

Castle v. Castle

15 Ohio St. 3d 279 (Ohio 1984) · 473 N.E.2d 803
Decided Dec 31, 1984

Nos. 83-1845 and 84-386

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Domestic relations — Parent and child — Duty to support minor children continues beyond age of majority, when — Children suffer from mental or physical disabilities which existed before age of majority.

O.Jur 3d Family Law §§ 608, 616, 1026.

1. The common-law duty imposed on parents to support their minor children may be found by a court of domestic relations having jurisdiction of the matter, to continue beyond the age of majority if the children are unable to support themselves because of mental or physical disabilities which existed before attaining the age of majority.

2. The domestic relations court retains jurisdiction over parties in a divorce, dissolution or separation proceeding to continue or to modify support payments for a mentally or physically disabled child, who was so disabled before he or she attained the statutory age of majority, as if the child were still an infant.

CERTIFIED by the Court of Appeals for Montgomery County.

APPEAL from the Court of Appeals for Hamilton County.

The two cases involved herein concern the question of whether parents have a continuing duty to support a mentally retarded or severely

handicapped child after the child has reached the age of majority, and are therefore being decided together.

In case No. 83-1845, Donald J. Castle, appellant, and Carlarita Castle, appellee, were divorced in 1977. The custody of Julie M. Castle, their daughter, was awarded to appellee. Julie is severely retarded, physically dependent and incapable of any gainful employment. At the time of the divorce Julie was nearly fourteen years old. The court issued a temporary order requiring appellant to provide \$22.50 per week child support to appellee for the care of Julie. In May 1977, Julie began receiving supplemental Social Security income of approximately \$127 per month.

On October 7, 1977, appellant was permitted by court order to discontinue child support payments for Julie due to her receipt of Social Security income benefits. In May 1979, the Social Security Administration reviewed Carlarita Castle's resources and assets and determined that Julie Castle had been overpaid by the Social Security Administration a total of \$2,751 between May 1977 and May 1979. Social Security income benefits payments were ordered discontinued from
280 May 1979 through December 17, 1979. *280

As a result of a change in circumstances the trial court ordered appellant to begin making child support payments for Julie in the amount of \$40 per week beginning December 17, 1979. Appellant made such payments until May 11,

1981. At that time appellant discontinued the payments because Julie had reached the age of eighteen.

On December 3, 1981, appellant filed a motion with the court requesting the termination of his obligation to provide support for Julie Castle due to the fact that she had reached the statutory age of majority.¹ Appellee filed a motion contra the motion to terminate on January 26, 1982, requesting, among other things, an increase in support payments for Julie.

¹ R.C. 3109.01 provides:

"All persons of the age of eighteen years or more, who are under no legal disability, are capable of contracting and are of full age for all purposes."

Evidence presented before a referee revealed that Julie has a mental age of five years, is attending a special school on a full-time basis and will never be able to live by herself due to the special care she requires. The referee also found that Julie has been receiving Social Security income in the amount of \$126 per month since November 1981.

Testimony also revealed that appellant was a general foreman at Dayton Reliable Tool receiving approximately \$45,000 in income for 1981. Appellee, on the other hand, showed no significant income for 1981 outside her receipt of alimony payments from appellant and Social Security income received in Julie's name. Appellee has been responsible for Julie's care and support on her own since May 1981.

The referee in his February 25, 1982 report and recommendations to the court urged that support payments for Julie be terminated due to her age and the receipt of Social Security income. On October 29, 1982, the trial court granted appellant's motion for termination of support.

Upon appeal, the court of appeals reversed the trial court, finding a common-law duty for the continued support of mentally retarded children by their parents after the age of majority. The court,

finding its judgment to be in conflict with the judgment of the Court of Appeals for Cuyahoga County in *Beilstein v. Beilstein* (1945), 43 Ohio Law Abs. 10, certified the record of the case to this court for review and final determination.

In case No. 84-386, the Court of Appeals for Hamilton County reached a similar conclusion when it reversed the trial court's judgment finding that no duty existed for Patrick J. Mullanney, appellant, to continue to support his handicapped daughter, Kelly.

The Mullanneys were divorced in 1968. The divorce decree awarded custody of the two children to appellee, Gail J. Mullanney, and ordered appellant to pay \$600 per month in child support. Patrick Mullanney filed a motion on August 27, 1982 to terminate support payments for Kelly.

The referee's report states that "Kelly suffers from a birth defect *281 known as hydrocephalus which has resulted in significant physical handicaps. Hydrocephalus is a defect of the spine."

This condition makes it difficult for Kelly to keep her balance and to coordinate her movements. She had difficulty in remembering the time of day or the day of the week. She has double vision and limited use of her right hand. She cannot use her two hands independently and has no depth perception.

The record reveals that Kelly is presently attending Wright State University. Wright State has facilities designated to accommodate handicapped individuals. Kelly was at the time of filing the referee's report in her fifth quarter at Wright State University and was still a freshman. She had a 1.4 point grade average. Kelly attempted to work as a waitress but was unable to because of her lack of coordination. The record does not specifically find that she was unable to support herself because of her physical disabilities.

In the report of the referee filed October 22, 1982, it was noted that Ohio law has not recognized a continuing duty to support post-majority disabled children. Therefore, it was recommended support for Kelly be terminated. This report was approved and adopted by the Domestic Relations Division of the Court of Common Pleas of Hamilton County on November 2, 1982.

The cause is now before this court pursuant to the allowance of a motion to certify the record.

Messrs. Tracy Tracy and Mr. Louis E. Tracy, for appellant in case No. 83-1845.

Messrs. Meily, Mues Kovich and Mr. Robert L. Mues, for appellee in case No. 83-1845.

