STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1581

Estate of Thomas J. McCarthy

Filed September 15, 2009
Affirmed in part, reversed in part, and remanded
Minge, Judge

Morrison County District Court
File No. 49-P8-06-000922

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Considered and decided by Minge, Presiding Judge; Stoneburner, Judge; and Collins, Judge.*

U N P U B L I S H E D O P I N I O N

MINGE, Judge

This appeal arises out of the claim by appellant, a 48-year-old disabled individual, against the estate of his father for child support, medical expenses and insurance coverage that the father was or potentially could be obligated to pay to appellant son. Appellant challenges the district court's order limiting his claim against the estate to $47,700.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

Because we conclude that the district court erred in failing to consider past medical expenses when calculating child-support arrearages, we reverse in part and remand.

FACTS

Appellant Richard McCarthy is the son of the decedent, Thomas McCarthy. Appellant has suffered from cerebral palsy since birth and has apparently been continuously disabled by the condition. Appellant's parents were divorced on April 10, 1973, when appellant was 12 years old. The divorce decree required decedent to maintain certain life insurance for appellant's benefit, to pay appellant's mother $200 per month for support of appellant, to maintain medical insurance coverage for appellant, and to pay all of appellant's medical expenses until appellant was "married, emancipated, attains his majority or deceases, or until the demise of the defendant, whichever event first occurs."

The divorce decree was appealed to and affirmed by the supreme court. *McCarthy v. McCarthy*, 301 Minn. 270, 222 N.W.2d 331 (1974). In its decision, the supreme court recognized that appellant suffers from cerebral palsy and stated that

> we have intimated that upon a showing that any of the children of the parties is either physically or mentally deficient or unable to support himself when he reaches his majority, the court's authority to require maintenance may extend past the date upon which the child attains majority.
>
> It is apparent that attention was not directed to this aspect of the case. However, inasmuch as the trial court has continuing jurisdiction to deal with this matter through its power to modify its decrees regarding child support and alimony on the basis of a change in circumstances, we feel that it is sufficient to merely apprise the parties and the trial court of the situation to facilitate reevaluation of the

> circumstances on or before the date upon which Richard [appellant] attains majority.

McCarthy, 301 Minn. at 274-75, 222 N.W.2d at 334 (footnotes and citations omitted). The decedent stopped paying child support when appellant reached the age of majority, including medical support, maintaining insurance coverage, and providing any assistance to appellant. Since appellant attained the age of majority, no request has been made for modification of the child-support provision of the dissolution decree.

Decedent died in May 2006. Appellant was not listed as a beneficiary under decedent's will and was specifically excluded from any share of the estate. Appellant and his mother filed a claim against decedent's estate for back child support, ongoing child support, life insurance benefits, reimbursement for appellant's medical and hospital insurance coverage, and appellant's ongoing medical expenses. Respondent personal representative Linda McCarthy disallowed the claim. Appellant then filed a petition for allowance of the claim in district court.

In an April 6, 2007 order allowing the claim, the district court summarized the claim as being for "child support payments, with interest, reimbursement for medical expenses, and a remedy for decedant's failure to provide the claimant as a beneficiary of a $50,000 life insurance policy, and to receive ongoing medical expenses and child support." After reviewing written arguments by the parties regarding the extent of the claim, the district court entered an order on August 21, 2007, stating that appellant could proceed with his claim for child-support arrearages and his one-half share of the proceeds of the life insurance policy. In the memorandum included with the August 21, 2007

order, the district court stated that appellant's child-support claims were limited by the statute of limitations, that appellant could only bring a claim for child-support arrearages that accumulated within the past 10 years, and that the ability of appellant to prevail on his claim was contingent on establishing that he was "incapable of self support." The August 21 decision concluded by ordering a hearing to establish a "scheduling order regarding discovery on the issues of the extent of [appellant's] disability and the amount of reimbursement if any." No appeal was taken from the April 6 and August 21 orders allowing and so limiting the claim.[1]

Ultimately, respondent decided to accept the district court's August 21 order as respondent construed it. On March 26, 2008, respondent moved the district court for an order setting appellant's claims, as allowed in 2007, at $47,700. This amount was composed of two parts: (1) $25,000 representing appellant's one-half of a life insurance policy that decedent had been ordered to maintain for appellant and for his brother during the pendency of the father's child-support obligation; and (2) $22,700 for ten years of child support calculated at $200 per month. Respondent moved that the payment of $47,700 be the final resolution of "any and all other claims, however labeled, characterized or identified which may arise from, or relate to, the Divorce Decree." Appellant opposed the motion, claiming the 2007 orders did not exclude medical expenses as a part of child support. On July 28, 2008, the district court decided medical

