



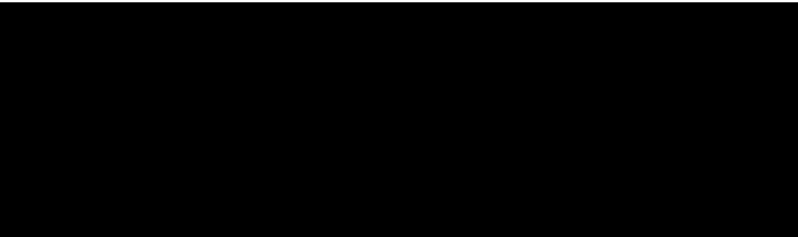
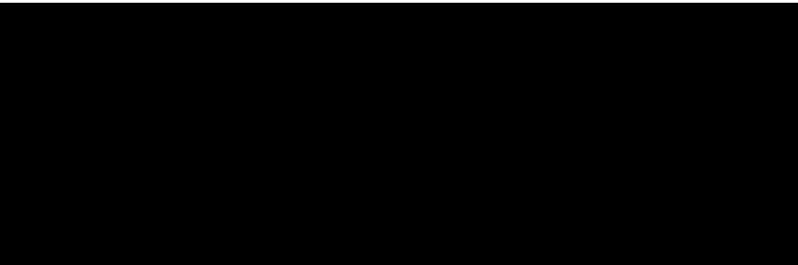
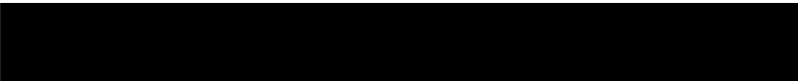
Rockingham  
No. 81-212

THERESA M. HEINZE

v.

PAUL E. HEINZE

April 7, 1982





has claimed only one tax exemption and that the decree, to the extent permitted by federal law, allowed him to claim tax exemptions for both the children. See *MacDonald v. MacDonald*, 122 N.H. 339, 343, 443 A.2d 1017, 1019 (1982). This court will not overturn a support order absent an abuse of discretion below. See *Hanson v. Hanson*, 121 N.H. 719, 720, 433 A.2d 1310, 1311 (1981). On the record before us, including evidence that the plaintiff did not have sufficient income to provide for the support of the children, we cannot find such an abuse. Furthermore, the plaintiff testified that she will pay the college tuition for the children. Accordingly, we affirm the support order.

■ ■ Next, the defendant argues that the support order improperly orders support payments for the couple's children (at the time of the final hearing, aged nineteen and sixteen) that may extend past the age of majority. We disagree. Ordinarily, support payments may not be ordered for children over eighteen. This court, however, has recognized that support may be awarded for higher education in appropriate circumstances. See *French v. French*, 117 N.H. 696, 699-701, 378 A.2d 1127, 1128-29 (1977); *Payette v. Payette*, 85 N.H. 297, 298, 157 A. 531, 531-32 (1931). The master ordered, in substance, that the defendant pay \$90 per week until the elder daughter reached the age of twenty-three, was no longer attending college full time, or married, whichever condition occurred first. At that time, the support was to be reduced to \$65 per week until the younger daughter satisfied the same three conditions, whereupon support payments would cease. We interpret the master's order, as providing that support will continue after age 18 only while each daughter is single and in college full time.

■ The defendant next challenges the portion of the decree that requires him to maintain all current health and/or dental coverage on each child until one of the conditions terminating the support payments occurs and to maintain his current life insurance policies, naming the two children as beneficiaries, until the younger child satisfies one of the above conditions. The health and/or dental coverage is justified by the same reasoning as the support payments discussed above. While requiring that both children be named beneficiaries under the life insurance policies until the younger child is no longer dependent is more troublesome, we do not find it such a clear abuse of discretion as to require reversal.

The defendant next challenges the inclusion of a clause automatically escalating the amount of child support with increases in the defendant's wages. His support obligation is to be increased by

thirty percent of any increase in his wages while both children are dependent on his support and increased by twenty percent of any increase in his wages when only the younger child is dependent on him. These amounts correspond roughly to the percentage of his gross income that the defendant is now obliged to pay for child support.

■ ■ While this type of arrangement has never before been passed on by this court, it has been approved by courts in many other jurisdictions. See, e.g., *Golden v. Golden*, 230 Ga. 867, 867, 199 S.E.2d 796, 797-98 (1973); *Vollenhover v. Vollenhover*, 4 Ill. App. 2d 44, 46-47, 123 N.E.2d 114, 115 (1954); *Petersen v. Petersen*, 85 N.J. 638, 642-46, 428 A.2d 1301, 1303-04 (1981); *In re Marriage of Mahalingam*, 21 Wash. App. 228, 232-36, 584 P.2d 971, 975-77 (1978). We agree that the inclusion of an automatic escalation clause is a sensible response to the economic pressures that this country has been experiencing for some time. Its use will reduce the need for parties to continually return to court to seek to modify support decrees. See *Mahalingam, id.* at 236 n.10, 584 P.2d at 977 n.10. The escalation clause provides cost-of-living increases in support payments as the ability of the supporting party to undertake the obligation increases. Of course, the supporting party will be able to return to court for a modification of the order if he receives a substantial increase in salary unrelated to a cost-of-living increase. See RSA 458:32. Triers of fact should also consider increases in the custodial spouse's income when drafting or modifying support orders. See *Logan v. Logan*, 120 N.H. 839, 842-43, 424 A.2d 403, 405 (1980).

Next, the defendant argues that the master's division of property, including the award of a business to the plaintiff, constituted an abuse of discretion. See *Henderson v. Henderson*, 121 N.H. 807, 809, 435 A.2d 133, 135 (1981); *Goudreault v. Goudreault*, 120 N.H. 140, 140, 412 A.2d 736, 736 (1980). Upon a review of the record, we disagree.

■ The master found that the business in question, the Bridal-loft, was founded and continuously operated by the plaintiff. There is evidence in the record to support his finding. See *Henderson v. Henderson*, 121 N.H. at 810, 435 A.2d at 135. We have previously held that a closely held business should not be divided where one party was primarily involved with the business and had devoted substantial time and toil to its growth and maintenance. See *Grandmaison v. Grandmaison*, 119 N.H. 268, 271, 401 A.2d 1057, 1059 (1979).

As to the division of the rest of the property, we cannot say that



it is so inequitable as to require reversal. See *Hanson v. Hanson*, 121 N.H. at 720, 433 A.2d at 1311; *Azzi v. Azzi*, 118 N.H. 653, 656, 392 A.2d 148, 150 (1978). In addition to a portion of the bank accounts and one car, the defendant also received an unencumbered interest in his company pension, see *MacDonald v. MacDonald*, 122 N.H. at 342, 443 A.2d at 1017, 1018, and the defendant will also receive one-half of the proceeds from the sale of the marital home as soon as the younger daughter reaches eighteen or graduates from high school.

Finally, the defendant contends that the master failed to address or rule on certain of his requests for findings of fact and rulings of law. A master need only make findings, in narrative form, of the essential facts which are sufficient to support his decision. *Pugliese v. Town of Northwood*, 119 N.H. 743, 749, 408 A.2d 113, 117 (1979); *R. J. Berke & Co. v. J. P. Griffin, Inc.*, 116 N.H. 760, 767, 367 A.2d 583, 588 (1976). The master here has done so.

*Affirmed.*

All concurred.



Personnel Commission  
No. 81-218

APPEAL OF DENNIS BATCHELDER  
(New Hampshire Personnel Commission)

April 7, 1982

