2011 IL App (5th) 110007-U

NO. 5-11-0007

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
DEBRA L. DIAL, n/k/a DEBRA L. PERKINS,	)	Williamson County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 99-D-443
	)	
BRIAN M. DIAL,	)	Honorable
	)	Brian D. Lewis,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE DONOVAN delivered the judgment of the court.
Presiding Justice Chapman and Justice Welch concurred in the judgment.

O R D E R

¶ 1 *Held*: While the trial court correctly found that appellant had a continuing obligation to support his physically disabled son, the court failed to consider the correct statutory factors in determining support, and as a result the case is remanded for a new hearing.

¶ 2 The marriage of Debra L. Dial, appellee, and Brian M. Dial, appellant, was dissolved on December 3, 1999, in Williamson County, Illinois. Custody of the parties' minor children, Amber and Corey, both born on November 28, 1990, was awarded to Debra. Under the parties' property settlement agreement, as incorporated in the judgment, Brian was to pay the sum of $500 per month biweekly in child support for the parties' minor children until they reached the age of 18 years or graduated from high school. The agreement further stated that Brian was to provide child support for Corey until "he is mentally and physically able to leave the home."

¶ 3 On September 17, 2009, Brian filed a petition to modify the judgment seeking to terminate child support because both children of the marriage had attained the age of majority and were no longer attending high school. Debra answered that Corey was not mentally and physically able to leave her home because of his cerebral palsy. She also filed a petition to modify child support alleging a substantial change of circumstances in that Brian was earning substantially more money.

¶ 4 On September 16, 2010, the parties presented to the court stipulated facts. As stated by Brian's attorney:

> "Here are the facts. First, the minor child of the parties–I'm sorry–the child of the parties who is no longer a minor, Cory [*sic*] Dial, suffers from cerebral palsy and is disabled. As a result, he remains and is expected to remain disabled the rest of his life. Cory [*sic*] Dial lives with his mother, Debra Dial, with the intention that he will continue to reside with his mother. Next, there are, without enumerating them, state-supported facilities where Cory [*sic*] Dial could live and reside were he to choose to do so. Next, Mr. Cory [*sic*] Dial has SSI of $482 per month. He also has a part-time–very part-time and limited job with the H Group, which was formerly known as Williamson County Workshop. He earns $174 to $220 per month. Cory [*sic*] Dial's combined income, therefore, is $656 to $702. And it's within that range we stipulate. Brian Dial, the father, has a $730 per week net income, a monthly gross of $3,163. I believe those are the facts as we agreed to stipulate to them."

After considering the stipulation and the arguments of the parties, the court interpreted the phrase "until he is mentally and physically able to leave home" as meaning child support was payable until Corey is able to live independently. The trial court also ordered Brian to pay child support in the amount of $632.67 per month, representing 20% of his net income. It is from this order that Brian appeals.

¶ 5 We first note that "[w]hen interpreting a marital settlement, courts seek to give effect to the parties' intent." *Allton v. Hintzsche*, 373 Ill. App. 3d 708, 711, 870 N.E.2d 436, 439 (2007). Illinois law avoids interpretations that render a contract "inequitable, unusual, or such as reasonable men would not be likely to enter into." *NutraSweet Co. v. American National Bank & Trust Co.*, 262 Ill. App. 3d 688, 695, 635 N.E.2d 440, 445 (1994). When an agreement is susceptible of two constructions, the interpretation that makes a rational and probable agreement under the circumstances is favored. *Camp v. Hollis*, 332 Ill. App. 60, 68, 74 N.E.2d 31, 35 (1947). Interpreting a marital settlement agreement is a question of law, which we review *de novo*. *In re Marriage of Culp*, 399 Ill. App. 3d 542, 547-48, 936 N.E.2d 1040, 1045 (2010).

¶ 6 Brian argues on appeal that the only logical reason the parties would have tied the obligation to pay child support to Corey's ability to leave home was to ease the financial burden on Debra in the event Corey would not be able to reside other than at Debra's home after he reached majority. Brian contends that Corey has an income sufficient to allow him to reside outside of Debra's home at a facility for disabled adults. Debra counters that Corey has never lived outside of the home and that the trial court's finding that Corey is "unable to live independently" was a logical interpretation of "able to leave home." She equates the trial court's finding with the analysis of the term "emancipated" as defined by the Illinois Supreme Court in *In re Marriage of Baumgartner*, 237 Ill. 2d 468, 930 N.E.2d 1024 (2010).

¶ 7 Section 513(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/513(a)(1) (West 2008)) provides support for a nonminor child when that child is mentally or physically disabled and not otherwise emancipated. Parties can expand upon the child's right to support in a marital settlement agreement, but cannot in any way restrict it. The parties here stipulated that Corey suffers from cerebral palsy and is physically disabled. Therefore, the only issue remaining is whether Corey is emancipated. According to *In re*

Marriage of Baumgartner:

> "[I]n determining whether a minor is self-emancipated, a court must determine whether the minor has actually moved beyond the care, custody, and control of a parent such that the minor no longer needs to be supported. The answer to this question depends on the relevant facts and circumstances of each particular case. Thus, courts should consider factors including, but not limited to, whether the minor has voluntarily left the protection and influence of the parental home, or whether the minor has otherwise moved beyond the care and control of the custodial parent; whether the minor has assumed responsibility for his or her own care, or whether the minor continues to need support ***." *In re Marriage of Baumgartner*, 237 Ill. 2d at 485-86, 930 N.E.2d at 1033-34.

Although the court did not reference *In re Marriage of Baumgartner* in reaching its decision in this instance, the court did make a similar analysis. The court specifically found that Corey was not able to leave home "[u]ntil he (Corey) could be at that level where he could have a place of his own, be able to get to and from work, if he so chooses, or is capable, can pay his bills, can take care of himself in that manner." We agree with the trial court. We also find that the court's interpretation of "able to leave home" is consistent with the public policy of the State of Illinois as provided for in section 513(a)(1) of the Act. Brian cannot argue that Corey is entitled to anything less. We therefore conclude the court properly found that Brian has a continuing obligation to support his disabled son.

¶ 8 Brian further contends that the trial court erred in automatically applying the 20% guideline contained in section 505(a)(1) of the Act (750 ILCS 5/505(a)(1) (West 2008)) for a child that is 18 years of age and graduated from high school. We agree. As Brian suggests, the court should have determined the amount of child support by considering all relevant factors including the financial resources of both parents as well as those of Corey in addition

to other factors such as the standard of living Corey would have enjoyed had the marriage not been dissolved. 750 ILCS 5/513(b) (West 2008). We therefore remand this cause for further proceedings to determine the amount of reasonable support necessary to provide for Corey. We express no opinion, however, as to whether that amount should be more, less, or equal to the $632.67 per month awarded by the trial court.

¶ 9 Accordingly, we affirm the trial court's finding that Brian is obligated to continue to pay support for his disabled son, but remand this cause for a determination of the amount of support to be awarded.

¶ 10 Affirmed in part and remanded in part.