

[J-45-2001]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

BETH A. HUMPHREYS,	:	No. 51 W.D. Appeal Docket 2000
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered August 18, 1999 at No.
v.	:	1099PGH1998 affirming the Order of the
	:	Court of Common Pleas of Crawford
	:	County, Civil Division, entered May 20,
	:	1998 at No. DR1995-226.
WILLIAM DEROSS,	:	
	:	
Appellant	:	SUBMITTED: March 6, 2001
	:	
	:	
	:	

OPINION

MADAME JUSTICE NEWMAN

DECIDED: FEBRUARY 20, 2002

We granted allocatur in this case to address the issue of how the receipt of an inheritance affects child support obligations of a payor. For the reasons that follow, we reverse the Order of the Superior Court that affirmed a decision by the Court of Common Pleas of Crawford County (trial court), which held that an inheritance was income available for support.

FACTS AND PROCEDURAL HISTORY

Appellant, William DeRoss (DeRoss), is the father of Angela, born March 3, 1981. Angela lives with her adult sister, Beth A. Humphreys (Humphreys), who is the

Appellee in this matter. DeRoss receives \$858.00 in Workers' Compensation benefits, twenty percent of which he owes to his attorney. He also receives \$355.00 in social security disability payments per month. In 1997, DeRoss' mother died, leaving him as the sole beneficiary of her estate. On August 25, 1999, the estate sold his mother's house, and realized \$83,696.50, which it distributed to DeRoss. From the proceeds, DeRoss purchased a home and other items for his current family. On August 28, 1997, Humphreys filed a petition for modification of an existing support order asserting a change in DeRoss' circumstances because of the inheritance.¹

A hearing officer determined that the entire amount of the inheritance was income to DeRoss, and prorated it over the remaining period of Angela's minority. Thus, he imputed to DeRoss an additional \$4,525.00 per month in income.² Based on the Support Guidelines, DeRoss' obligation was \$723.45 per month minus \$108.00, which Social Security paid to Angela on behalf of DeRoss. On November 24, 1997, the trial court adopted the hearing officer's recommendation and set the support obligation at \$615.45 per month, retroactive to August 31, 1997. With an adjustment for arrears,

¹ We are unable to determine the amount of the original support order from the Reproduced Record.

² The Note to Pa.R.C.P. 1910.16-2 provides:

The trial court has discretion to determine the most appropriate method for imputing lump-sum awards as income for purposes of establishing or modifying the party's support obligation. These awards may be annualized or they may be averaged over a shorter or longer period of time depending on the circumstances of the case.

Because we determine that an inheritance is not income, we do not address the issue of whether the trial court abused its discretion in dividing the amount of the inheritance by the number of months remaining until Angela's eighteenth birthday.

the court ordered him to pay \$700.00 per month for Angela's support. DeRoss sought a de novo hearing, following which the trial court issued an Order on May 20, 1998, reducing the support obligation of DeRoss to \$609.45 per month due to an increase in the amount Angela was receiving from Social Security. Appellant filed an appeal to the Superior Court, which affirmed the Order of the trial court.

DISCUSSION

In reviewing child support matters, appellate courts apply the abuse of discretion standard. Ball v. Minnick, 648 A.2d 1192 (Pa. 1994). This Court has defined an abuse of discretion as follows:

Not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence of record, discretion is abused.

Blue v. Blue, 616 A.2d 628, 631 (Pa. 1994) citing In re: Women's Homeopathic Hospital of Philadelphia, 142 A.2d 292, 294 (Pa. 1958).

Our analysis begins with the definition of "income" set forth in Section 4302 of the Domestic Relations Code, 23 Pa.C.S. §§ 101 - 8215:

"Income." Includes compensation for services, including, but not limited to, wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; all forms of retirement; pensions; income from discharge of indebtedness; distributive share of partnership gross income; income in

respect of a decedent; income from an interest in an estate or trust; military retirement benefits; railroad employment retirement benefits; social security benefits; temporary and permanent disability benefits; workers' compensation; unemployment compensation; other entitlements to money or lump sum awards, without regard to source, including lottery winnings; income tax refunds; insurance compensation or settlements; awards or verdicts; and any form of payment due to and collectible by an individual regardless of source.

