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Auchmoody v. Cline

JANE L. AUCHMOODY, Plaintiff,
v. RICHARD L. CLINE, SR., Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Domestic Relations Section No. 1996-1940

Support Obligation Toward a Disabled Child Over the Age of Majority

1. There is a presumption in the law that the duty to support one's child ends when the child reaches 18 or graduates from high school, whichever occurs later. This presumption can be rebutted if the child becomes disabled by a mental or physical condition before reaching the age of majority which prevents him from being self-supporting.
2. The adult child has the burden of proving that he has a disability which prevents him from working at a supporting wage. The child must present evidence about his specific needs in order for the court to ascertain whether his income is at the level of a supporting wage. 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 child has the burden of proof in that regard.
3. Where an adult child with Asperger's Disorder had a constellation of mental, emotional and social disabilities which predated him reaching 18 and graduating from high school, the child proved he was unable to engage in profitable employment and that employment was not available at a supporting wage, even though he graduated from the Vo-Tech program in high school and had held a part-time landscaping job with the assistance of a job coach and received a social security payment.

Appearances:

Janice M. Hawbaker, Esquire

Jennifer S. Newman, Esquire

OPINION

Herman, P.J., February 9, 2009

Introduction

The parties are the parents of Richard L. Cline, Jr., who was born January 11, 1990 and graduated from Chambersburg Area High School in June of 2008. Before the court is father's de novo appeal from an Order entered by the Domestic Relations Conference Officer on June 23, 2008 which directed him to pay child support to mother in the amount of \$671.23 per month plus \$67.00 toward arrears. Mother alleges that Richard who continues to live with her is disabled and incapable of self-support. Father maintains that his son, who was 18 years old as of the time of the de novo appeal hearing and is now 19 years old, is in fact emancipated and his support obligation toward Richard should end. The court received proposed findings of fact and conclusions of law from counsel. This matter is ready for decision.

Evidence Presented at the Hearing

The court was presented with a substantial amount of credible testimony and documentary evidence which shows Richard has a long history of mental health, emotional and social problems. He has a constellation of diagnoses which include Attention Deficit Hyperactivity Disorder (ADHD, first diagnosed when he was 6), Asperger's Disorder, Anxiety/Mood Disorder, Post-Traumatic Stress Disorder, Pervasive Developmental Disorder, Oppositional Deviant Disorder, and Psychotic Disorder Not Otherwise Specified. This constellation of disorders has undermined Richard's academic record, his ability to create social and emotional bonds, and his vocational potential.

We note at the outset that father, who has had little if any contact with his son in approximately 6 years, did not attempt to directly rebut any of these diagnoses. Instead it is his contention that Richard and his mother failed to present sufficient evidence to carry their burden of proving Richard is incapable of self-support. We discuss the relevant legal authority on this point more in detail below.

Several mental health professionals have worked closely with Richard over the past few years and three of them testified at the hearing: Dr. Robert Skelly, a psychologist and family therapist involved with Richard and members of his household since 2006; Craig Houpt, a behavioral specialist who devised a treatment plan to help Richard improve his academic performance and social skills and to manage emotional stress; and David Sharer, a job coach/vocational specialist who worked closely with Richard to encourage him to stay on task, manage his time better and take direction from supervisors.

These professionals have had access to Richard's academic and medical records and evaluations dating back to 2003 when at age 13 he spent two months in a mental health facility. After being discharged, Richard received mental health and academic support services which continued through his high school years. He was hospitalized in 2006 at Brook Lane Health Services in Hagerstown, Maryland, where he was again diagnosed with ADHD and also Asperger's Disorder, Post-Traumatic Stress Disorder (PTSD) along with a tentative diagnosis of Bipolar Disorder. Richard required intensive behavioral rehabilitation services and therapeutic staff support services (TSS) from Manito Therapeutic Enrichment Center at school, at home and in the community during recent years. He takes four medicines prescribed by Dr. Lad of Summit Behavioral Health Services: Adderall (for ADHD), Lithobid (for bipolar disorder), and Clonazepam and Zoloft (both for anxiety). Recent evaluations address in detail his various conditions and how they affect his daily functioning, as well as his prospects for employment and independent living.^[1] The court also considered the testimony of Richard, Richard's mother, and three witnesses offered by father, including Richard's twin sister Ashley who until recently lived with Richard in their mother's household.

