

Circuit Court for Baltimore County
Case No. 03-C-15-000979 OD

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 977

September Term, 2017

CRAIG SCHLEUNES

v.

ELSIE SCHLEUNES

Meredith,
Kehoe,
Arthur,
JJ.

Opinion by Kehoe, J.

Filed: December 18, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. *See* Md. Rule 1-104.

This is an appeal from a judgment of the Circuit Court for Baltimore County, the Honorable Sherrie R. Bailey presiding, declaring that Elsie Schleunes is a destitute adult child and ordering her father, Craig Schleunes, to pay monthly support to her as well as part of her extraordinary medical expenses.

Mr. Schleunes presents three issues, which we have reworded and reordered:

- (1) Did the trial court err in allowing Ms. Schleunes to present additional testimony and evidence after the case was held *sub curia*?
- (2) Did the trial court err in determining that Ms. Schleunes is a destitute adult child?
- (3) Did the trial court err in requiring Mr. Schleunes to pay his pro rata share of Ms. Schleunes's extraordinary medical expenses?

Our answer to each question is “no,” and we will affirm the judgment of the circuit court.

Background

The facts of this case are well known to the parties, and an extensive discussion of all of them is not necessary for us to resolve the contentions raised in this appeal. Ms. Schleunes, 24 years old at the time of trial, is the daughter of Mr. Schleunes and his former spouse, Catherine England. Ms. Schleunes was first diagnosed as having Crohn's disease when she was a preteen. Her symptoms were so severe that she was unable to continue in school. Attempts at home schooling were unsuccessful and Ms. Schleunes never graduated from high school or obtained a GED. Her work experience was limited to a three-month stint as a bagger in a grocery store. Her parents separated and were divorced in 2011. Ms.

Schleunes has resided with Ms. England since that time. Ms. Schleunes has very limited assets and no income. She has health care coverage through Medicare but, as of the time of trial, had not been able to obtain Social Security disability benefits. Other than occasional gifts, Mr. Schleunes has provided no support to his daughter after he and Ms. England were divorced.

In 2015, Ms. Schleunes filed a complaint against her parents seeking a judgment that she is a destitute adult child and seeking support from them.

The case was tried in two phases. Phase I occurred on May 3 and 4, 2016. Leyla Ghazi, M.D., a gastroenterologist who was Ms. Schleunes's treating physician, Ms. Schleunes, Ms. England, and Mr. Schleunes were the only witnesses. Considered in the light most favorable to her, Ms. Schleunes's testimony established that: (1) she had no income; (2) her health insurance (Medicare) did not cover all her medical expenses, in particular dental and ophthalmological care; (3) she was unable to work because of her Crohn's disease, periodic migraine headaches, and other conditions; and (4) she was dependent upon her mother for housing, day-to-day care, and financial support. Ms. England's testimony, while not as detailed, was to the same effect. Dr. Ghazi testified about Ms. Schleunes's medical history, and the limitations that her health conditions placed upon her in terms of finding employment. Mr. Schleunes's testimony pertained largely to financial matters. At the conclusion of the presentation of evidence, and after hearing argument from counsel, the trial court stated that it found that Ms. Schleunes "is an adult destitute child under . . . the

definition of the statute. She is, at the present time, not self-supporting and cannot be self-supporting.” The court did not, however, enter judgment. Instead, it announced that it would hold the case *sub curia* and directed Ms. England¹ and Ms. Schleunes:

to individually make application to [the] Maryland Division of Rehabilitation Services (“DORS”) and to thereafter fully cooperate with a vocational rehabilitation evaluation, which includes a psychological assessment, to be performed on each of them by DORS.

The court provided several reasons for its decision to require DORS evaluations. We will discuss these in part 2 of the opinion.