23 Pa. C.S. 4302.³

³ At the time Humphreys commenced the instant support action, Section 4302 provided the following definition of income:

"Income." Includes compensation for services, including, but not limited to, wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; all forms of retirement; pensions; income from discharge of indebtedness; distributive share of partnership gross income; income in respect of a decedent; income from an interest in an estate or trust; military retirement benefits; railroad employment retirement benefits; social security benefits; temporary and permanent disability benefits; workers' compensation; unemployment compensation; or other entitlements to money or lump sum awards, without regard to source.

On December 16, 1997, during the pendency of the litigation, the legislature expanded the definition of "income" to include bonuses and "lottery winnings, income tax refunds; insurance compensation or settlements; awards or verdicts; and any form of payment due to and collectible by an individual regardless of source." December 16, P.L. 549, No. 58, §1.1, effective January 1, 1998. The current definition of "income" may be applied to this case because retrospective laws are permitted "when they impair no contract and disturb no vested right, but only vary remedies, cure defects in proceedings otherwise fair and do not vary existing obligations contrary to their situation when entered into and when prosecuted." Brangs v. Brangs, 595 A.2d 115, 119 (Pa. Super. 1991). See also, Nicholson v. Combs, 703 A.2d 407 (Pa. 1997).

Citing its decision in Darby v. Darby, 686 A.2d 1346, 1348 (Pa. Super. 1996), allocatur denied, 698 A.2d 594 (Pa. 1997), the Superior Court noted that the statutory definition of “income” is not intended to be an all-inclusive list because it includes the phrase “including, but not limited to.” We disagree. The Section 4302 definition of “income” includes “compensation for services, including, but not limited to wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; income derived from business; gains derived from dealings in property” (emphasis added) and numerous other sources. The plain meaning of the statute provides that including, but not limited to refers solely to types of compensation for services. The statute does not provide that income includes, but is not limited to various types of compensation for services. Accordingly, in order to be included in the statutory definition of income, a resource must reasonably fit within one of the categories enumerated in Section 4302.

The inheritance DeRoss received from his mother’s estate does not meet the definition of “income in respect of a decedent” or “income from an interest in an estate or trust.”⁴ In light of the fact that the legislature specifically included “income from an interest in an estate or trust” but did not include the principal of an inheritance or trust, it is logical to assume that the legislature did not intend to include the principal. Strunack v. Ecker, 424 A.2d 1355 (Pa. Super. 1981), rev’d on other grounds, 436 A.2d 1187 (Pa. 1981) (where certain things are specified in a statute, omissions are exclusions);

⁴ The dissenting opinion asserts that the inheritance at issue in this matter falls within the definition of “income from an interest in an estate or trust.” We disagree, in recognition of the difference between income generated from an interest in an estate and the inheritance itself. We also disagree with the dissenting opinion’s conclusion that the house constituted the corpus of the inheritance, and that the proceeds from the sale should be deemed income. It was not DeRoss, but his mother’s estate that sold the house, thus converting it to cash. The corpus of the inheritance, which DeRoss received upon final distribution of the assets, was cash.

Commonwealth v. Charles, 411 A.2d 527 (Pa. Super. 1979). Considering that inheritance is one of the most common means by which wealth is transferred, it defies logic that the legislature would not have clearly provided for inheritance within the statutory definition of income if that were its intent. It is for this reason that we reject the determination by the Superior Court that the inheritance DeRoss received falls within “other entitlements to money or lump sum awards, without regard to source, including lottery winnings,”⁵ and the position espoused by the concurring opinion of the Superior Court, which stated that the monies at issue should be categorized as “any form of payment due to and collectible by an individual regardless of source.”⁶

The definition of “income” provided in Section 4302 must be understood in the context of the Support Guidelines. Section 4322(a) of the Domestic Relations Code provides:

Statewide Guideline. - Child and spousal support shall be awarded pursuant to a Statewide guideline as established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly. The guideline shall be based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support. In determining the reasonable needs of the child or spouse seeking support, the guideline shall place primary

⁵ In his concurrence, President Judge McEwen, now President Judge Emeritus, agrees with the majority that the inheritance received by DeRoss must be included as income within the definition set forth in Section 4302, but he does not state which provision of Section 4302 applies to this case.

