

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CYNTHIA R. CANINZUN

Appellee

v.

JERROLD R. CANINZUN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1793 WDA 2012

Appeal from the Order Entered October 29, 2012
In the Court of Common Pleas of Allegheny County
Family Court at No(s): FD 03-002472-RELATED TO FD03-008894-002

BEFORE: BENDER, J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY GANTMAN, J.:

FILED: June 5, 2013

Appellant, Jerrold R. Caninzun ("Father"), appeals from the order entered in the Allegheny County Court of Common Pleas, denying his exceptions to the hearing officer's recommendation and directing Father to continue to pay support for the parties' adult son, A.M.C. We affirm.

The relevant facts and procedural history of this appeal are as follows. Appellee, Cynthia R. Caninzun ("Mother") and Father are the parents of A.M.C. When A.M.C. was five years' old, doctors diagnosed him with autism and pervasive developmental disorder ("PDD"). Sometime after the diagnosis, the parties separated. On September 8, 2003, Mother filed a complaint for child support, which the court granted.

On November 20, 2011, A.M.C. celebrated his eighteenth birthday. Prior to A.M.C.'s high school graduation in June 2012, the court ordered an

administrative review of the child support action to determine whether A.M.C. would be "emancipated" upon graduation. On May 31, 2012, a hearing officer received testimony from Father, Mother, and A.M.C. At the conclusion of the hearing, the officer issued the following recommendation:

As the child...is not able to be self-supporting at this time, he is not emancipated and support will continue. Order considers the cost of medical insurance to [Mother] for the child. Effective 6/1/12, [Father] is to pay \$699.00 per month for the support of [A.M.C.] plus \$70.00 per month ordered on amount on arrears set at \$3,490.09 as of 6/1/12.

* * *

(Hearing Summary, dated 5/31/12, at 1).

On June 19, 2012, Father filed exceptions to the support recommendation. Father argued that A.M.C. had successfully completed high school and planned to pursue post-secondary education at a local vocational school. Father concluded A.M.C. did not have a condition rendering him incapable of self-support, and the officer erroneously ordered the continuation of child support. By order and opinion dated October 29, 2012, the court denied Father's exceptions, adopted the hearing officer's support recommendation, and ordered a review of the matter in June 2013, upon the completion of A.M.C.'s first year at vocational school.

Father timely filed a notice of appeal on November 16, 2012. The court did not order Father to file a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b).

Father raises three issues for our review:

WHETHER THE [TRIAL] COURT ERRED IN ALLOWING AN "END RUN" AROUND **BLUE V. BLUE**, 532 PA. 521, 616 A.2D 628 (1992) AND **CURTIS V. KLINE**, 542 PA. 249, 666 A.2D 265 (1995), ALLOWING POST-SECONDARY SUPPORT OF ADULT, ALLEGEDLY INCAPACITATED CHILD, WHILE **BLUE AND CURTIS** FORBADE, ON CONSTITUTIONAL GROUNDS, POST-SECONDARY CHILD EDUCATIONAL SUPPORT WHICH IS WHAT THIS SUPPORT REALLY IS.

WHETHER THE [TRIAL] COURT ERRED IN AWARDING SUPPORT TO AN ADULT, ALLEGEDLY INCAPACITATED CHILD.

EQUIVALENTLY, WHETHER THE [TRIAL] COURT ERRED IN AWARDING SUPPORT TO AN ADULT, ALLEGEDLY INCAPACITATED CHILD, NOTWITHSTANDING...THAT THE PROPONENT, MOTHER, FAILED TO PRESENT MEDICAL OR VOCATIONAL EVIDENCE OF THE CHILD'S ALLEGED INCAPACITY OF DISABILITY, AMONG OTHER FAILURES OF PROOF.

(Father's Brief at 2).

The relevant standard of review is as follows:

When evaluating a support order, this Court may only reverse the trial court's determination where the order cannot be sustained on any valid ground. We will not interfere with the broad discretion afforded the trial court absent an abuse of the discretion or insufficient evidence to sustain the support order. An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be either manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused. In addition, we note that the duty to support one's child is absolute, and the purpose of child support is to promote the child's best interests.

Kimock v. Jones, 47 A.3d 850, 854 (Pa.Super. 2012) (quoting **Brickus v.**

Dent, 5 A.3d 1281, 1284 (Pa.Super. 2010)).

On appeal, Father asserts Mother bore the burden of proving A.M.C. suffers from an incapacity or disability that renders A.M.C. incapable of self-support. Father contends Mother failed to prove A.M.C. suffers from any condition that warrants continued child support. Father emphasizes Mother presented no evidence regarding A.M.C.'s current diagnosis and its impact on A.M.C.'s ability to obtain gainful employment. Additionally, Father insists the hearing officer and the trial court misapplied the relevant case law and ignored the evidence adduced at the hearing, which demonstrated that A.M.C. has the necessary skills to join the workforce. Father concludes this Court must reverse the order denying his exceptions to the support recommendation, order his support obligation terminated as of May 31, 2012, and remand the matter to the trial court to refund all child support paid after that date. We disagree.

"In Pennsylvania, the duty to support a child generally ceases when the child reaches the age of majority, which is defined as either eighteen years of age or when the child graduates from high school, whichever comes later." **Style v. Shaub**, 955 A.2d 403, 408 (Pa.Super. 2008).

This presumption is not rebuttable if the child becomes disabled only **after** reaching the age of majority. The public policy behind such rationale is apparent, as there must be a logical end point to a parent's obligation to support his or her child. Otherwise, an adult child could theoretically sue their elderly parents for support after sustaining a debilitating injury well after reaching the age of majority.

