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Summary of Edington v. Edington, 119 Nev. Adv. Rep. 62

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FAMILY LAW - DISABILITY

Summary

Appeal from a district court order denying a motion to modify a divorce decree and denying a motion for attorney fees.

Disposition/Outcome

The order was reversed and remanded for further proceedings insofar as it refused to apply the handicapped child support statute and denied the ex-wife's attorney fees. The order was affirmed insofar as it denied the ex-wife's request for an increase in the amount of child support.

Factual and Procedural History

Appellant and Respondent have one son, Matthew, born in March of 1983. They were divorced in 1995. The parties stipulated concerning child custody and support at the time of the divorce. The husband agreed to pay child support at the statutory maximum of \$500 per month until Matthew reached nineteen years of age or graduated from high school, whichever occurred first.

In October 2000, while Matthew was seventeen years old, the wife moved in the district court to increase the husband's child support obligation to \$600 per month, \$100 more than the statutory maximum at the time. She also moved the district court to extend the support obligation until June 2004, beyond both high school graduation and Matthew's nineteenth birthday because she claimed that Matthew was a special needs child who was "handicapped" within the meaning of NRS 125B.110(4)². According to the wife Matthew had hearing loss, attention deficit disorder, and was bipolar, which would make it so that Matthew would not be able to provide for himself after graduation. The mother also sought attorney's fees for being forced to move the district court to recover a portion of Matthew's unpaid medical expenses from her ex-husband.

The husband admitted that Matthew had moderate hearing loss and that he was diagnosed with attention deficit disorder, but that Matthew was basically a normal kid and had a productive life ahead of him. The husband also stepped forward on the eve of the hearing to reimburse his ex-wife for past medical expenses.

At a hearing on the motion Matthew's psychiatrist, Dr. Lynn, testified. When asked if Matthew could lead an independent life after high school graduation Dr. Lynn replied that he did not think that it would be possible. He was then asked if Matthew was "incapable of engaging in any substantial gainful activity," to which Dr. Lynn responded, "not in any but in many."

¹ By Z. Ryan Pahnke

² NRS 125B.110(4) states: "As used in this section, "handicapped" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

There was testimony about the wife's financial hardships because of many medical expenses. Matthew testified about the extent of the special assistance that he received at school as a disabled student including being allowed to use a calculator when others could not, being given more time to take tests, and being provided with a "note taker" to help him. Additional testimony revealed that Matthew volunteered for a summer program in which he participated in a job training course and supervised a group of mentally challenged children.

On November 2, 2001, the district court denied the wife's motion to modify the divorce decree and for attorney's fees. The district court also concluded that the handicapped child support statute did not apply because the evidence presented did not establish that Matthew was handicapped within the statutory definition.

Discussion

1. Nevada's handicapped child support statute.

Generally, court ordered support obligations cease when a child reaches eighteen years of age, or is no longer enrolled in high school.³ There is a presumption that once a child reaches the age of majority that the child is capable of self-support.⁴ NRS 125B.110 creates an exception to this general rule for handicapped children. In Nevada, special needs children must be supported by parents beyond the age of majority if the child cannot support himself because of a qualifying disability.

In order to decide if a child is handicapped under the statute the meaning of "handicapped" must be ascertained. The determination of "handicapped" involves examining two pieces of specific language from NRS 125B.110(4) itself: (1) the child must be unable to "engage in any substantial gainful activity;" and (2) the inability to engage in the activity must be "by reason of any medically determinable physical or mental impairment."

a. Substantial gainful activity.

The supreme court turned to legislative intent and public policy in order to construe the meaning of the statute because the statutory language is ambiguous. The court determined that the Nevada Legislature adopted the federal definition of "disabled" to define "handicapped" under Nevada's handicapped child support statute. When a federal statute is adopted by the state of Nevada, a presumption arises that the legislature knew and intended to adopt the statutory construction of the federal courts along with the language.⁵ Thus, because the handicapped child support statute's definition of the term "handicapped" is adopted from a federal statute, the Nevada Legislature intended to adopt the federal interpretation of the definition.

