

[J-169-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

WHEAMEI JENQ CHEN,	:	No. 89 MAP 2004
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court dated December 19, 2003 at No.
	:	2387 EDA 2002 affirming the Order of the
v.	:	Court of Common Pleas of Northampton
	:	County, Civil Division dated June 28, 2002
	:	at No. 1982-C-3708
RICHARD CHEN,	:	
	:	840 A.2d 355 (Pa. Super. 2003)
Appellant	:	
	:	
THERESA CHEN, Intervenor	:	ARGUED: October 20, 2004
	:	

CONCURRING OPINION

MR. JUSTICE CASTILLE

DECIDED: March 20, 2006

I concur in the result since I believe that Theresa Chen (“Daughter”) was not an intended beneficiary of her parents’ property settlement agreement. I am in agreement with Chief Justice Cappy’s Concurring Opinion that the Majority unnecessarily relies on principles outside of contract law in disposing of the issue presented, see Maj. slip op. at 12-15, and considers extraneous issues unrelated to the limited issue upon which this Court granted review, see id. at 6 n.8; id. at 12 n.15; id. at 16 n.19. In my opinion, the issue presented in this case is easily resolved by a straightforward application of the two-part test presented in the Restatement (Second) of Contracts § 302, as adopted by this Court in Guy v. Liederbach, 459 A.2d 744 (Pa. 1983).

Like the Majority, I agree that Daughter satisfies the second prong of the § 302 test because Wheamei Jenq Chen (“Mother”), as promisee, intended to give Daughter the benefit of the promised performance, *i.e.*, the \$25.00 weekly child support payments from Richard Chen (“Father”). See Restatement (Second) of Contracts § 302(1)(b). I also agree that the central issue in this case concerns the first prong of the § 302 test -- whether recognition of a right to performance in Daughter is appropriate to effectuate the intention of the parties. See id. § 302(1). In actually resolving this issue, however, the Majority, rather than applying this prong to the underlying facts, needlessly considers competing policy considerations in concluding that, “strong public policy favors denying a child standing to seek the specific dollars one parent owes the other for the child’s generalized support pursuant to a separation agreement, absent special circumstances” Maj. slip. op. at 15.

I believe that, based on the unambiguous words of the property settlement agreement, Mother and Father clearly intended for Mother to receive the child support payments for the benefit of Daughter, not for Daughter to be the direct recipient of the payments. Accordingly, Daughter is not an intended beneficiary under § 302; rather, she is an incidental beneficiary. That is enough to decide this case and require reversal.