[1] Both the April 6 and August 21 orders were appealable orders under Minnesota's probate code, which provides a right of appeal for orders "permitting, or refusing to permit, the filing of a claim, or allowing or disallowing a claim or counterclaim, in whole or in part, when the amount in controversy exceeds $100." Minn. Stat. § 525.71(a) (2008).

expenses had not been allowed by the prior orders, granted respondent's motion, and ordered that the $47,700 be paid in full satisfaction of appellant's claims. This appeal follows.

D E C I S I O N

I.

The first issue is whether the district court's July 28, 2008 decision to exclude medical expenses was in error. We give great weight to a district court's construction of its own decree. *Johnson v. Johnson*, 627 N.W.2d 359, 363 (Minn. App. 2001) (citing *Mikoda v. Mikoda*, 413 N.W.2d 238, 242 (Minn. App. 1987), *review denied* (Minn. Dec. 22, 1987)), *review denied* (Minn. Aug. 15, 2001). However, interpretation of a court order is reviewed de novo. *Anderson v. Archer*, 510 N.W.2d 1, 3 (Minn. App. 1993).

The term "child support," as used in the Minnesota statutes, is defined under Minnesota law and clearly includes medical support:

> "Support money" or "child support" means an amount for basic support, child care support, and *medical support* pursuant to:
>
> (1) an award in a dissolution, legal separation, annulment, or parentage proceeding for the care, support and education of any child of the marriage or of the parties to the proceeding;

Minn. Stat. § 518A.26, subd. 20 (2008) (emphasis added). Basic support is a statutorily defined term that includes periodic payments. *Id.* at subd. 4.

The August 21, 2007 order stated that appellant was entitled to proceed on his claim "for child support." Appellant argues that the district court's July 28, 2008 order erred in concluding that the term "child support" in the August 21, 2007 order did not

include medical support.[2] Respondent argues that the district court's July 28, 2008 order properly determined that the August 21, 2007 order must be read in the context of the previous April 6, 2007 order which listed appellant's claim for "child support" and "medical expenses" separately. Respondent asserts that the district court's July 28, 2008 order properly concluded that the August 21, 2007 order "fully recognized" appellant's request for past and future medical support expenses and that the 2008 order properly limited appellant's potential maximum relief to only $200 per month in child-support arrearages and his one-half share of life insurance proceeds.

The district court's August 21, 2007 order allowed appellant to proceed on his claim for "child support." Nothing in that August 21 order excluded child support in the form of medical support expenses. Although the accompanying memorandum refers to "child support arrearages" and a lump-sum payment, neither the order nor the memorandum indicate that a lump-sum monetary payment would exclude medical expenses. This distinction between monetary periodic child-support payments and child support in the form of medical support is not justified by the statutory definition of child support which includes both basic support and medical support.[3] Respondent's argument that the April 6, 2007 order divided claims into categories that excludes medical expenses from child support and limits the meaning of child support in the August 21 order is not

[2] We note that a different district court judge heard and considered the 2008 motion.

[3] This court has recognized that "child support" can be used narrowly to refer to the guideline amount of lump-sum monetary support. *Maschoff v. Leiding*, 696 N.W.2d 834, 839 (Minn. App. 2005) (comparing Minn. Stat. § 518.551, subd. 5(b) (2004) (child-support guidelines) with Minn. Stat. § 518.54, subd. 4a (2004) ("[s]upport order" includes rulings requiring a party to provide "monetary support, child care, [or] medical support")).

persuasive. Furthermore, there is no reason given for excluding medical expenses. Rather, it appears that the district court's August 21 order did not consider the distinction or the question. Given the potential importance of the medical support expense claim, this omission is significant. Deciding whether to accept a claim for the medical expense part of child support by indirection is improper.

