[J-13-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

IN RE: THE ESTATE OF CHARLES L. SMALL	:	No. 26 EAP 2019
	:	Appeal from the Order of the Superior
	:	entered on 1/28/19 at No. 744 EDA
v.	:	2018 affirming the decree entered on
	:	2/28/18 in the Court of Common Pleas,
	:	Philadelphia County, Orphans' Court at
	:	No. 617DE-2017
APPEAL OF: JUANITA SMALL, AS PETITIONER AND ADMINISTRATOR OF THE ESTATE OF CHARLES L. SMALL	:	ARGUED: March 11, 2020

OPINION

CHIEF JUSTICE SAYLOR **DECIDED: July 21, 2020**

This matter involves the alleged forfeiture of a parent's share in his child's estate where his child died without a will. The question is whether an adult decedent, who became disabled after reaching the age of majority, is a dependent child for purposes of the forfeiture statute.

The manner in which a decedent's estate is to be distributed where the decedent dies intestate is governed by Chapter 21 of the Probate, Estates and Fiduciaries Code (the "Code").[1] *See* 20 Pa.C.S. §2101(a). Generally, where, as here, an intestate decedent dies without a spouse or issue but with living parents, his or her parents are entitled to inherit the individual's estate as tenants by the entirety. *See id.* §2103(2). As an exception to this general rule, the Code provides:

[1] Act of June 30, 1972, P.L. 508, No. 164 (as amended 20 Pa.C.S. §§101-8815).

> Any parent who, for one year or upwards previous to the death of the parent's minor or dependent child, has:
>
> > (1) failed to perform the duty to support the minor or dependent child or who, for one year, has deserted the minor or dependent child; or
> >
> > (2) been convicted of [certain crimes not presently relevant];
>
> shall have no right or interest under this chapter in the real or personal estate of the minor or dependent child. The determination under paragraph (1) shall be made by the court after considering the quality, nature and extent of the parent's contact with the child and the physical, emotional and financial support provided to the child.

Id. §2106(b). Notably, the Code does not define the phrase "dependent child." *See id.* §102 (defining terms).

Decedent was 18 years old when he sustained gunshot wounds, rendering him a paraplegic. At age 37, he died intestate without a spouse or issue, and Appellant ("Mother") was granted letters of administration. Decedent's estate subsequently recovered a $90,000 wrongful-death award, which became the estate's sole asset. Mother filed a petition for forfeiture of estate under Section 2106(b), asserting that Appellee ("Father") forfeited his share of the estate by allegedly failing to perform his duty of support.[2] After Father's motion for judgment on the pleadings was denied, a hearing on the petition was held before the orphans' court.

At the hearing, the parties agreed that the central issue was whether Decedent was a "dependent child" under paragraph (1) of the above statute. *See* N.T., Feb. 26, 2018, at 6-7. They differed as to the meaning of that term: Mother characterized the

[2] Although Mother initially alleged that Decedent became a paraplegic when he was 16, *see In re Estate of Small*, No. 617DE-2017, Petition for Forfeiture of Estate ("Forfeiture Petition") at ¶5 (C.P. Phila. May 9, 2017), this appears to have been a misstatement, as the parties agreed at the hearing that Decedent was 18 when he became paralyzed. *See* N.T., Feb. 26, 2018, at 10 (Father's testimony), 85 (Mother's testimony).

question as centering on a somewhat informal type of dependency, *i.e.*, whether Decedent "was . . . depending on the care of others," *id*. at 7; whereas Father argued there was no evidence Decedent was ever formally declared incompetent, incapable of handling his own affairs, or in need of guardianship. *See id*. at 8-9.

The hearing testimony concerning Decedent's reliance on others was mixed. Father stated that, although Decedent lived with paraplegia, he could perform all of life's ordinary activities except walking. *See id*. at 36.[3] Similarly, Almeta Miller, Decedent's home health aide and paramour, in whose home Decedent lived for the last four years of his life, explained that Decedent was mostly self-sufficient and did not require her assistance. *See id.* at 64; *see also id.* at 71 ("It's not like he need[ed] [my help] because he [could] do a lot for himself."). She added, though, that he did require her help with his colostomy bag and associated tubing. *See id*. at 69.