The DORS evaluations were a mixed bag. Miguel Rodriguez, Ph.D., a clinical neuropsychologist, prepared a psychological assessment. He concluded that Ms. Schleunes “clearly has the intellectual and academic skills necessary to obtain and maintain competitive gainful employment,” but that she had a history of treatment for a psychological condition. He recommended that she be referred for treatment of that condition. Leonard J. Hertzberg, M.D., a psychiatrist, also evaluated Ms. Schleunes. He found her largely self-reported medical history to be inconsistent with his impressions of her during their interview, and ultimately concluded that he was unable to provide an assessment without an independent medical examination. Jenny Garitalos, a professional vocational evaluator, concluded that Ms. Schleunes “has competitive academic scores,” but had yet to earn a high school diploma or GED. She recommended that Ms. Schleunes

¹ The DORS evaluations of Ms. England are not an issue in this appeal.

obtain full-time employment by taking the following sequential steps: complete a GED preparation course; obtain a GED; participate in formal training as an administrative office assistant; and then, after “obtaining a release to work from her physicians,” seek part-time and then full-time employment with the assistance of a job coach.

In Phase II of the trial, the court considered the DORS evaluations, as well as additional evidence adduced by the parties. Ms. Schleunes called Gabriel Newman, Ph.D., a licensed clinical neuropsychologist, who was admitted as an expert witness. Dr. Newman evaluated Ms. Schleunes in December of 2016, four months after Dr. Rodriguez’s evaluation. In summary, Dr. Newman testified that Dr. Rodriguez did not perform “personality or affective . . . testing or background collecting as I do.” In light of the additional information obtained by Dr. Newman, he concluded that Ms. Schleunes’s emotional problems would interfere with her ability to obtain employment until those issues were addressed.

Ms. Schleunes testified that, although her Crohn’s disease was in remission, she still frequently experienced symptoms of that disorder. Additionally, she testified that her migraines were much more frequent and more severe.

For his part, Mr. Schleunes called Cynthia Munro, Ph.D., an associate professor of psychiatry and neurology at the Johns Hopkins School of Medicine. She was admitted as an expert witness in neuropsychology. She did not evaluate Ms. Schleunes and restricted her testimony to a critique of Dr. Newman’s report. Viewed in the light most favorable to

Mr. Schleunes, Dr. Munro’s testimony cast doubt on the validity of several of Dr. Newman’s conclusions.

After the close of the evidence in Phase II, the court entered a judgment that Ms. Schleunes is a destitute adult child and that her parents are liable for her care. Applying the child support guidelines to the undisputed evidence as to Ms. England’s and Mr. Schleunes’s incomes, the court ordered Mr. Schleunes to pay \$420 per month for Ms. Schleunes’s support, and further ordered that Ms. England was responsible for 28%, and Mr. Schleunes 72%, of Ms. Schleunes’s extraordinary medical expenses. Mr. Schleunes filed a motion to alter or amend the judgment, which the court granted in part, in order to clarify that Ms. England is responsible for Ms. Schleunes’s habitation, transportation and day-to-day care.

Analysis

1. The Destitute Adult Child under Maryland Law.

Parents who are financially able to do so are required to support their destitute adult children. Md. Code, Family Law Article (“F.L.”) § 13-102(a).² A destitute adult child is one who: “(1) has no means of subsistence; and (2) cannot be self-supporting, due to mental or physical infirmity.” F.L. § 13-101(a). This Court has broadened the first prong of F.L. §

² F.L. § 13-102. Duty to support destitute adult child:

(a) If a destitute adult child is in this State and has a parent who has or is able to earn sufficient means, the parent may not neglect or refuse to provide the destitute adult child with food, shelter, care, and clothing.