⁶ The dissenting opinion asserts that the inheritance received by DeRoss can also be considered as an entitlement to money regardless of the source or as a form of payment due and collectible. As Judge Eakin, now Mr. Justice Eakin, noted in his dissenting opinion in the Superior Court, the legislature would not have used so general a term as “other entitlements to money” if it had intended to include so common a form of transfer of wealth as inheritance. We further agree with then Judge Eakin’s observation that term “payment” refers to compensation or discharge of a debt, and not to moneys one receives from a parent’s estate.

emphasis on the net incomes and earning capacities of the parties, with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention. The guideline so developed shall be reviewed at least once every four years.

23 Pa.C.S.A. §4322(a). The 1998 Amendment to the Support Guidelines, effective April 1999, specifically provides, "Monthly gross income is ordinarily based upon at least a six-month average of income. The term 'income' is defined by the support law, 23 Pa.C.S. §4302, and includes income from any source." Pa.R.C.P. 1910.16-2 (Support Guidelines. Calculation of Net Income).⁷ Therefore, it is appropriate to consider the purpose of the Support Guidelines, which is to ensure that "persons similarly situated shall be treated similarly." In the instant matter, DeRoss has actual income of \$1041.00 per month. He received \$82,500 from his mother's estate, which he immediately used to buy a house. Nevertheless, by dividing the amount of the inheritance by the number of months remaining until Angela reached her majority, the hearing officer determined, and the trial court agreed, that DeRoss had additional monthly income of \$4545.00 available for support. However, this ignores the economic reality that DeRoss is not similarly situated to a person with a monthly cash flow of \$5586.00. As stated in Ball v. Minnick, 648 A.2d 1192 (Pa. 1994):

there should be available for the needs of a child of separated parents the same proportion of parental income that would have been available for the needs of that child if the parents lived together. The guidelines assume that similarly situated parties, at least with respect to income

⁷ We recognize that the Support Guidelines did not contain a direct reference to the Section 4302 definition of income at the time of the support order at issue in the instant matter. However, the 1998 amendment, effective April 1, 1999, underscores the significant relationship between the statutory definition of income and the Support Guidelines.

levels, will have similar reasonable needs and expenses. The reasonable needs of the child as well as the reasonable expenses of the obligor are factored into the support guidelines. The support guideline amount is presumed to be (1) a payment which the obligor can reasonable afford and (2) a payment that is reasonably necessary to further the child's welfare.

Id. at 1197. Including an inheritance in income available for support does not reflect how families in which parents live together treat inheritances. In an intact family, the receipt of a lump sum is likely to be used for purchases, investments or savings, and not for meeting living expenses. Therefore, considering the entire inheritance as income available for support is contrary to the purposes of the support guidelines.

Our review of cases from other jurisdictions indicates that inheritances are generally not considered income when calculating child support. As noted by the Superior Court, many states include only the income generated from an inheritance in child support calculations. See, Halter v. Halter, 959 S.W.2d 761 (Ark. Ct. App. 1998) (although an inheritance is not income, any income that might have been generated by an inheritance could have been considered in determining the amount of support); Armstrong v. Armstrong, 831 P.2d 501, (Colo. Ct. App. 1992) (income that an inheritance could reasonably be expected to generate is a financial resource constituting gross income for the purposes of child support); Stula v. Stula, 1998 Conn. Super. LEXIS 2132 (Conn. Super. Ct. 1998) (return of income on inherited property must be included when calculating support); Connell v. Connell, 712 A.2d 1266 (N.J. Super. Ct. App. Div. 1998) (court could impute income even when inheritance was invested in non-income producing real estate); Gainey v. Gainey, 948 P.2d 865 (Wash. Ct. App. 1997) (interest earned on an inheritance is included in support calculation). Additional authority for this position can be found in Robinson v. Robinson, 961 P.2d

1000 (Alaska 1998) (although the principal amount of an inheritance should not be included as income, interest from the principal amount should be considered as income), Gal v. Gal, 937 S.W.2d 391 (Mo. Ct. App. 1997) (trial court considered mother's income from inheritance); and Lendman v. Lendman, 460 N.W. 2d 781 (Wis. Ct. App. 1990) (interest income from inheritance is includable in income for support).

