

Third District Court of Appeal

State of Florida

Opinion filed August 5, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-104
Lower Tribunal No. 19-21840

Korey Fernandez,
Appellant,

vs.

Adolph Fernandez,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, David H. Young,
Judge.

Tron Thomas, for appellant.

Seyba Law PLLC, and Ryanne N. Seyba (Hollywood), for appellee.

Before EMAS, C.J., and HENDON and MILLER, JJ.

EMAS, C.J.

INTRODUCTION

Appellant Korey Fernandez (“Korey”) appeals the trial court’s orders dismissing Korey’s Petition for Dependent Adult Support for lack of subject-matter jurisdiction, and imposing attorney’s fees against Korey pursuant to section 57.105, Florida Statutes (2019), upon a finding that the petition was frivolous. We reverse.

FACTS AND PROCEDURAL BACKGROUND

In September 2019, Korey filed a petition in the Circuit Court of the Eleventh Judicial Circuit, seeking dependent adult support from her father, Adolph Fernandez (“Adolph”). The case was assigned to a judge in the Family Division. Accepting the well-pleaded allegations as true, here are the relevant facts:

Korey was born on May 22, 1992 into an intact family. Korey was born with Down Syndrome. When her parents divorced in 2001, they entered into a marital settlement agreement, which provided terms for Korey’s support until she turned eighteen. Korey’s disability prevents her from securing and maintaining employment; her IQ is between 60 and 70, and she is missing fingers on one hand. At the time of the filing of her petition, she was twenty-seven, dependent, and requiring daily financial and physical assistance from her mother because of her disability.

Adolph moved to dismiss the petition, claiming that the Circuit Court, Family Division was without subject-matter jurisdiction. Adolph contended Korey was

barred from bringing this action because there was no provision in the Final Judgment of Dissolution of Marriage that provided Korey's child support would extend beyond the age of majority, nor was there any attempt, while Korey was still a minor, to modify or extend child support beyond the age of majority.

The trial court granted Adolph's motion and dismissed the petition upon a finding that the court lacked subject-matter jurisdiction. After denying Korey's motion for reconsideration, the trial court awarded Adolph attorney's fees under section 57.105, Florida Statutes (2019), upon a finding that the petition was frivolous. This appeal followed.

DISCUSSION

We must determine whether the trial court properly concluded it was without subject-matter jurisdiction to hear the petition seeking dependent adult support. The determination of subject-matter jurisdiction in this case is a question of law, as there were no issues of material fact in dispute before the trial court. We thus review the trial court's determinations de novo. See Beroes v. Florida Dept. of Revenue, 958 So. 2d 489, 492 (Fla. 3d DCA 2007).

On appeal, Korey contends that dependent adults have a common law right, preserved by statute, to seek adult support from their parents and that the circuit court has subject-matter jurisdiction to hear and adjudicate a petition for dependent adult support. In response, Adolph contends these arguments miss the mark on

subject-matter jurisdiction, failing to address the actual jurisdictional requirements for the Family Division of the Circuit Court of the Eleventh Judicial Circuit. We agree with Korey, and hold that the circuit court has subject-matter jurisdiction over this petition and improperly dismissed the petition.

As the Florida Supreme Court observed nearly seventy years ago: “Generally, the obligation of a parent to support a child ceases when the child reaches majority, but an exception arises when the child is, from physical or mental deficiencies, unable to support [herself].” Perla v. Perla, 58 So. 2d 689, 690 (Fla. 1952).

Florida law imposes a duty of support upon a parent for an adult dependent child who is unable to support herself because of a mental or physical incapacity that began prior to the child reaching majority. See Brown v. Brown, 714 So. 2d 475 (Fla. 5th DCA 1998); Monitzer v. Monitzer, 600 So. 2d 575 (Fla. 2d DCA 1992); Fincham v. Levin, 155 So. 2d 883 (Fla. 1st DCA 1963). Where, as here, Adolph has fulfilled his child support obligation as provided in the final judgment of dissolution, “an independent action must be brought to adjudicate the father’s support obligation for an adult dependent child. The circuit court is the proper court for such adjudication.” Brown, 714 So. 3d at 477.

In 1973, the Florida Legislature adopted section 743.07, Florida Statutes (2019), removing the disability of nonage, while preserving an exception for

continued support of a certain class of dependent adults. In its present form, the statute provides:

- (1) The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law.
- (2) **This section shall not prohibit any court of competent jurisdiction from requiring support for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority** or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.
- (3) This section shall operate prospectively and not retrospectively, and shall not affect the rights and obligations existing prior to July 1, 1973.

