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FAMILY LAW

Support Order Based on Evidence Outside of Record Vacated

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Special to the Legal

Within the last five years, the issue of evidence outside of the record being considered by the trial court was raised in an appeal from a custody order in *C.M.P. v. M.P.*, 54 A.3 950 (Pa. Super. 2012)). Recently, the case of *Johnson v. Johnson*, 153 A.3 318 (Pa. Super. 2016), was decided and the vacating and remanding of the order was based on a similar reasoning. The *Johnson* case is a support case. In *Johnson*, according to the opinion, the parties are the parents of a daughter who suffered severe mental illness since the age of 7. In 2002, when the father filed a petition to terminate support for his emancipating son, the trial court ordered that the father's support obligation for the parties' daughter, who was 26 years old at time, would remain. Twelve years later, the father filed



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a petition to modify the support order pertaining to their then 39-year-old daughter because: his retirement from employment; his ineligibility for continuing the daughter's medical insurance coverage under his former company's health insurance policy; and his request that the daughter secure coverage under the "The Patient Protection and Affordable Care Act." The father then amended his petition to include a request to terminate the support order "upon

the allegation that Ms. Gardner [daughter], who is now 39 years of age, is no longer a dependent child."

Under Pennsylvania law, child support terminates upon a child reaching age 18 or graduating from high school, whichever occurs last. However, child support can continue after a child turns 18 or graduates high school where a child "is too feeble physically or mentally to support itself." As highlighted in the *Johnson* case, "it is the adult child's burden to prove the conditions that make it impossible for her to be employed."

At the trial in the *Johnson* matter, the mother, on behalf of the daughter, sought to introduce medical records of the child's recent treatment at a community medical health service in the state of Washington. The father objected to the introduction of the records and the trial court sustained the father's objection that allowing the records without testimony of the provider

would be hearsay and would deny the father of the opportunity of cross examination regarding same. Thereafter, the trial court consulted its own file that contained the daughter's medical records introduced at the 2002 hearing (where the father also sought termination of his support obligation) where the father had the ability of cross examination. The trial court also relied on the DSM (diagnostic and statistical manual) of mental disorders in conjunction with its observations of the child in court while testifying and answering questions in deciding to decline to terminate the father's child support obligation.

After the trial court denied the father's petition, he filed a timely appeal raising numerous issues. The Superior Court vacated the trial court's order and remanded the case. The Superior Court found that the trial court erred in reviewing the medical records admitted in 2002, as the records were outside of the court record. The Superior Court agreed with the father's contention that "the court is prohibited from considering evidence not part of the record in this case or from taking judicial notice of records in another case, even if known to the court." The Superior Court highlights that the medical records from 2002 "were not admitted into evidence in this case." The Superior Court then states: "Therefore, the court

was not permitted to rely on any information gleaned from those documents."

The trial court stressed that the documents that the court reviewed from 2002 were equally available to the father and supported the fact that the child was a "victim of an ongoing psychiatric illness from age 7." The trial court

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stated: "Indeed, our findings of fact relative to her troubled employment history, such as it has been, and our observation of her trial demeanor and her responses to counsel's questions and our own, supports the conclusion we reached under all of the facts as we found them to be." The trial court further stated: "We do not believe we required psychiatric testimony to reach a conclusion respecting those factors, given her long-standing illness and the facts described in our findings that support our ultimate conclusion."

Again, it is the adult child's burden to prove the existence of issues that make him or her unemancipated. The Superior Court stressed that the trial court cannot consider evidence outside the record nor may it uphold the trial court's order on the basis of off-the-record facts. Therefore, the order had to be vacated.

This is an interesting case and an important case for both the bench and the bar. Being that the burden was on the daughter to prove her case, it was important that she should have taken all steps necessary to get more recent documents admitted at trial. Because the prior records were not admitted at the present hearing, the fact that they were admitted previously does not automatically include them into the present record. That was the fatal flaw in the decision of the trial court. •