Under the CFR containing the federal interpretation of "disability," the term "substantial gainful activity" means an activity that results in significant economic gain and does not

³ NRS 125.510(9)(b) which states: "(9)Except where a contract providing otherwise has been executed pursuant to NRS 123.080, the obligation for care, education, maintenance and support of any minor child created by any order entered pursuant to this section ceases: (b) When the child reaches 18 years of age in he is no longer enrolled in high school, otherwise, when he reaches 19 years of age."

⁴ See generally Noralyn O. Harlow, Annotation, Postmajority Disability as Reviving Parental Duty to Support Child, 48 A.L.R. 4th 919, 923 (1986).

⁵ State, Bus. & Indus. V. Granite Constr., 118 Nev. 83, 88, 40 P.3d 423, 426 (2002)

generally include school attendance.⁶ Based on this federal definition, the court concluded that the same term in the Nevada handicapped child support statute means work activity resulting in the child being financially self-supporting. This interpretation is consistent with Nevada's public policy of ensuring that handicapped children have adequate ongoing financial support from their parents, if needed.

b. *Medically determinable physical or mental impairment.*

According to the court, this language is plain and unambiguous. The term "impairment" means a limitation resulting in any loss or abnormality of psychological, physiological, or anatomical structure or function.⁷ The court then held that when "impairment" is read in conjunction with its modifier, "medically determinable physical or mental," it means any physical or mental structural or functional limitation that can be determined by medically accepted diagnostic techniques.

In order for a court to hold that a child is "handicapped," a nexus must exist between "substantially gainful activity" and "medically determinable physical or mental impairment." Dr. Lynn was not supplied with any statutory definitions when he gave his testimony and thus his testimony did not focus on whether Matthew could be self-supporting. Additionally, neither the husband nor the wife testified with respect to Matthew's job prospects or his ability to live independently. Therefore, the record does not contain sufficient information about Matthew's ability to support himself, and if unable to support himself, whether a qualifying impairment was the cause.

2. *Increased child support and attorney fees.*

At the time the wife filed the motion in district court her ex-husband was already paying the statutory maximum under the parties' divorce agreement. The husband was also current with his child support obligations at the time of the hearing. Based on the above, the Supreme Court held that the district court did not abuse its discretion when it denied the motion to increase the amount of the child support payments by \$100 per month.

With regard to the attorney fees, a district court must award reasonable attorney fees in a proceeding to enforce a child support obligation unless the responsible parent would experience an undue hardship.⁸ There were no findings about the award of attorney fees by the district court, leading the supreme court to conclude that the district court abused its discretion in failing to either award the fees or expressly find that the fee award would be unduly burdensome on the husband.

⁶ 20 C.F.R. § 404.1505(a) (2003).

⁷ Taber's Cyclopedic Medical Dictionary 897 (Clayton L. Thomas ed., 16th ed. 1989).

⁸ NRS 125B.140(2)(c)(2) which states: "(2) Except as otherwise provided in subsection 3 and NRS 125B.012, 125B.142 and 125B.144: (c) The court shall determine and include in its order: (2) A reasonable attorney's fee for the proceeding, unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts."

Conclusion

A child is “handicapped” under NRS 125B.110 if he or she is incapable of being economically self-supporting because of a qualifying physical or mental impairment. Because the record was insufficiently developed regarding whether Matthew was capable of self-support and, if unable, whether any qualifying impairments were the cause, the Supreme Court remanded the matter for further proceedings. The Supreme Court further held that the district court erred by summarily denying the ex-wife’s request for attorney fees. However, the district court did not abuse its discretion by denying the ex-wife an increase in child support because the husband was already paying the statutory maximum and he was current with his child support obligations.