When the disability resulting in the child's inability to be self-sufficient already exists at the time the child reaches the age of majority, however, the presumption is rebuttable by the adult child upon proof that there are conditions that make it impossible for...him to be employed.

* * *

To rebut the presumption that a parent has no obligation to support an adult child, the test is whether the child is physically and mentally able to engage in profitable employment and whether employment is available to that child at a supporting wage. The adult child has the burden of proof on these issues. Our scope of review is limited to a determination of whether the trial court committed an abuse of discretion or an error of law when making a determination in this regard.

Style, supra at 408-09 (internal citations and quotation marks omitted) (emphasis in original). Thus, under certain circumstances, "Parents may be liable for the support of their children who are 18 years of age or older." 23 Pa.C.S.A. § 4321(3). "Emancipation of a child for purposes of the statute governing a parent's liability for support of a child is a question of fact to be determined by the totality of the circumstances presented in each case." **Castaldi v. Castaldi-Veloric**, 993 A.2d 903, 911 (Pa.Super. 2010) (quoting **Nicholson v. Follweiler**, 735 A.2d 1275, 1278 (Pa.Super. 1999), *appeal denied*, 561 Pa. 698, 751 A.2d 192 (2000)).

Instantly, Father, Mother, and A.M.C. each testified before the hearing officer on May 31, 2012. Father emphasized that A.M.C. had successfully completed high school and intended to pursue post-secondary education at

Forbes Road Technical School. Father admitted A.M.C. suffers from autism and PDD, but Father opined A.M.C. was still capable of self-support:

I acknowledge [A.M.C.'s] condition wholly. I was the one that took him to Rangos Research Center to get diagnosed, but [A.M.C.'s] been diagnosed with this PDD Asperger's/autism since he was at Rangos at five years of age. His mother's never taken him back to be reevaluated. So what his condition is now, there are no medical records showing that's—I mean, he's an A, B student. He's able to attend school, he's able to get good grades and get along in school. He's able to go...on to Forbes Tech and go on to college. So he's above average—he's high functioning enough to be able to succeed at his career and work, I believe, in a full-time manner.

* * *

He's not severely autistic. His diagnosis was mild autism. It's called PDD.... Yes, I'm aware of it, and his mother was aware of it.... She [sent] him to camp with kids that were much more severe than him, and he hated it. My son's high enough functioning that he knew that he was different.

Is [A.M.C.] autistic, yes, I agree he's autistic. Does it prevent him from functioning in a normal everyday life, no. He knows right from wrong. He knows how to cook for himself. He knows how to clean for himself. He...went out and tried to get a job in Pittsburgh. It's just the market is very tight right now, but he's very capable of working with something that he'd be behind the scenes. He's very capable of that, yes. I feel strongly he is.

(**See** N.T. Hearing, 5/31/12, 9-10.)

In response, Mother testified that she had cared for A.M.C. his entire life, and he could not perform basic tasks unless she reminded him on multiple occasions. Although Mother permitted A.M.C. to take the bus to

school, she did not consider him capable of using public transportation on his own. Mother indicated that A.M.C. would not pay attention to the stops, and he would not disembark unless told to do so. When asked whether A.M.C. could live independently, Mother responded that he could not.

Regarding A.M.C.'s employability, Mother stated that A.M.C. would have difficulty dealing with employers. Mother claimed A.M.C. does not make eye contact or initiate conversation with unfamiliar individuals, and Mother noted A.M.C. was unable to find a part-time job in the weeks leading up to the hearing:

Well, he has walked from building to building to building along Frankstown Road and Robinson Boulevard getting applications, applying at the building and has not gotten any calls back from the places that he personally walked in the door [and] signed the paperwork for possible work.

(*Id.* at 58-59).

Significantly, Mother presented a psychological report from the Office of Vocational Rehabilitation ("OVR"), evaluating the impact of A.M.C.'s autistic disorder on his vocational ability. The OVR report provided:

It's the opinion of this examiner that [A.M.C.'s] autistic disorder constitutes a **vocational handicap**. He may require extra assistance, support, in order to successfully complete any educational program. Services may include but not be limited to extended time for assignments and tests, specialized seating, frequent breaks and separate quiet room testing.

(*Id.* at 77) (emphasis added). Mother's counsel also presented A.M.C. as a witness, explaining, "It's considered to be a salutary thing to have the child

available where there are social deficiencies that are easily observable by any relatively schooled person.” (*Id.* at 85-86). Based upon the foregoing, the hearing officer found as follows:

While [A.M.C.] may be able to support himself at some point in time, possibly after he completes this program at the trade school, I find that the child is not capable of supporting himself at this time.

(**See** Hearing Summary at 2.)

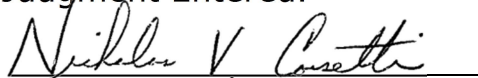
Upon consideration of Father’s exceptions, the trial court concluded:

In sum, the evidence and testimony was undisputed regarding the child’s mental diagnosis. Further, the evidence clearly reflects that the child’s mental condition renders him incapable of self-support. The Hearing Officer rendered a detailed analysis in support of her determination, which indicated, *inter alia*, that she considered the [individualized education program], Father’s...brief and the psychological report. [The trial court] finds no error with her determination.

(**See** Order and Opinion, dated 10/29/12, at 4.) In light of the applicable standard of review, relevant case law, and the evidence adduced at the hearing, we see no abuse of discretion in the court’s order for continued child support for A.M.C. **See *Kimock, supra*; *Style, supra***. Accordingly, we affirm.

Order affirmed.

Judgment Entered.



Deputy Prothonotary

J-A12024-13

Date: 6/5/2013