</sup>*Id.*

<sup>111</sup>CENTER FOR DISEASE CONTROL AND PREVENTION, *Marriage and Divorce*, <http://www.cdc.gov/nchs/fastats/divorce.htm>.

<sup>112</sup>CENTER FOR DISEASE CONTROL AND PREVENTION, *National Marriage and Divorce Rate Trends*, [http://www.cdc.gov/nchs/nvss/marriage\\_divorce\\_tables.htm](http://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm).

<sup>113</sup>NATIONAL CENTER FOR EDUCATION STATISTICS, *Enrollment*, <http://nces.ed.gov/fastfacts/display.asp?id=98>.

<sup>114</sup>*Id.*

thinking that FERPA was designed to be a free pass to never have to divulge her college records to anyone.

Initially, it seems like parents who do not divorce have greater rights than parents who divorce because of the compulsory college contributions of divorced parents. However, when one considers that college support obligations often stem from marital settlement agreements negotiated by the parties themselves, and that courts are really just trying to restore the student/child to the same economic position had their parents not divorced, non-divorced and divorced parents are essentially in equal positions.

Initially, with the Court's ruling, it would appear that divorced parents have achieved an extra right that non-divorced parents do not have; i.e., the compulsory disclosure from their student/child of their college records. However, upon closer examination, the Court leveled the playing field by not mandating that students disclose their college records to their parents, but rather ruling that to stay unemancipated students disclose their records. The distinction is important because it means that Mr. Van Brunt may not actually get Melissa's records if she chooses emancipation. Just like a rebellious student of non-divorced parents could choose to not disclose his grades to his parents and face whatever consequences his parents choose to impose, which could no longer fund his college education.

Another subtle issue is the struggle that Mrs. Van Brunt and other custodial parents could face. The Court originally tasked Mrs. Van Brunt to produce Melissa's college records. Unfortunately for her, she was just as unentitled to Melissa's records under FERPA as Mr. Van Brunt. As the case clearly shows, Mrs. Van Brunt was unable to comply with the Court's directive and furnish Mr. Van Brunt with the records he craved, through no fault of her own. Again, the Court was both fair and helpful to Mrs. Van Brunt, and custodial parents, by mandating that the duty to provide the college records belongs to both her and the student hoping to remain

unemancipated. Although, custodial parents would surely prefer that the duty to provide college records solely belongs to the student, it is more logical to also give custodial parents the duty because he or she is the person actually receiving the child support, which hopefully is solely used for the student/child's benefit. Furthermore, being the custodial parent they can presumably apply the necessary pressure to the student to get the records better than a non-custodial parent could.

As far as Melissa and other students are concerned, the ruling may not be exactly what they wanted, especially if they received less than stellar marks. However, it is more than fair for them to simply have to provide a copy of their transcripts every semester in order to continue to receive support. It is probably safe to presume that the 37% of college students who do not receive any financial support from their parents during college would gladly furnish a stranger with their college transcripts in exchange for support, let alone their parents.<sup>115</sup> In an age where student's records are all readily available online twenty-four hours a day, it hardly seems burdensome or unfair for Melissa to have to provide a copy of this information to her father at the beginning of every semester.

Before this issue reaches state Supreme Courts, the legislature in New Jersey and other states should consider enacting a statute much like Missouri Statute 452.340. If legislatures enacted such a statute the onus would be off of courts to decide what is equitable and courts would be given clear guidelines on how a parent can have their college-aged child considered emancipated. Students would also clearly know what their obligations are to their non-custodial parent to remain unemancipated. Also if the legislature enacted a statute, someone like Mr. Van Brunt would not have to file three motions in one year in an attempt to compel the release of information from his daughter. Interestingly, under similar circumstances the New Jersey court, where no statutory guidance existed, concluded that the student was not emancipated, while one Missouri case, where the court had a clear statute to look to, ended in the student being emancipated and the other

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<sup>115</sup>See *Clark*, *supra* note 48.

Missouri case ended with a remand to determine if the student had provided the necessary information to avoid emancipation.

Although Kanye West may be worried about finding out too late that the child he is supporting is not his he can rest easy with the knowledge that he will at least know what courses that child took in college and the grades they received.