13-101 to “include not only individuals with no means of subsistence, but also those with expenses that exceed their resources.” *Fitzzaland v. Zahn*, 218 Md. App. 312, 323 (2014). Before the court will require parents to support a destitute adult child, the record must show that the child’s disabilities “pervade his day-to-day life and are the cause of his inability to be self-supporting.” *Id.* at 325. A court may not take into consideration a child’s capability to obtain *future* resources or employment. *Fitzzaland*, 218 Md. App. at 323. “The court can examine the child’s available assets, his eligibility for disability or other assistance, and his earning capacity and weigh them against what he reasonably needs to provide a proper subsistence level.” *Presley v. Presley*, 65 Md. App. 265, 278 (1985). In deciding whether parents should pay support for an adult child, courts typically “weigh the child’s total reasonable living expenses against her existing available resources.” *Cutts v. Trippe*, 208 Md. App. 696, 708 (2012). However, if the court finds “that the adult child has no financial resources, there is no need for the trial judge to go any further and weigh the adult child’s financial resources against her expenses, because there were simply no financial resources to consider.” *Fitzzaland*, 218 Md. App. 325. Once a court has determined that an adult child is destitute, it shall order support based upon the Child Support Guidelines set out in F.L. §§ 12-201–204. *Cutts*, 208 Md. App. at 708.

2. The trial court did not abuse its discretion when it held the case *sub curia* to allow for further evidence as to Ms. Schleunes’s and Ms. England’s earning capacities.

Mr. Schleunes argues that the trial court erred in holding the case *sub curia* and in allowing additional testimony and evidence. He points to the fact that, after hearing closing arguments in Phase I, the trial court stated:

Let me make it abundantly clear. I am not going to order this gentleman to pay an indefinite amount of child support without some further information on why [Ms. Schleunes and Ms. England] aren’t working[.]³

Treating this statement as an indication that the court concluded that Ms. Schleunes failed to meet her burden of production and persuasion, Mr. Schleunes argues:

Even assuming *arguendo* that the Court had the power to order the DORS evaluations, it was legally incorrect and an abuse of discretion to receive new evidence outside of those court-ordered evaluations. By allowing the additional evidence of Dr. Newman and other witnesses, the Appellee was, in actuality, offered a “second bite at the apple” giving her an opportunity to fill in the deficiencies in her case where she had failed to meet her burden of proof in the first instance.

Thus, according to Mr. Schleunes, allowing testimony from Dr. Newman was both legally incorrect and an abuse of discretion because the case and all testimony and evidence were closed for a year. This argument is not persuasive.

³ The parties stipulated that Ms. England had a monthly income of \$2,500. The source of this income is unclear from the material in the record extract.

First, Mr. Schleunes takes the court’s expression of its reservations about ordering support somewhat out of context. A few minutes prior to the above-quoted portion of the transcript, the court stated (emphasis added):

I don’t doubt whatsoever, it’s been well-established, that Ms. Schleunes does have some mental/emotional and physical infirmities. It’s been well-established. The question is then to — to narrow it directly whether or not she can be self-supporting. I have concerns about whether or not she can become fully self-supporting under the current circumstances. **And I do find that she is an adult destitute child under . . . the definition of the statute. She is, at the present time, not self-supporting and cannot be self-supporting.** She would, at the very least, need further training and evaluation[.]

Now here’s the thing. I’m not satisfied that I have sufficient information to determine the level to which Ms. Schleunes could or could not become self-supporting at the present time. I do believe a vocational evaluation recommendations are needed in this matter.

* * *

And my concern is this. . . . [U]ltimately, generally speaking, there comes a point in time where young people are on their own whether they were that’s due to age or infirmity of the parent or loss of the parent or parents. It’s going to come a point in time where Ms. Schleunes is going to need to learn to support herself and need to learn how to get in — how to put in place . . . the support that she needs to be able to function as an adult. It seems as if she’s taking some steps towards that by moving forward with these proceedings, but I think more needs to be done here.

Thus, the premise of Mr. Schleunes’s argument, namely, that the trial court implicitly concluded that Ms. Schleunes failed to meet her burden of proof in Phase I, is incorrect.