In support of its position that a lump sum inheritance is income available for support, the Superior Court relied on decisions from other jurisdictions. It asserted that Crayton v. Crayton, 944 P.2d 487 (Alaska 1997), holds that a one-time gift from the payor's father was includable as income because the court was not dealing with indeterminate payments arriving in the future. However, Crayton states, in relevant part, "In cases . . . where the court must establish a child support obligation for the future, the inclusion as income of a one-time gift or an inheritance would unfairly inflate that obligation beyond the obligor's reliable future resources." Id. at 490. The Superior Court cited Goldberg v. Goldberg, 698 So.2d 63 (La. App. 4th Cir. 1997) as holding that a court considers an inheritance when determining alimony because it must examine the entire financial condition of the parties. While this is true, the Louisiana court did not hold that the inheritance was income. The Superior Court also relied on Ford v. Ford, 1998 Tenn. App. LEXIS 703 (Tenn. Ct. App. 1998) for the proposition that money received by inheritance may be considered income when it is regularly distributed and that a one-time distribution from a life-insurance trust received before the filing of a support petition is not income available for support. However, the distributions that Mr. Ford received from a trust fund established under his mother's will more closely resemble "income from an interest in an estate" than a lump sum inheritance. Furthermore, the Tennessee court's rationale for not considering the insurance

proceeds in Mr. Ford's income for child support purposes was the lack of evidence that he would receive additional insurance proceeds in the future. Accordingly, the decision in Ford militates against, rather than supports the decision of the Superior Court in the instant matter.

The sole case from another jurisdiction cited by the Superior Court that supports its position is Forsythe v. Forsythe, 41 Va. Cir. 82 (Cir. Ct. of Fairfax County, Va. 1996). In Forsythe, the court held that although an inheritance is not included in the statutory definition of "gross income" set forth in 20-108.2(C) of the Code of Virginia, the definition does include gifts. Because an inheritance is a testamentary gift, the court concluded that an inheritance, like a gift given during the donor's lifetime, is income. This analysis is of limited value to the interpretation of the relevant Pennsylvania statute because Section 4302 of the Domestic Relations Code does not include "gifts" in the definition of income.

In light of the fact that we can find no principled way of fitting the corpus of an inheritance into the statutory definition of "income", we hold that it may not be so included. However, this does not mean that an inheritance will not affect the amount of support to which a child may be entitled. The Support Guidelines provide that in deciding whether to deviate from the presumptive amount of support determined by the Guidelines, the trier of fact shall consider, inter alia, the assets of the parties and other relevant and appropriate factors, including the best interests of the children. Pa.R.C.P. 1910.16-5(b)(5),(9)(emphasis added).⁸ Rule 1910.16-5(a) requires the trier of fact to

⁸ Pa.R.C.P. 1910.16-5 was adopted December 8, 1998, effective April 1, 1999. It incorporates former Rule 1910.16-4, which was in effect at the time that the trial court issued its decision in the instant matter.

provide written reasons for, and findings of fact justifying the amount of the deviation. Therefore, where the fact finder determines that an inheritance affects a payor's financial obligations by making more income available for support, an upward deviation is appropriate.

Accordingly, although the corpus of an inheritance is not included in a payor's income available for support, it may be considered when adjusting a support obligation pursuant to Pa.R.C.P. 1910.16-5.

CONCLUSION

The Superior Court abused its discretion in determining that the inheritance that DeRoss received fits within the definition of income set forth in Section 4302 of the Domestic Relations Code. Accordingly, we reverse the judgment of the Superior Court and remand this matter to the trial court for proceedings consistent with this opinion.

Mr. Justice Eakin did not participate in the consideration or decision of this case.

Mr. Justice Castille files a dissenting opinion in which Mr. Justice Nigro joins.