An Individualized Educational Plan (IEP) was developed for Richard during high school to provide him with more guidance in the school setting, improve his study habits and help him with certain academic subjects. He participated in the Franklin County Career and Vocational Center, graduating from that program on time and with good grades. By all accounts, Richard has an average IQ and is intelligent. His particular academic strengths lie in the areas of math and science and he likes to work with his hands on tasks such as carpentry, design drawing, and landscaping/horticulture. His reading and writing skills are not nearly as good.

Richard has a history of social problems which include disrespect for teachers and supervisors. Although he made moderate progress in his last year of high school with the intensive guidance of mental health service providers, he is often awkward and anxious, avoids group activities, has angry outbursts, belittles his classmates and has trouble making friends. He also has difficulty staying focused and fixates on particular topics or tasks. This undermines his ability to manage his time to complete his work and makes him frustrated. He needs a very structured environment in order to minimize confusion and anxiety. The evidence showed that these problems are common in persons diagnosed with Asperger's Disorder.

Richard's mental health problems have compromised his ability to maintain paid employment. He found his first part-time job in 2007 during high school at Cluggy's Amusement Center in Chambersburg where he helped with cleaning, maintenance, snow removal and preparing for special events. He was closely guided by co-workers or therapeutic support staff (TSS) who kept him focused on his assignments. Even then, he was not allowed to operate the cash register or have much contact with customers. Richard now works at Cluggy's 8-15 hours per week over three days and earns \$7.50 per hour. He admitted to the court that he cannot work more than 45-60 minutes at a time without guidance from a job coach or other behavioral aide. Richard's boss has been willing to accommodate his particular needs because he is making very slow but steady improvement in staying verbally and mentally focused, taking direction from supervisors and cooperating with co-workers and customers. Richard is not currently looking for additional employment.

Richard was employed for a brief time in the summer of 2008 at Kelsey Springs Landscaping doing weeding, mowing,

pruning, as well as cleaning and general maintenance. David Sharer was his job coach at that job. At one point, Richard may have worked as many as 54 hours a week and earned \$10 per hour. Those hours then decreased in part because of the downturn in the economy but mostly because Richard began to experience difficulty with his boss. The credible evidence showed that Richard started off as a hard worker with enthusiasm for learning about landscaping and horticulture. By the second week, however, he became bored and argumentative once the novelty wore off. He appeared to believe that entry level work such as trimming and general clean-up was beneath him, he could not stay on task and would not take direction. The credible evidence showed Richard would have been fired if he had not quit on his own. Several weeks later when he asked to be rehired, his boss told him he could not return unless he had a job coach or TSS worker with him.

Mr. Sharer credibly testified Richard is not a candidate for competitive employment and recommended he return to school until he is 21 years old.^[2] Although Richard is intelligent and found the Kelsey Springs job on his own, and was able to drive himself the short distance between the job and his mother's home, he is still very immature and needs more structure and discipline in managing his time. He cannot yet live on his own or become truly independent for at least another three years. Richard has an unrestricted driver's license and drives himself to Cluggy's. He was in a car accident in 2008 when he swerved to avoid an on-coming car and lost control. He became agitated and overwhelmed, and was threatening and uncooperative with police on the scene. He voluntarily does not drive more than one hour at a time.

Mr. Houpt, a behavioral specialist with Manito, has worked with Richard since August of 2006. Although Richard has made steady progress in reducing anxiety, angry outbursts and in daily functioning, the credible evidence showed he is not yet able to live independently. Even if he could be employed full-time, he would still periodically struggle with keeping a regular work schedule. His mother, who is his power-of-attorney, handles his money, helps him with personal hygiene, reminds him to take his medicines and must bring him to doctor appointments because he cannot consistently handle these matters on his own

The recommendation is for Richard to continue receiving behavioral health services such as TSS assistance for at least 10 hours per week in the home and the community as he moves toward more independent living. The availability of such services is quite limited now that Richard has graduated from high school, however. A possible alternative is placement into an adult group living facility such as the New Visions Group Homes where the goal would be to monitor his medicines, help him with socializing and the tasks of daily living and to improve his ability to engage in productive work.

The Social Security Administration began paying Richard benefits in the amount of \$329 per month in October 2008, retroactive to April 2008. His mother as representative payee established a bank account for him and his benefit check and paycheck from Cluggy's are deposited into that account. (Plaintiff's exhibits #9 and #10.) The money from the account pays for his cell phone and car insurance.

