20CA1949 Marriage of Griffis 09-16-2021

COLORADO COURT OF APPEALS

Court of Appeals No. 20CA1949
Mesa County District Court No. 13DR724
Honorable Matthew D. Barrett, Judge

In re the Marriage of

Larry E. Griffis,

Appellee,

and

Janette Griffis, k/n/a Janette Romero,

Appellant.

ORDER REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division III
Opinion by JUDGE DAVIDSON*
Furman and Brown, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced September 16, 2021

LaCroix & Hand, P.C., Mark R. Hand, Grand Junction, Colorado, for Appellee

Catherine C. Burkey P.C., Catherine C. Burkey, Grand Junction, Colorado, for Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2020.

¶ 1 In this post-dissolution of marriage case between Janette Griffis, now known as Janette Romero (mother), and Larry E. Griffis (father), mother appeals the district court's order that rejected the magistrate's order modifying child support. We reverse the district court's order and remand the case with directions to reinstate the magistrate's order.

I. Background

¶ 2 Mother and father have three children together: Jo.G, Ja.G, and E.G. After their divorce, the parties agreed to a modified parenting time schedule, in which Jo.G. resided with mother, Ja.G. resided with father, and E.G. spent equal time with the parties. Mother was obligated to pay father child support in the amount of $330 per month.

¶ 3 In August 2019, father moved to modify child support, alleging in relevant part that Jo.G. had become emancipated. Although the child had turned nineteen years old, mother argued that the child support obligation should continue because Jo.G. was physically disabled.

¶ 4 After a two-day hearing, the magistrate found that Jo.G. was "partially disabled to a degree that prevent[ed] her [from] being able

to independently support herself without assistance from her parents" and, thus, she had not become emancipated. The magistrate explained that Jo.G. had rheumatoid arthritis and had described daily pain, considerable fatigue, and swelling of her extremities. The magistrate acknowledged that Jo.G. was working part time while also attending college full time and was able to complete limited activities. But the magistrate found that the effects of Jo.G.'s disease had worsened, her pain was not successfully managed, and she needed assistance to complete certain tasks.

¶ 5 After calculating the amount of child support for the split physical care of the children, the magistrate found that the statutory guidelines recommended offsetting payments. However, the magistrate found that because Jo.G. was capable of earning $650 per month from her part-time job, her income eliminated father's need to pay mother any child support. The magistrate then modified mother's child support obligation to $910 per month, and concluded that, based on his calculations, mother owed father $10,973 in arrearages.

¶ 6 Father petitioned the district court to review the magistrate's order, disputing the magistrate's determination that Jo.G. was not emancipated. The district court rejected the magistrate's order, concluding that the magistrate had misapplied the law and that his finding that Jo.G. was incapable of supporting herself was clearly erroneous.

II. Standard of Review

¶ 7 A district court reviewing a magistrate's decision under C.R.M. 7(a) shall adopt, reject, or modify the magistrate's order. C.R.M. 7(a)(10). Our review of the district court's decision is effectively a second layer of appellate review. *In re Parental Responsibilities Concerning G.E.R.*, 264 P.3d 637, 639 (Colo. App. 2011). We review de novo the magistrate's and the district court's conclusions of law. *In re Parental Responsibilities Concerning B.J.*, 242 P.3d 1128, 1132 (Colo. 2010). But we must accept the magistrate's factual findings unless they are clearly erroneous. *Id.*; *see* C.R.M. 7(a)(9).

¶ 8 "The general rule is that a child support award falls within the sound discretion of the trial court and will not be disturbed on appellate review, absent an abuse of discretion." *In re Marriage of Plummer*, 735 P.2d 165, 166 (Colo. 1987).

III. Discussion

¶ 9 Mother contends that the district court erred by rejecting the magistrate's order because (1) the magistrate properly applied the law to determine that Jo.G. was disabled for purposes of continuing child support and (2) the record supported the magistrate's finding that Jo.G. was incapable of supporting herself. We agree.

A. The Magistrate Did Not Misapply the Law

¶ 10 In concluding that the magistrate misapplied the law, the district court explained that a presumption of emancipation applies when a child reaches the age of nineteen. It found that the magistrate did "not indicate" (1) he had presumed Jo.G. had become emancipated after turning nineteen and (2) the presumption had been overcome. The court also stated that a "partial disability" was insufficient to continue a child support obligation for a child over nineteen years old. We do not agree that the magistrate misapplied the law.