Second, in pertinent part, Md. Rule 2-508(a) states that at either the request of a party or upon its own initiative, “a court may continue a trial or other proceeding as justice may require.” The trial court has discretion to grant a continuance. *Serio v. Baystate Properties*,

LLC, 209 Md. App. 545, 554 (2013). Appellate courts will interfere with a court’s exercise of that discretion only in “exceptional instances where there was prejudicial error.” *Id.* (quoting *Thanos v. Mitchell*, 220 Md. 389, 392 (1959)).

In the present case, it is clear that the trial court’s motivation in requiring DORS evaluations for Ms. Schleunes and Ms. England was to assure itself that Ms. Schleunes was given an opportunity to address her physical and psychological problems in a way that would lead to full-time, gainful employment. We see no error in this perfectly reasonable approach. There was certainly no prejudice to Mr. Schleunes as the trial court had already found that Ms. Schleunes was a destitute adult child. The court’s order holding the case *sub curia* pending the DORS evaluations did not foreclose the introduction of additional evidence and both parties obtained expert witnesses to testify in the second proceeding. A trial court abuses its discretion when it makes a ruling that is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *North v. North*, 102 Md. App. 1, 14 (1994). Mr. Schleunes has not convinced us that the court’s decision crossed that threshold.

3. The trial court did not err in finding that Ms. Schleunes was a destitute adult child.

Mr. Schleunes asserts that the trial court erred when it concluded that Ms. Schleunes was a destitute adult child. We review the circuit court’s decision for clear error. *Fitzzaland v. Zahn*, 218 Md. App. 312, 322 (2014). “Under the clearly erroneous standard, we look at the record in the light most favorable to the prevailing party, and if there is any competent,

material evidence to support the circuit court’s findings of fact, we cannot hold that those findings are clearly erroneous.” *Id.* (citations omitted). Mr. Schleunes presents two arguments as to why the circuit court erred in finding Ms. Schleunes to be a destitute adult child. We will address them separately.

First, he asserts that he has a significant constitutional liberty interest in not being bound to support his destitute adult child. His authority for this proposition is *Troxel v. Granville*, 530 U.S. 57, 65 (2000). He argues that one of its holdings, specifically, that parents have a fundamental liberty interest in the care, custody and control of their minor children, also means that a parent is free from any obligation to support a destitute adult child. Without belaboring the issue, *Troxel* doesn’t come close to addressing the scope of a parent’s liberty interest in any aspect of an adult child’s life, much less a parent’s hypothetical right not to support a destitute adult child. Mr. Schleunes points to no other authority to support his contention, and we will not pursue the matter further.

Second, he distinguishes the present case from *Fitzzaland*, *Stern*, *Cutts*, and other reported decisions by arguing that, in contrast to those cases, “there was no competent material evidence at trial to support a finding that [Ms. Schleunes’s] inability to be self-supporting was due to her alleged mental or physical infirmity.” In our view, this is not a correct characterization of the evidence.

Ms. Schleunes testified that she was unable to work because of her medical and psychological conditions. Dr. Ghazi testified as to the severity of Ms. Schleunes’s

symptoms and stated that between 10% and 15% of individuals suffering from Crohn's disease are unable to work. Ms. Jenny Garitalos, the DORS professional vocational evaluator, concluded that Ms. Schleunes should enter the workforce only after obtaining a release from her physicians. None of this was challenged in any meaningful way by Mr. Schleunes at trial. This evidence was more than sufficient to provide a basis for the trial court's finding that Ms. Schleunes was a destitute adult child. It is the role of the trial court to assess the probative weight of the testimony of witnesses and we will not second-guess the trial court.

4. The trial court properly exercised its discretion in awarding extraordinary medical expenses.

Mr. Schleunes asserts that the trial court erred in its inclusion of "extraordinary medical expenses" in establishing the child support obligation for Ms. Schleunes from each of her parents. Although Mr. Schleunes agrees that Maryland child support guidelines should apply in cases where a trial court has properly determined an individual to be a destitute adult child pursuant to F.L. § 13-103, he argues that to further order the parents to pay proportionate amounts of "extraordinary medical expenses" is erroneous and problematic.