The credible evidence showed Richard does want to work and become independent. Many people with Asperger's syndrome are employed and this is good for their self-esteem. However, the more mental health conditions a person has, the more difficult it is to maintain employment and to live on their own. These individuals can work if the activities are solitary, rote and highly structured and do not involve multi-tasking or customer service. The recommendation is that Richard can pursue employment where he can be outside and work with his hands. Horticulture and landscaping appears to be of interest to him. No job coach is currently available to him, however, and the credible evidence showed that part-time rather than full-time work is the more realistic short-term goal for him for the next few years.

Mother has been self-employed as a daycare provider since 2003. Based on her 2007 federal tax return and previous support conferences, Domestic Relations calculated her earning capacity as \$12,293 based on her annual gross income of \$20,049 minus reasonable business expenses. (Plaintiff's exhibit #11.)

Father Richard Cline, Sr. is a union carpenter and was employed in June 2008 at the time of the support conference. He was laid off in August because of the slowing economy. As of the time of the court hearing, he was receiving unemployment compensation benefits from Virginia in the amount of \$378 per week. These benefits are set to run out in February 2009. (Defendant's exhibit #1.) Mr. Cline has been assured by his boss that he will be hired back as soon as possible. In the meantime, he is looking for other work through his union which encompasses six states and Washington, D.C. Father further testified that he has worked as an auto mechanic and did mechanical supervisory work for Letterkenny Army Depot several years ago before his most recent carpentry job. His gross income for the last three quarters of 2007 and the first quarter of 2008 was \$62,820.

Discussion

There is a presumption in the law that the duty to support one's child ends when the child reaches 18 or graduates from high school, whichever occurs later. This presumption can be rebutted if the child became disabled by a mental or physical condition before reaching the age of majority which prevents him from being self-supporting. 23 Pa.C.S.A. §4321(2) and (3); Hanson v. Hanson, 625 A.2d 1212 (Pa.Super. 1993). The adult child has the burden of proving he has a disability which prevents him from working at a supporting wage. Specifically, the child must present testimony concerning the precise nature of the disability and how that disability prevents him from working. The child must also present evidence about his specific needs in order for the court to ascertain whether his income is at the level of a supporting wage. *Id.* 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." Style v. Shaub, 955 A.2d 403 (Pa.Super. 2008) (citations omitted).

In Hanson, the parents had stipulated in a settlement agreement signed when they divorced that their daughter, then a minor, had certain handicaps which impaired her employment capabilities. The agreement anticipated the need for medical coverage but not monthly support payments beyond her becoming an adult. The trial court found the adult child was not emancipated. She had both mental and physical disabilities, lived with her mother and was able to earn part-time wages of only \$2,805 per year as a laundress. The trial court ordered father to pay \$45 per week support out of his \$1,233 monthly pension. The appellate court affirmed, holding there is a duty on a parent to support an adult child who has a physical or mental condition which exists at the time the child reaches the age of majority and which prevents the child from being self-supporting.

The facts of the instant case differ from those in Hanson in that Richard is of average intelligence in terms of his IQ and has no physical handicaps. He graduated on time from the Vo-Tech program and worked part-time while attending high school. Also, Mr. Cline and Ms. Auchmoody-Cline had no specific agreement whereby Mr. Cline ever acknowledged his son was handicapped and would need further financial support after becoming 18 and graduating from high school. Nevertheless, the employment which Richard has been able to maintain is not even half-time and he earns only slightly more than minimum wage. In addition, his prospects of obtaining full-time work or higher wages are not very good right now because he has no job coach or other behavioral specialist to assist him while he works. The credible evidence showed Richard to be immature and in need of continued counseling and medication monitoring. Although his condition has been slowly improving over the past few years, he will not be truly in a position to even attempt semi-independent living until he is at least 21.