1. Applicable Law

¶ 11 Parents generally have an obligation to support their child until the child becomes emancipated. § 14-10-115(13)(a), C.R.S. 2020; *In re Marriage of Salas*, 868 P.2d 1180, 1181 (Colo. App.

1994). When the child reaches the age of majority (statutorily defined as nineteen), we presume the child has emancipated because, at that age, the child "is presumed to possess the physical and mental capabilities to support himself [or herself], to establish his [or her] own residence, and in general to manage his [or her] own affairs." *Koltay v. Koltay*, 667 P.2d 1374, 1376 (Colo. 1983) (decided under a former version of the statute that defined the age of emancipation as twenty-one); *see also* § 14-10-115(13)(a).

¶ 12 "However, when a child is obviously incapable of supporting himself [or herself] by reason of some physical or mental disability, the presumption of emancipation is no longer valid, and the duty of parental support may continue . . . ." *Koltay*, 667 P.2d at 1376. The court therefore may continue child support beyond the age of nineteen if it finds that "the child is mentally or physically disabled." § 14-10-115(13)(a)(II).

2. Presumption of Emancipation

¶ 13 In the magistrate's order, he asserted that a "child is generally emancipated for child support purposes when they attain nineteen years of age," citing to section 14-10-115(13)(a). The magistrate continued that, under the statute, child support may continue

beyond the child's nineteenth birthday when the child is mentally or physically disabled.

¶ 14 After setting forth the applicable law, the magistrate applied it. The magistrate found that Jo.G. had reached the age of nineteen but then determined that, based on the facts and circumstances, Jo.G.'s partial disability rendered her incapable of self-support. He, thus, concluded that Jo.G. was not emancipated.

¶ 15 Although the magistrate did not specifically state that he presumed Jo.G. had become emancipated at age nineteen, the ruling demonstrates that he correctly applied the law. The magistrate referenced section 14-10-115(13)(a), noted the general emancipation of a child at age nineteen, and, applying the statute, determined that mother had shown that Jo.G.'s partial disability prevented her from independently supporting herself. *See Plummer*, 735 P.2d at 166 (recognizing that the presumption of emancipation is overcome when a child is physically or mentally incapable of self-support); *see also In re Marriage of Nelson*, 2012 COA 205, ¶ 41 (findings may be implied from the court's ruling).

¶ 16 We therefore do not agree that the magistrate failed to presume Jo.G. emancipated at age nineteen and find that the presumption had been overcome.

3. Partially Disabled

¶ 17 The district court also rejected the magistrate's order because it concluded that section 14-10-115(13)(a)(II) provides no exception to emancipation for a "partial disability."

¶ 18 To be sure, the statute applies when "the child is mentally or physically disabled." *See id.* But we must consider the magistrate's statement in context with his full finding.

¶ 19 The magistrate found that Jo.G. was "partially disabled to a degree that prevent[ed] her [from] being able to independently support herself without assistance from her parents." While the magistrate described Jo.G.'s disability as "partial," it clarified — in accordance with the applicable law — that her disability rendered her incapable of self-support. *See Koltay*, 667 P.2d at 1376. Thus, despite the magistrate's qualifier to Jo.G.'s disability, it was Jo.G.'s inability to support herself "by reason of" her physical disability that formed the basis of the magistrate's finding. *Id.* That determination was not contrary to section 14-10-115(13)(a)(II).

B. The Magistrate's Finding Was Not Clearly Erroneous

¶ 20 The district court also rejected the magistrate's order because it concluded that the magistrate clearly erred by finding that Jo.G. was incapable of self-support. In reaching this determination, the court noted certain findings by the magistrate and evidence from the hearing that supported the conclusion that Jo.G. was physically capable of supporting herself. The district court, however, misconstrued the magistrate's findings, ignored findings and evidence that supported the magistrate's determination, and relied on its own resolution of conflicting evidence to support its conclusion that Jo.G. was capable of self-support.