For her part, Mother testified that as Decedent's home health aide prior to Miller, she assisted him with daily activities. She observed that Decedent relied on a nurse for personal cleanliness, *see id*. at 78-79; *accord id*. at 66 (Miller's testimony), and that he needed her (Mother) and Miller to obtain his prescription medications and ensure he took the prescribed doses at the appropriate times. *See id*. at 81, 86. With respect to more general daily activities, however, Mother, like Miller, indicated that although Decedent liked having her help, he did not need it. *See id.* at 83. Mother additionally explained that Decedent was collecting Social Security disability benefits but that she was supplementing those monies with her own. *See id.* at 85-86. Finally, she clarified

[3] During his testimony, an affidavit of Father's was introduced. In it, he attested that he had been Decedent's primary source of care and assistance from when Decedent was a young child until several years before Decedent's death, whereas Mother was absent from Decedent's life during that timeframe. *See* Affidavit of Laverne Dollard, Aug. 3, 2016, *reprinted in* RR. 244a-246a. Father clarified that, after age 23, Decedent lived with Father's relatives for a number of years. *See* N.T., Feb. 26, 2018, at 17.

that she and Miller had cared for Decedent for the last few years of his life, during which time Father was absent. *See id*. at 83-85.

The orphans' court denied the petition by decree issued the day after the hearing. In its subsequent opinion, the court explained its view that Decedent was not a dependent child under Section 2106(b). *See In re Estate of Small*, No. 617DE-2017, *slip op.* at 1, 3 (C.P. Phila. June 7, 2018). The court did not expressly define "dependent child" in this context. Rather, in apparent agreement with Father's position, it highlighted that Decedent was never adjudicated an incapacitated person, declared incompetent, or appointed a guardian, and no evidence of mental impairment had been presented at the hearing. *See id*. at 4.

In terms of legal precedent, the Court referred to *In re Kistner*, 858 A.2d 1226 (Pa. Super. 2004), where the intermediate court affirmed the denial of a mother's forfeiture petition on the basis that the decedent, the mother's 58-year-old daughter, was neither a minor nor a dependent child for purposes of the statute. *Kistner* determined that the forfeiture statute was inapplicable, explaining that, "[i]f Decedent believed Father failed to perform his duty to support her as a minor child, . . . she could have executed a last will and testament disposing of her estate accordingly." *Id*. at 1228-29. Finding *Kistner* controlling, the orphans' court in the present matter concluded that, if Decedent wanted to exclude Father from receiving a share of his estate, he could have done so by means of a will. *See Estate of Small*, No. 617DE-2017, *slip op.* at 5.

Mother lodged an appeal, arguing that the orphans' court impermissibly narrowed the scope of the phrase "dependent child" by focusing on the fact that Decedent was never adjudicated incapacitated or formally appointed a guardian, and that no evidence of mental incompetency had been presented. Mother acknowledged that neither the forfeiture statute nor the Code as a whole defines "dependent child," but she pointed out

that, under Pennsylvania's unemployment compensation regulations the term means "[a]n individual's unmarried child . . . who . . . if 18 years of age or older, because of physical or mental infirmity was unable to engage in a gainful occupation." 34 Pa. Code §65.151. Mother suggested that that definition be used in the present case. She also questioned whether the orphans' court had properly taken into account Decedent's failure to create a will inasmuch as he had no assets to distribute.

The Superior Court affirmed in a non-precedential decision. *See In re Estate of Small*, No. 744 EDA 2018, 2019 WL 336185, at *3 (Pa. Super. Jan. 28, 2019). It deemed the question of whether Appellant had reason to make a will to be of little relevance, viewing the central inquiry as whether Decedent was a dependent child. In this latter regard, the intermediate court largely agreed with the orphans' court's reasons for finding that he was not, and it expressly rejected the definition favored by Mother as being unique to the unemployment compensation context. See *id*. at *2.

This Court granted further review. The issue as framed by Mother is:

> Pursuant to 20 Pa.C.S.A. §2106(b)(1), is an adult decedent a "dependent child" where the decedent depended on the support of a parent in order to care for himself?

In re Estate of Small, ___ Pa. ___, 217 A.3d 799 (2019) (*per curiam*). This raises a question of law relative to which our review is *de novo* and plenary. *See Oliver v. City of Pittsburgh*, 608 Pa. 386, 393, 11 A.3d 960, 964 (2011).