Heitzman-Nolte v. Nolte, 837 A.2d 1182 (Pa.Super. 2003) involved an adult child who was blind since birth. The trial court found he was not self-supporting and this was affirmed on appeal. Although he was highly intelligent and attended college on grants and scholarships, he could not perform basic tasks of daily living without extensive training, practice and assistance. He also could not do the type of jobs ordinarily done on campus by students his age, such as wash dishes, serve food and general cleaning chores. His parents had agreed he was physically impaired. "The term 'unemployable' is intended to mean that the child is not capable of being self-supporting, whether on a temporary or permanent basis and whether or not such limitation is caused by mental or physical disabilities." *Id.* at 1185, citing Erie Office of Juvenile Probation v. Schroeck, 721 A.2d 799, 804 (Pa.Super. 1998). The blind adult child was then unemancipated, unemployable and remained in need of parental support.

Kotzbauer v. Kotzbauer, 937 A.2d 487 (Pa.Super. 2007) involved a 19-year-old adult child who, before age 18, had been diagnosed with epilepsy and underwent brain surgery. Before the surgery, she was a normal teenager with no learning disabilities or memory problems. After the surgery, however, she began having memory and concentration problems. Her grades declined substantially and she needed learning support in school. She attended a local community college but could take only the minimum number of credit hours. She continued to have seizures and though they were reasonably controlled with medicine, the medicine left her tired. She also suffered from severe and frequent migraines which left her debilitated. In addition to seizures and migraines, she had developed cavernous malformations on her brain, one of which leaked blood and required monitoring; future surgery was likely. She also suffered from mood swings, rapid heartbeat and depression.

The Kotzbauer child worked part-time at a retail business 16 hours a week for \$7.38 per hour and this money went to pay for car insurance, gas and her cell phone. She often had to miss work or leave early because of the migraines and fatigue. Although she had a valid driver's license, there were times when her mother had to pick her up because her symptoms, such as nausea, tunnel vision, numbness and confusion, were so severe she was too ill to drive. Working full-time was not possible and she continued to have medical insurance through her parents. The prescription drugs cost \$240 per month and there were substantial co-pay expenses for her frequent tests and doctor appointments. The appellate court noted that "emancipation is a question of fact to be determined by the circumstances presented in each case." *Id.* at 493 (citations omitted). The un rebutted testimony was that the adult child's medical conditions had a profound impact on

her daily life which prevented her from engaging in profitable employment or working at a supporting wage.

In Style v. Shaub, 955 A.2d 403 (Pa.Super. 2008), the trial court refused to award support for an adult child and this was affirmed on appeal. The child had a long history of psychiatric and medical disabilities including ADHD, Oppositional Deviant Disorder, depression and Atypical Autism. His reading and math skills were at the 8th and 9th grade levels and his IQ was 78. A vocational evaluator at the school attended by the child opined the child showed adequate oral communication skills, though he lacked initiative. He was easily distracted but this could be improved with ADHD medicine. He had worked as a dishwasher in a restaurant and could probably do custodial type of work. The child worked slowly but consistently and could do well with some supervision. Although in need of some vocational rehabilitation, the evaluator gave him a guarded diagnosis for successful immediate entry into the workplace.

When the handicap resulting in a child's inability to be self-sufficient already exists at the time the child reaches the age of majority, the presumption that the parent is not required to support the adult child is rebuttable by the child upon proof that there are conditions which make it impossible for him or her 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 child has the burden of proof as to whether he is physically and mentally unable to engage in profitable employment and whether employment is available to him at a supporting wage. 23 Pa.C.S.A. §4321(3).

The outcome in Style was fact-driven insofar as the mother and adult child simply failed under both prongs of the test to present sufficient evidence to rebut the presumption that father's duty of support was finished. The first prong is whether the child is physically and mentally able to engage in profitable employment. The evidence presented by the one with the burden (the child) was insufficient to meet the standard of proof. As to the second prong — whether he could work at a supporting wage — the child failed to present any evidence about what types of jobs he could do, how much he could earn, whether such jobs were available or if he could support himself through those jobs.

In arguing the instant case demands the same result as Style, father points to job coach David Sharer's inability to state with certainty that Richard, who is basically intelligent, hardworking and shows signs of improving on many fronts, cannot work more hours and therefore earn more money than he is currently earning at Cluggy's. Father also points out that mother and Richard presented very little testimony about Richard's needs aside from car insurance and his cell phone. It is father's position that Richard's social security payment and part-time income together should give him enough money for the needs he did describe while living in mother's home and therefore there is no need for father to continue paying support. We find father's position untenable and unrealistic in light of all the credible, uncontradicted evidence about the interrelated nature of Richard's difficulties, along with the facts of the cited cases

Preliminarily we note Richard's situation is the same as the adult children in all of the cited cases in that he has a disability or more precisely, a constellation of disabilities which pre-date him reaching age 18 and graduating from high school. Indeed, father does not directly dispute these long-documented diagnoses nor does he specifically deny his son still struggles with these problems. As indicated above, the second part of our inquiry is two-fold: (1) whether Richard is physically and mentally able to do profitable employment and (2) whether employment is available to him at a supporting wage. These inquiries are somewhat overlapping.

