IN THE SUPREME COURT OF THE STATE OF NEVADA

JANE BRADSHAW,
Appellant,
vs.
DARYL BRADSHAW,
Respondent.

No. 43449

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order terminating respondent's child support obligation for the parties' adult disabled child. Seventh Judicial District Court, Lincoln County; Steve L. Dobrescu, Judge.

Appellant Jane Bradshaw and respondent Daryl Bradshaw are the divorced parents of Dalton, a twenty-two-year-old adult disabled child with Prader-Willi Syndrome.[1] After Jane and Daryl's divorce, the district court granted Jane primary physical custody of Dalton, then a minor, and ordered Daryl to pay child support, maintain health insurance for Dalton, and pay half of any of Dalton's uncovered medical and dental expenses.

After turning eighteen, Dalton began receiving supplemental security income (SSI) and became eligible for Medicaid program benefits. Jane filed a motion to require continued support payments from Daryl pursuant to NRS 125B.110. A district court master recommended that Daryl continue to pay child support and maintain additional health

[1]Both parties acknowledge that this is a lifelong disability.

insurance for Dalton. Daryl objected to this recommendation, noting that it might jeopardize Dalton's government benefits.

Generally, a court-ordered obligation to support a minor child ceases when the child reaches eighteen years of age if he or she is no longer enrolled in high school, otherwise ceasing when he or she reaches nineteen years of age.[2] However, parents have an obligation to support an adult disabled child, who was disabled as a minor, until the child is no longer disabled or until the child becomes self-supporting.[3] "[A] child is self-supporting if he receives public assistance beyond the age of majority and that assistance is sufficient to meet his needs."[4]

The district court ordered additional briefing on the issue of whether the public assistance Dalton received was sufficient to meet his needs. The court noted that the supplemental briefs should discuss Dalton's specific needs that were unmet by public assistance, as well as the cost of those needs.

Arguing that Dalton's needs were not met, Jane requested child support payments to fund: (1) supplemental private insurance to cover out-of-state visits to specialists, (2) in-state transportation costs, and (3) respite care. Regarding this last request, Jane argued that at a minimum Daryl must contribute $500 per month to a special-needs trust to provide respite care for Dalton's primary caregiver (herself).

However, the district court relieved Daryl of providing further child support because Jane's supplemental brief was non-responsive to the

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[2]NRS 125.510(9)(b).

[3]NRS 125B.110(1).

[4]NRS 125B.110(2).

court's order; the court had asked for specifics, but determined that Jane had either provided generalities or failed to provide evidence.

Jane appeals, arguing that it is difficult to determine a dollar amount that is sufficient to meet Dalton's needs because opinions vary from person to person and Dalton's needs could change daily. Jane requests that the matter be remanded to the district court so that Dalton's needs could be extensively evaluated. Jane also argues that, based on Nevada public policy, Dalton should be cared for by both parents, even if Dalton is receiving government assistance. Finally, at oral argument, Jane argued that there was sufficient evidence presented below for the district court to craft some sort of relief. With the exception of respite care, which we will address shortly, we disagree.

This court reviews a district court's child support order for an abuse of discretion.[5] NRS 125B.080(5) states that the presumption that the basic needs of a child are met by the NRS 125B.070(1) formulas may be rebutted "by evidence proving that the needs of a particular child are not met by the applicable formula."

Here, Jane presented general evidence that Dalton's annual SSI benefits were less than the poverty level, and far below the yearly expenses of a self-sufficient individual with Prader-Willi Syndrome. However, it was undisputed that the SSI payments received by Dalton covered his basic needs of food, clothing, and shelter. More importantly, Jane failed to present any evidence as to the costs of required in-state transportation or of out-of-state medical care not covered by Medicaid.

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[5]Edgington v. Edgington, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003).

Therefore, we conclude that the district court did not abuse its discretion in relieving Daryl of his child support obligations on these bases.

Regarding respite care, however, we conclude that the district court erred as a matter of law. Here, the court determined that there was no showing that respite care was unavailable financially or that such care would benefit Dalton. Further, the district court could not find that the caregiver's need for respite care was an appropriate reason to order child support. The district court erred as a matter of law in making this determination because its analysis erroneously assumes that respite care may or may not benefit the child depending upon the evidence presented.

Although respite care certainly benefits a child's primary caregiver by providing him or her with temporary relief, it also directly benefits the child because, among other things, it helps maintain a high quality of care and, over the long-term, prevents institutionalization of the child due to caregiver burnout. As the Supreme Court of Appeals of West Virginia notes:

> "[R]espite care" envisions the short-term placement of a child outside of the child's home environment in order to permit the child's parent(s) or guardian(s) and the child a temporary reprieve from a stressful familial situation. Respite care is often sought by families who have children with severe physical, emotional, or mental difficulties as a type of "cooling off" period before the family relationship becomes irreparably damaged.[6]

The record indicates that respite care may also take the form of in-home support services.

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[6]State ex rel. Paul B. v. Hill, 496 S.E.2d 198, 202 n.9 (W. Va. 1997).

We conclude that the district court erred as a matter of law in determining that Jane failed to show that respite care would directly benefit Dalton. Such a showing is unnecessary. We remand the issue of respite care to the district court for a determination of: (1) an appropriate amount of respite care for Jane; (2) whether government assistance is available to meet that level of respite care[7]; (3) if no or limited government assistance is available, whether Daryl should fill that gap personally or financially; and (4) if Daryl should contribute financially, whether a special needs trust should be used. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Steve L. Dobrescu, District Judge
Bret O. Whipple
King & Taggart, Ltd.
Lincoln County Clerk

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[7]At oral argument, it was acknowledged that Medicaid does not provide for respite care, but there may be other state programs that do.