As the forfeiture petition was filed by Mother in an effort to alter the manner by which Decedent's estate would otherwise have been distributed, she bore the initial burden to set forth a *prima facie* case for forfeiture. *See generally 500 James Hance Court v. Pa. Prevailing Wage Appeals Bd.*, 613 Pa. 238, 272-73 & n.28, 33 A.3d 555, 575-76 & n.28 (2011) (describing, *inter alia*, the initial allocation of the burden of proof). A review of Section 2106(b)'s text, *see* 20 Pa.C.S. §2106(b) (quoted above), reveals

that Mother was required to demonstrate three elements: Decedent was a dependent child; Father had "the duty to support" Decedent; and Father failed to perform that duty for at least one year prior to Decedent's death. *Accord Johnson v. Neshaminy Shore Picnic Park*, 217 A.3d 320, 327 (Pa. Super. 2019).

In applying these requirements, we note initially that there is no present dispute that Father failed to support Decedent during the final year of the latter's life. Therefore, and consistent with Mother's framing of the issue for review, we consider whether, during that timeframe Decedent was a dependent child for purposes of Section 2106(b)(1) such that Father had a duty to support him. As noted, the Code does not define the phrase, "dependent child," nor does the Statutory Construction Act.

Consistent with her position before the orphans' court, Mother contends the term "dependent child" should be understood broadly to refer to any child who is incapable of fully caring for himself, and thus – at least informally speaking – depends on others for support. *See* Brief for Appellant at 21-22 (quoting the definitions of "dependent" as given in Black's Online Law Dictionary and Merriam-Webster's Online Dictionary). Mother asserts that interpreting the phrase as such comports with the legislative intent underlying the Code's forfeiture provision, namely, to encourage parents to assist children who are substantially hindered in their daily life activities and to prevent uninvolved parents from reaping a windfall in the event of the child's death. *See id*. at 33-34. She again notes that this is consistent with the definition that appears in administrative regulations governing entitlement to unemployment compensation benefits. *See id*. at 24-25 (quoting 34 Pa. Code §65.151).

Mother also suggests the orphans' court's understanding of the term is overly narrow in that the phrase was not meant to include only those individuals who have been declared incapacitated or have some type of mental deficiency. Had that been the

Legislature's purpose, Mother contends, it would have so stated. Mother further argues that the Code expressly defines the term "incapacitated person" as "an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety." 20 Pa.C.S. § 5501.[4] Because the General Assembly opted to use the term "dependent child" rather than "incapacitated person" in Section 2106, Mother argues it intended for "dependent child" to subsume other forms of dependency, such as that which arises from a severe physical handicap.

Lastly, Mother repeats her argument that the orphans' court improperly attributed significance to Decedent's failure to execute a will disposing of his property in a manner that excluded Father. She expresses that there is no basis to assume the General Assembly intended for the existence of a will to inform the analysis of dependency under Section 2106(b). *See* Brief for Appellant at 28.

We agree with this latter point, as the Code's forfeiture provision, being located in Chapter 21, is only implicated where the child dies intestate. Because the non-existence of a will is assumed for Section 2106 purposes, it has no further bearing on whether that provision's additional prerequisites were met. As such, any focus on the lack of a will distracts from the issue as it has developed in this matter – namely, whether Section 2106(b)'s use of the term "dependent child" contemplates dependency in a legal sense, or in a more general, social or colloquial sense.

"The object of any judicial exercise in statutory interpretation is to ascertain and effectuate legislative intent." *Commonwealth v. Cullen-Doyle*, 640 Pa. 783, 787, 164

[4] Although this definition appears in Chapter 55 of the Code (relating to incapacitated persons), it is included by reference in the Code's general definitional section. *See id.* §102.

A.3d 1239, 1242 (2017) (citing 1 Pa.C.S. §1921(a)). To determine the intended meaning of the term, "dependent child," we look initially to its context. *See Rendell v. Pa. State Ethics Comm'n*, 603 Pa. 292, 303-04, 983 A.2d 708, 715 (2009) (reciting that statutory words are not to be read in isolation but according to the context in which they appear). By its terms – and consistent with the above recitation of the three-factor test for relief on a forfeiture petition – Section 2106(b) requires any dependency on the child's part to be one that gives rise to a duty of support on the part of a parent. This is evident from paragraph (b)(1)'s reference to "the duty to support the . . . dependent child[.]" 20 Pa.C.S. §2106(b)(1). Here, the phrase "the duty" leaves no room for an interpretation whereby the child was dependent, in some sense of the word, but there was no corresponding duty on the part of the parent to provide support.[5] A child cannot have been "dependent" under Section 2106(b), then, unless the subject parent had a duty to support the child. As a consequence, it is helpful to inquire as to the type of duty involved.