The evidence shows Richard is not physically handicapped. He appears to be basically healthy with no obvious physical malformations or maladies as was the situation in Hanson, Nolte and Kotzbauer. He has experience hunting (with supervision), fishing, driving (in a limited way), hiking and drawing, and likes to be outdoors. He does maintenance and clean-up at Cluggy's. While at Kelsey Springs, he developed an interest in landscaping and it appears he was in all respects physically capable of doing that type of work. Nevertheless, he has consistent difficulty with maintaining focus, controlling emotions like anger and anxiety, and in cooperating with others. Although he does earn income from his job at Cluggy's, these mental problems make him unable to engage in profitable employment and prevent him from working at a supporting wage at this time.

Richard has an average IQ and graduated on time from the Vo-Tech program in high school. He has an aptitude for spatial drawing and other hands-on activities and is creative and intelligent. With individualized practice and supervision, he can perform routine tasks and make progress toward work goals within structured settings. Still, he performs significantly under par when it comes to mental focus and discipline and this leads to a loss of emotional control by making him anxious and frustrated. He also alienates others by bragging and being bossy with his peers and co-workers and becomes argumentative with instructors. He has poor oral and written communication skills, he must be monitored to ensure he takes his medicines, and reacts poorly to stressful situations or to merely minor changes in routine. This interplay of mental/academic, emotional and social problems substantially limits his prospects for full-time employment.

The second prong of our inquiry is whether employment is available to Richard at a supporting wage. He now works 8-15 hours per week for \$7.50 per hour. He has not been offered full-time hours at Cluggy's. This is clearly not a supporting wage. Although he has a high school diploma, he has no computer skills or other technical skills and his mental and social problems make it unlikely that he will be able to acquire such skills in the near future. The only job he had aside from Cluggy's was at Kelsey Springs Landscaping and he was told he could not work there again unless he was accompanied by a job coach, a resource not currently available to him. According to the credible testimony of David Sharer who has almost 20 years experience as a job coach, Richard is not currently a candidate for competitive employment and will not be able to maintain a job which will pay him a self-supporting wage. No one familiar with Richard visualizes him doing work entailing extensive public contact, multi-tasking or sustained concentration without close guidance and supervision.

We find Richard and his mother have presented more than sufficient evidence to prove Richard has a disability which existed before he reached the age of 18. They have also presented more than sufficient evidence to rebut the presumption that Mr. Cline should now be relieved of the obligation to pay child support. Specifically, the evidence clearly showed Richard is unable to engage in profitable employment nor is he able to work at a supporting wage currently due to a constellation of mental health problems which are well-documented and uncontradicted. We believe as Richard matures and additional services become available that he could vastly improve his ability to be self-supportive. In light of this, the court would be willing to review this matter within 18 months or at any time there is a substantial change of circumstances.

ORDER OF COURT

February 9, 2009, the defendant having filed a de novo appeal from a Domestic Relations Order dated June 23, 2008 directing him to pay \$671.23 per month in child support plus \$67.00 toward arrears and upon review and consideration of the evidence presented at the hearing, written arguments of counsel and the law, the Court hereby dismisses the defendant's appeal and confirms the June 23, 2008 Order.

^[1]May 8, 2008 evaluation by Manito social worker Amy Hershey who had researched Richard's background in a February 4, 2008 report (Plaintiff's exhibit #3); September 10, 2008 psychological evaluation by Aaron Williams, M.S., of Hugh S. Smith, Ph.D. & Associates of Lancaster (Plaintiff's exhibit #2); Treatment Plan/report spanning March 2007 through June 2008 containing 12 behavior goals for Richard, progress notes, and an October 31, 2008 target date for achieving those goals (Plaintiff's exhibit #5).

^[2]Mr. Sharer's written recommendation appears in the record as plaintiff's exhibit #12.