§ 743.07(1)-(3), Fla. Stat. (emphasis added).

In Hastings v. Hastings, 841 So. 2d 484, 486 (Fla. 3d DCA 2003), a fifty-year old dependent man, who suffered from autism and Asperger's syndrome, which began before the age of majority, petitioned for the establishment of support from his father twenty-nine years after attaining majority. The trial court granted summary judgment in favor of the father and this Court reversed. We first acknowledged "there is no doubt that the son has a common law right of support from his parents." Id. at 485 (citing Perla, 58 So. 2d 690). This Court further

determined that the right to support, and the corresponding right to bring the cause of action, “belongs to the mentally or physically disabled adult whose disability began prior to majority, while the duty of support rests upon both parents throughout their lives,” id. at 486, and that this action “can be brought at any time as the parents remain responsible for support throughout the dependency, and throughout their lives.” Id. In other words, even if Adolph fulfilled his child support obligation pursuant to the divorce decree, Korey had the right to bring an independent action for dependent adult support in the circuit court to adjudicate Adolph’s continuing support obligation.

We reject Adolph’s contention that the Family Division of the Circuit Court has no subject-matter jurisdiction over “adult child support” cases, and that Korey’s case must therefore be dismissed because she is beyond the age of majority. First, the premise of this argument is incorrect because the petition sought dependent adult support, not “adult child support.” Second, whether the petition should have been assigned to the “Family Division” or some other division of the Circuit Court is immaterial to the question of the trial court’s subject-matter jurisdiction. Adolph appears to equate the Eleventh Judicial Circuit’s local rules with a circuit court’s subject-matter jurisdiction. These are entirely separate matters, and a circuit’s local

rules¹ are simply administrative directives for the assignment, management and disposition of cases that otherwise come within the circuit court's subject-matter jurisdiction. Such local rules can neither confer nor constrict circuit court jurisdiction. "Subject matter jurisdiction—the 'power of the trial court to deal with a class of cases to which a particular case belongs'—is conferred upon a court by constitution or statute." Strommen v. Strommen, 927 So. 2d 176, 179 (Fla. 2d DCA 2006) (quoting Cunningham v. Standard Guar. Ins. Co., 630 So. 2d 179, 181 (Fla. 1994)).

Florida's Constitution provides in pertinent part:

The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state.

¹ Adolph cites for example Miami-Dade County Local Rule R-1-7, which provides inter alia:

The Family Division of the Circuit Court is hereby established and will be responsible for the disposition of the following matters:

1. Such matters as apply to families and/or a child, including adoption, separate maintenance, paternity, custody and support, dissolution of marriage, delinquency and dependency.
2. Such other family type matters as may be assigned or re-assigned by the Chief Judge.

Art. V, § 5(b), Fla. Const. See also § 26.012(2)(a)-(g), Fla. Stat. (2019) (enumerating those actions, cases and proceedings over which Florida circuit courts shall have exclusive original jurisdiction). Adolph's argument, taken to its logical conclusion, would mean that some circuit courts within Florida (those with no local rule establishing separately defined divisions) would have subject-matter jurisdiction over this petition while other circuit courts within Florida (such as the Eleventh Judicial Circuit, with a local rule establishing separately-defined divisions) would not have subject-matter jurisdiction over the same petition. This position is wholly without merit.²

CONCLUSION

Section 743.07(2) preserves the common law right to seek adult dependent support from a parent in a court of competent jurisdiction when such dependency is the result of a mental or physical incapacity which began prior to such person reaching majority. The circuit court is a court of competent jurisdiction for such a cause of action and the trial court had subject-matter jurisdiction to adjudicate the petition filed by Korey seeking adult dependent support. The trial court erred in dismissing this petition for lack of subject-matter jurisdiction, in denying rehearing,

² We need not address, and express no opinion, whether under the Local Rules of the Eleventh Judicial Circuit this petition should have been assigned to some other division. We merely note that such an administrative assignment has no bearing on a determination of the circuit court's subject-matter jurisdiction.

and in awarding attorney's fees to Adolph under section 57.105 upon a finding that the petition was frivolous.

We reverse and remand for further proceedings, and express no opinion on the merits of the petition.