Messrs. Wood Lamping and Mr. Stephen Cohen, for appellant in case No. 84-386.

Messrs. Frost Jacobs, Mr. Michael L. Cioffi and Mr. Pierce E. Cunningham, for appellee in case No. 84-386.

CLIFFORD F. BROWN, J.

These causes before the court present a common-law question of first impression in the state of Ohio. Both appellants argue that the domestic relations division of the court of common pleas retains no jurisdiction over their cases to order any modification or continuation of child support payments after their children reach the statutory age of majority. These cases are not easily decided. If there does exist a common-law duty to support a disabled child, who was so disabled before he or she attained the statutory age of majority, then the domestic relations court retains jurisdiction over parties in a divorce, dissolution, or separation proceeding to modify the support payments for that child as if the child were still an infant.

Increasingly, courts have recognized a legal duty on the part of parents to provide support to a child ²⁸² with some infirmity of body or mind ^{*282} who is unable to support himself or herself after reaching

the age of majority. For compelling moral and public policy reasons this court concurs with the enlightened path other states have followed in finding such a duty.²

² See *Breuer v. Dowden* (1925), 207 Ky. 12, 268 S.W. 541; *Murrah v. Bailes* (1951), 255 Ala. 178, 50 So.2d 735; *Davis v. Davis* (1954), 246 Iowa 262, 67 N.W.2d 566; *State, ex rel. Kramer, v. Carroll* (Mo. 1958), 309 S.W.2d 654; *Kruvant v. Kruvant* (1968), 100 N.J. Super. 107, 241 A.2d 259; *Dehm v. Dehm* (Utah 1976), 545 P.2d 525; see, also, extensive citations in Annotation (1948), 1 A.L.R. 2d 910; 39 American Jurisprudence (1942) 710, Parent and Child, Section 69; 67A Corpus Juris Secundum (1978) 195, Parent and Child, Section 15.

Ordinarily, in the absence of a statutory provision to the contrary, the duty of the parent to support a child ends when the child reaches the age of majority. The law regards a normal child as capable of providing his or her own support at the age of eighteen. See R.C. 3109.01. An exception to this general rule has been recognized by a majority of states which have reviewed the question, as follows:

"* * * [But] where a child is of weak body or mind, unable to care for itself after coming of age, and remains unmarried and in the parent's home, it has been held that the parental rights and duties remain practically unchanged, and that the parent's duty to support the child continues as before. The obligation to support such a child ceases only when the necessity for the support ceases." 39 American Jurisprudence (1942) 710, Parent and Child, Section 69.

Numerous jurisdictions have adopted or acknowledged this exception to parental support duties. See the citations of thirty-two cases from seventeen different jurisdictions in Annotation (1948), 1 A.L.R. 2d 910, 921.

In *Davis v. Davis* (1954), 246 Iowa 262, 266, 67 N.W.2d 566, the Iowa Supreme Court stated: "* * * [G]enerally at common law a parent's obligation to support his child ends when the latter becomes of age. But there is an important, widely recognized exception to this rule where the child because of weak body or mind is unable to care for itself upon attaining majority. The obligation to support such a child ceases only when the necessity for the support ceases." The reasoning of the Iowa Supreme Court is compelling. The duty of parents to provide for the maintenance of their children has been described by Blackstone as a "principle of [the] natural law," "an obligation * * * laid on them not only by nature herself, but by their own proper act, in bringing them into the world: * * * By begetting them, therefore, they have entered into a voluntary obligation to endeavor, as far as in them lies, that the life which they have bestowed shall be supported and preserved." 1 Blackstone's Commentaries (Lewis Ed. 1897) 419.

In 2 Kent's Commentaries on American Law (1884) 190, it is stated: "The wants and weaknesses of children render it necessary that some person maintains them, and the voice of nature has pointed out the parent as ²⁸³ the most fit and proper person. The laws and customs of all nations have enforced this plain precept of universal law. * * * The obligation on the part of the parent to maintain the child continues until the latter is in a condition to provide for its own maintenance * * *."

In the case of mentally or physically disabled children there must exist a duty both morally and legally on parents to support and maintain such children. The common-law duty imposed on parents to support their minor children may be found by a court of domestic relations having jurisdiction of the matter to continue beyond the age of majority if the children are unable to support themselves because of mental or physical disabilities which existed before attaining the age of majority.

It should be stressed that while this court affirms the result reached by the appellate court in the *Mullanney* case, that a domestic relations court has jurisdiction to order a noncustodial parent to continue to provide support after the age of majority if the child is physically or mentally disabled to the extent of being incapable of maintaining himself or herself, this case must nonetheless be remanded to the trial court for a factual determination as to whether Kelly is so disabled.

Therefore, the judgments of the courts of appeal are affirmed and both causes are remanded to the trial court for further proceedings consistent with this opinion.

Judgments affirmed.

W. BROWN, SWEENEY, LOCHER, HOLMES and J.P. CELEBREZZE, JJ., concur.

CELEBREZZE, C.J., dissents.

CELEBREZZE, C.J., dissenting.

I neither fathom nor condone, from a moral perspective, the termination of parental support to a disabled child simply upon the child's reaching the statutory age of majority. Nevertheless, as repugnant and reprehensible as these terminations of support are, I believe that any extension of the parental duty to support minor children into adulthood and beyond must emanate from the General Assembly, inasmuch as it is within their province to define the scope of the parental duty of support in the first instance. Some would say upon an initial reading of the pertinent sections of the Revised Code that they already have.

I, therefore, reluctantly dissent. The majority here churns out a majestic contradiction bordering on stupefaction, for in a confusion of terms of grave consequence the "majority" becomes a "minority."

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