In terms of the nature of such a duty and how it comes about, it would be tenuous to suggest that the statute refers to a social, moral, or ethical duty arising apart from the law in relation to an adult child who, in some sense, depended on others for assistance with many of life's daily undertakings. This is the approach advanced by Mother. She repeatedly emphasizes that Decedent depended on others for assistance with ordinary activities, *see, e.g.*, Brief for Appellant at 39 (arguing that the orphans' court should have analyzed whether Decedent "depended on the support of a parent to care for his day-to-day needs"), and asserts that Father failed to perform his duty to provide such assistance, *see, e.g.*, *id*. at 50 (referring in a generalized manner to

[5] The text previously referred to "any duty," but the Legislature eventually changed that phrase to "the duty." *See* Act of Dec. 20, 2000, P.L. 838, No. 118, §1.

Father's "duty to support"), albeit she does not tether that purported duty to any particular legal foundation.

We find it doubtful that the General Assembly's use of the definitive phrase, "*the* duty to support" (emphasis added), was intended to refer to such an imprecise concept. There would be little in the way of objectively discernible standards which orphans' courts could apply in determining whether such a social/moral duty existed. The number and types of factual circumstances that could go into such a generalized evaluation may be virtually limitless. Although we do not presently discount that the General Assembly may, in setting social policy, choose to predicate forfeiture upon such an uncertain foundation, to accomplish this it would have to use words which more expressly embody that directive. *See* 1 Pa.C.S. §1922(2) (reflecting a presumption that the legislative body intends for all aspects of an enactment to be "effective and certain"). As for the particular guidance given to orphans' courts in the final portion of Section 2106(b) – that the court is to consider the "quality, nature and extent of the parent's contact with the child and the physical, emotional and financial support provided to the child" – this pertains only to whether the parent performed any duty that he had, and not whether such a duty existed in the first place.

Accordingly, we read the text of the forfeiture statute as militating against Mother's core position that the question of whether the decedent was a "dependent child" to whom a duty of support was owed should be understood in an informal, social, moral, or colloquial sense.[6] Our conclusion is supported by the definition of "duty" when that word is used in the law. Black's, for example, defines "duty" generally as a "*legal obligation* which is owed or due to another . . .; an obligation for which somebody else

[6] To the degree Mother's argument may be construed to suggest the duty in question is created by the forfeiture statute itself, we disagree: nothing in Section 2106(b) suggests the provision can be read in that fashion.

has a corresponding right." BLACK'S LAW DICTIONARY 521 (7th ed. 1999) (emphasis added). The presence of an enforceable right, in turn, presupposes that the duty arose from some legally recognized source, such as common law, a statute, a contract, or a court order. This is consistent, as well, with parts of the Domestic Relations Code, which assign a specific meaning to the term, "duty of support." In relevant part, that phrase is defined in Part VIII (relating to interstate family support) as well as Part VIII-a (pertaining to intrastate family support) to mean "an obligation imposed or imposable by law to provide support for a child." 23 Pa.C.S. §§7101.1, 8101(b). *See generally* Revised Uniform Reciprocal Enforcement of Support Act (1968), at §2(b) (defining "duty of support" as referring to a duty "imposed by law or by order, decree or judgment of any court"). Ultimately, then, we reject Mother's understanding of the concepts of dependency and duty of support, as they are utilized in the forfeiture provision, as reflecting beneficial social policy unconnected to some anchor in the law.

Mother nonetheless stresses that Section 2106(b)'s purpose is to "incentivize parents to provide support for a dependent child and, in the event they do not, prevent parents from reaping a windfall in the event of the child's death." Brief for Appellant at 13-14, 49; *see Johnson*, 217 A.3d at 326 (expressing that "the Legislature intended to prohibit the non-performing parent from collecting a windfall" from the child's death). Still, the General Assembly elected to create that incentive by using terms that have developed a specific meaning in the law. That being the case, those words must be given their "peculiar and appropriate meaning." 1 Pa.C.S. §1903(a); *cf.* 1 Pa.C.S. §1921(b) (providing that, absent an ambiguity, the letter of the law is not to be disregarded under the pretext of pursuing its spirit).