Mr. Schleunes claims that, unlike a traditional application of the child support guidelines where at least one parent has custody of a minor child and can make major decisions involving the child's medical treatment, such is not the case here. Mr. Schleunes believes the trial court's order contains no mechanism of checks and balances to ensure that Ms. Schleunes needs the treatment she receives, researches treatment alternatives, or

explores applicable governmental or other health insurance benefits to secure the best pricing. He claims that the trial judge’s order created what is essentially a “blank check” for Ms. Schleunes to pursue whatever course of action she in her sole discretion deems appropriate. Having been ordered to pay a portion of Ms. Schleunes’s extraordinary medical expenses, Mr. Schleunes is provided no opportunity or forum to object to the necessity, scope, cost, and nature of the treatments and related expenses. Mr. Schleunes believes that the trial court’s order was an abuse of discretion. We do not find Mr. Schleunes’s argument to be convincing.

“[A] parent has no greater or different duty to provide medical care for an adult child than he or she does to provide general support. The child’s medical needs are part of his or her general needs.” *Presley*, 65 Md. App. at 278. It is reasonable for a court to simultaneously find that a destitute adult child could substantially support himself or herself and “maintain a decent standard of living without assistance” concerning “non-medical expenses,” while being unable to afford any part of their medical expenses without parental aid. *Id.* In such a circumstance based on the evidence in the record, a court can justify an order of parental support, including extraordinary medical expenses under F.L. § 12-204(h)(1)(2).⁴ *See id.*

⁴ F.L. § 12-204 states in pertinent part:

(h)(1) Any actual cost of providing health insurance coverage for a child for whom the parents are jointly and severally responsible shall be added to the

In *Smith v. Smith*, the Court of Appeals determined that the clear intent of the destitute adult child statute was “to place failure to support an incapacitated child on equal footing with failure to support a minor child.” 227 Md. 355, 360 (1962). “Equal footing” includes providing procedures and remedies to enforce the rights of a destitute adult child, such as using the child support guidelines to determine the amount a parent must pay to support a destitute adult child. *See Stern*, 58 Md. App. at 295; *see also Goshorn v. Goshorn*, 154 Md. App. 194, 218-19 (2003). In an appeal of a child support award, the appellate court reviews the trial court’s award for abuse of discretion. *See Reynolds v. Reynolds*, 216 Md. App. 205, 218-19 (2014).

There is no evidence whatsoever in the record to support the notion that Ms. Schleunes will abuse her father’s obligation to pay a portion of her uninsured medical care. The concerns identified at trial related to eye and dental care. In the present case, Mr. Schleunes does not explain how the purported opportunities for methods of manipulation (e.g., receiving unnecessary treatment, failing to secure third-party payor benefits, or ignoring the best pricing) are unique to a destitute adult child compared to a minor child. In any event, by definition, “extraordinary medical expenses” must be reasonable and necessary

basic child support obligation and shall be divided by the parents in proportion to their adjusted actual incomes.

(2) Any extraordinary medical expenses incurred on behalf of a child shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted actual incomes.

costs under F.L. § 12-201(g).⁵ If Ms. Schleunes incurs unreasonable or unnecessary medical expenses, then Mr. Schleunes may take appropriate action in the trial court. He may contest the exact monetary amount of the child support award itself. This is the same avenue parents have available to object to payment of extraordinary medical expenses of minor children.

As a destitute adult child, Ms. Schleunes has the same right to adequate medical care as does a minor child, and the trial court did not err in requiring Mr. Schleunes to pay his pro rata share of his daughter’s extraordinary medical expenses.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE COUNTY IS
AFFIRMED. APPELLANT TO PAY
COSTS.**

⁵ The statute states:

(1) “Extraordinary medical expenses” means uninsured expenses over \$100 for a single illness or condition.

(2) “Extraordinary medical expenses” includes uninsured, reasonable, and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, treatment for any chronic health problem, and professional counseling or psychiatric therapy for diagnosed mental disorders.