We conclude that, in absence of any language indicating that the district court intended a more narrow meaning when using the term child support, the district court will not be presumed to have excluded medical support but rather that it left the determination of the scope and amount of appropriate child support, including medical expenses, for future consideration. Accordingly, we conclude that the August 21, 2007 order allowed a continuing claim for medical support and that the district court's July 28, 2008 order limiting the August 21, 2007 order's use of the term child support was in error. Therefore, we reverse the district court's July 28, 2008 order and remand for a determination of the proper amount of child-support arrearages, including payments for medical support during the previous ten years.[4] Respondent's calculation of $47,700 is her interpretation of appellant's claims and the basis for respondent's 2007 motion and the district court's July 28, 2008 order. Because we have rejected that interpretation and reversed part of the order, on remand respondent is not bound by her motion or the accompanying representations or by the provisions of the resulting order.

[4] We note that the district court set the amount of child support at $200 per month. This was apparently based on the 1973 judgment in the divorce proceeding. The correctness of using the 1973 support figure to calculate back support was not raised in this appeal and we do not address the matter.

Because we reverse and remand the district court's July 28, 2008 order, we do not address appellant's argument that the district court abused its discretion in ruling on respondent's motion without an evidentiary hearing.

II.

The second issue is whether the district court erred in its July 28, 2008 determination that appellant's claim for child support after decedent's death is barred. "Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this court." *Davies v. W. Publ'g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001) (citing *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998)), *review denied* (Minn. May 29, 2001). "When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (citation and quotations omitted).

Minnesota law governs the effect of the death of an obligor on child support:

> Unless otherwise agreed in writing or expressly provided in the order, provisions for the support of a child are not terminated by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

Minn. Stat. § 518A.39, subd. 4 (2008). Appellant argues that the second sentence of this subdivision should be read as a separate statutory provision to "cover any instance of death of the obligor, whether there is or is not a separate writing, or whether the divorce

decree provides or does not provide that child support ends at the obligor's death." We disagree. The plain language of the statue states that, if there is a written order expressly stating that child support terminates on the death of the obligor, the child-support obligation terminates on the death of the parent.

The child-support order in the 1973 divorce decree explicitly stated that the obligation would terminate upon the death of the obligor, the decedent. Under the plain language of section 518A.39, subdivision 4, and the child-support order, the district court's determination that appellant was unable to present a valid claim against the estate for future child support, including future medical support, is not erroneous.

III.

Appellant argues for the first time in his reply brief that the district court violated the probate code when it granted respondent's July 28, 2008 motion allowing the $47,700 claim. Because we are reversing in part and remanding on other grounds, we do not address this issue.

IV.

Finally, we address respondent's notice of review challenging the district court's August 21, 2007 order. Respondent argues that the district court incorrectly allowed appellant to proceed with a portion of his claim. Neither party directly appealed the August 21, 2007 order, and appellant has only appealed the July 28, 2008 order and its application of the April 6, 2007 and August 21, 2007 orders.

The probate laws have specific rules governing orders that may be appealed. The purpose of the probate code is "to promote a speedy and efficient system for liquidating

the estate of the decedent and making distribution to successors." Minn. Stat. § 524.1-102(b)(3) (2008). As part of that system, the probate code has made otherwise interlocutory orders immediately appealable. Minn. Stat. § 525.71 (2008). Under Minnesota law:

> Appeals to the Court of Appeals may be taken from any of the following orders, judgments, and decrees issued by a judge of the court under this chapter or [the uniform probate code]:
>
> . . . .
>
> (5) an order permitting, or refusing to permit, the filing of a claim, or allowing or disallowing a claim or counterclaim, in whole or in part, when the amount in controversy exceeds $100[.]

Minn. Stat. § 525.71(a) (2008). Because the August 21, 2007 order permitted the filing of appellant's claim and allowed appellant to proceed on a portion of his claim, it is an appealable order under the statute. In this case, there was no written notice of the filing of the August 21, 2007 order served by a party and this appeal was not filed until September 11, 2008. When written notice of the order is not served by a party, the appeal must be taken within six months of the filing of the order. Minn. Stat. 525.712 (2008); Minn. R. Civ. App. P. 104.01, subd. 2. "It is axiomatic that a judgment or appealable order becomes final if timely appeal is not taken." *Janssen v. Best & Flanagan*, 704 N.W.2d 759, 765 (Minn. 2005).

Because the subject of this action is the July 28, 2008 order, and the August 21, 2007 order was a final order, and because no appeal was taken from the August 21, 2007 order, we conclude that respondent's challenge to the August 21, 2007 order is untimely.

Affirmed in part, reversed in part, and remanded.

Dated: