

REL: 08/08/2014

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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2014

2121086

Andrew Arthur Duerr

v.

Anne Marie Duerr

Appeal from Montgomery Circuit Court
(DR-09-768.03)

PITTMAN, Judge.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.; Morgan v. Morgan, [Ms. 2120101, July 11, 2014] ___ So. 3d ___, ___ (Ala. Civ. App. 2014); Bray v. Bray, 979 So. 2d 798, 800 (Ala.

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Civ. App. 2007); and O'Neal v. O'Neal, 678 So. 2d 161, 164 (Ala. Civ. App. 1996).

The appellee's request for the award of an attorney fee on appeal is denied.

Thompson, P.J., and Moore and Donaldson, JJ., concur.

Thomas, J., concurs in part and dissents in part, with writing.

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THOMAS, Judge, concurring in part and dissenting in part.

This is an appeal in a domestic-relations action. I concur as to the affirmance of the Montgomery Circuit Court's decision to reinstate its award of periodic alimony to Anne Marie Duerr. However, I respectfully dissent as to the affirmance of the trial court's award of postminority educational support. On October 4, 2013, our supreme court released Ex parte Christopher, [Ms. 1120387, Oct. 4, 2013] ___ So. 3d ___ (Ala. 2013), in which our supreme court expressly overruled Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989).

In overruling Bayliss, our supreme court specifically held that,

"[a]lthough [this] decision does not affect final orders of postminority educational support already entered, our overruling of Bayliss is applicable to all future cases. Further, this decision also applies to current cases where no final postminority-support order has been entered or where an appeal from a postminority-support order is still pending."

Christopher, ___ So. 3d at ___ (emphasis added).

As I explained in my special writing in Morgan v. Morgan, [Ms. 2120101, July 11, 2014] ___ So. 3d ___, ___ (Ala. Civ. App. 2014) (Thomas, J., concurring in part and concurring in the result in part), the above language in Christopher plainly

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states that the holding in Christopher is applicable to any case in which an appeal of a postminority-educational-support order was pending at the time the supreme court's opinion in Christopher was released; there is no mention of an obligation of a party to have raised the issue before the trial court.

The State Judicial Information System case-action-summary sheet in this case indicates that Andrew Arthur Duerr ("the former husband") filed this appeal on September 26, 2013, and that the appeal remained pending when the opinion in Christopher was released on October 4, 2013. Accordingly, it is my opinion that, based upon the plain language used by our supreme court, this court must reverse that portion of the trial court's divorce judgment ordering the former husband to pay postminority educational support, in accordance with the supreme court's holding in Christopher that "the child-custody statute does not authorize a court in a divorce action to require a noncustodial parent to pay educational support for children over the age of 19." ___ So. 3d at ___.