In light of the foregoing, for Mother to have been entitled to relief in the orphans' court, she was required to demonstrate, *inter alia*, that Decedent was a dependent child

as recognized under legal principles extrinsic to the forfeiture provision, and thus, that Father owed him a corresponding legal duty. Mother does not presently refer this Court to any type of legal dependency and parental duty that she was able to prove in support of her petition. Under the Domestic Relations Code, unemancipated minor children are dependent on their parents for support, and the parents are required to provide it. *See* 23 Pa.C.S. §4321(b). As explained, however, Decedent was 37 when he died, and thus, he was not a minor child at any time during the final year of his life when Father is alleged to have had a duty to support him. *See generally Style v. Shaub*, 955 A.2d 403, 408-09 (Pa. Super. 2008) (explaining the policy rationale underlying the rule that the parental support duty ordinarily ends when the child reaches adulthood).

It is true that, where a child becomes disabled – meaning the child is unable to engage in profitable employment, *see, e.g.*, *In re McCready's Trust*, 387 Pa. 107, 116, 126 A.2d 429, 434 (1956) – before reaching majority, the parental support duty may continue into the child's adulthood. *See In re Erny's Estate*, 337 Pa. 542, 544-45, 12 A.2d 333, 334 (1940) (citing cases); *accord Hanson v. Hanson*, 425 Pa. Super. 508, 512-13, 625 A.2d 1212, 1214 (1993); 1 LEGAL RIGHTS OF CHILDREN REV. 2D §4:5 & n.13 (3d ed. 2019) (collecting cases). As such, the Domestic Relations Code acknowledges that "[p]arents *may be* liable for the support of their children who are 18 years of age or older." 23 Pa.C.S. §4321(3) (emphasis added). That precept has no application here, however, as Decedent became paralyzed when he was an adult.[7]

Insofar as Mother relies on the definition of "dependent child" appearing in the unemployment-compensation regulations, *see* 34 Pa. Code §65.151, we agree with the

[7] Under this Court's precedent, even absent a disability the duty of support continues into adulthood while the child is still in high school. *See Blue v. Blue*, 532 Pa. 521, 529, 616 A.2d 628, 633 (1992). That aspect of this Court's jurisprudence has no present relevance.

Superior Court that Section 65.151 is of little importance in the present setting.[8] By its terms and placement, the provision is designed to effectuate the Department of Labor and Industry's regulations relating to the payment of an allowance for dependents to unemployment compensation claimants. *See id*. §§65.152, 65.155. In that context, the question is whether a person who in fact provided support, due to a child's physical or mental infirmity, it is entitled to monetary benefits. The definition is silent with regard to whether and when an affirmative duty existed on the part of the parent – and, as previously observed, it is established that any such duty ceases at adulthood unless the physical disability or mental infirmity arose during the child's minority.

Finally, Mother has not placed into the record any court order or contractual agreement indicating that Decedent was a dependent child or that Father owed him a duty of support.

To summarize, we hold that the concepts of a dependent child and the parental duty of care, as they are referenced in Section 2106(b) of the Probate, Estates and Fiduciaries Code, *see* 20 Pa.C.S. §2106(b), contemplate a legally-imposed parental duty stemming from a state of dependency arising under the established law of this Commonwealth. We also agree with the orphans' court that, in the present matter, Mother failed to demonstrate Decedent was a dependent child – and concomitantly, that Father had a duty of care – as required to obtain relief under that provision.

---

[8] The unemployment-compensation regulations define "dependent child" as:

> An individual's unmarried child, stepchild, legally adopted child or illegitimate child, who at the beginning of the individual's current benefit year, was wholly or chiefly supported by the individual and was 17 years of age or younger, or if 18 years of age or older, because of physical or mental infirmity was unable to engage in a gainful occupation.

Id. §65.151.

Accordingly, the order of the Superior Court is affirmed.

Justices Baer, Todd, Donohue, Dougherty, Wecht and Mundy join the opinion.