¶ 21 "A court's factual findings are clearly erroneous only if there is no support for them in the record." *Van Gundy v. Van Gundy*, 2012 COA 194, ¶ 12. As applicable here, it was the magistrate's role to resolve the factual conflicts in the evidence, and determine the credibility of witnesses, the weight to accord testimony, and the inferences to be drawn from the evidence. *See In re Estate of Owens*, 2017 COA 53, ¶ 22. The reviewing court may not reweigh the evidence and substitute its judgment when the magistrate's

findings have record support. *See id.*; *see also In re Parental Responsibilities Concerning D.T.*, 2012 COA 142, ¶ 17.

¶ 22 In support of its determination that Jo.G. was incapable of independently supporting herself, the magistrate found that Jo.G. suffered from rheumatoid arthritis, she was in constant pain, she had considerable fatigue, her symptoms had worsened, she required her mother's assistance for bathing and administering medication, her medical condition prevented her from working more than part time, and she was unable to work enough to live independently. The magistrate also recognized that Jo.G. was "unable to sit for more than a few hours at a time," could only drive "for almost an hour at a time," was capable of working only "15 hours per week," and had to quit a prior college program "because of complications from her arthritis."

¶ 23 Because the record supports these findings, as well as the magistrate's finding that, due to Jo.G.'s disability, she was incapable of independently supporting herself, we must accept them, even if some evidence may support a different conclusion. *See D.T.*, ¶ 17; *Van Gundy*, ¶ 12.

¶ 24 Jo.G. testified extensively about her rheumatoid arthritis and the impact it had on her ability to support herself. She stated that

- she suffered substantial pain and "physically hurt every day";
- her extremities had swollen significantly;
- she could not walk, stand, or sit at a desk for extended periods of time;
- she could not drive a car for "more than an hour" and could "barely drive to class";
- she physically could not work more than a part-time job and, in doing so, she required physical accommodations by her employer;
- she had limited mobility, describing that mother had to "push [her] up the stairs" and help her get into the shower;
- she needed assistance to administer her medications;
- she was extremely fatigued; and then
- she had quit her prior college program (focused on equine care) because she could not physically continue it.

¶ 25 As well, Jo.G. testified that she was diagnosed as morbidly obese, mother financially supported her, she did not know of any job she could perform that could enable her to live independent of mother, and she could not live independently.

¶ 26 In addition to Jo.G.'s testimony, mother confirmed that Jo.G.'s physical condition prevented her from living independently, Jo.G.'s condition had deteriorated, and her ability to move had gotten worse, noting that "[t]here are times [Jo.G.] can't even lift her arm up to brush her hair[,] days she can't even get out of bed," and times mother must help her get up the stairs. Mother's boyfriend also testified that Jo.G. required his help at home, she was in a lot of pain, and she could not live independently.

¶ 27 Notwithstanding this evidence, the district court concluded that Jo.G.'s disability was not as "substantial" or "obvious" as other published cases that had continued child support for a disabled child. *See, e.g.*, *In re Marriage of Cropper*, 895 P.2d 1158, 1160 (Colo. App. 1995) (the child's "undisputed[]" mental disability rendered her incapable of living on her own); *Salas*, 868 P.2d at 1181 (continuing child support where the child suffered from cerebral palsy). But whether a child is disabled and, thus,

incapable of self-support after the age of emancipation is determined by the relevant facts and circumstances of each case. *Cf. In re Marriage of Robinson*, 629 P.2d 1069, 1072-73 (Colo. 1981) (recognizing that the facts and circumstances of each case must be considered in determining whether the standards for emancipation have been established); *In re Marriage of Weisbart*, 39 Colo. App. 115, 117, 564 P.2d 691, 963 (1977). The magistrate considered the relevant circumstances and found, with record support, that Jo.G.'s disability rendered her incapable of self-support. The district court must defer to that finding, based on the magistrate's resolution of the conflicting evidence, and may not substitute its judgment after the fact. *See Owens*, ¶ 22; *D.T.*, ¶ 17.

¶ 28 We therefore cannot conclude that the magistrate clearly erred by finding that Jo.G. was incapable of self-support.

IV. Appellate Attorney Fees

¶ 29 Father asks for an award of appellate attorney fees under C.A.R. 38 and 39.1, arguing that mother's appeal was frivolous. Given our disposition, we reject his request. *See In re Marriage of Wright*, 2020 COA 11, ¶ 41.

V. Conclusion

¶ 30 We reverse the district court's order and remand the case with directions to reinstate the magistrate's order modifying child support.

JUDGE FURMAN and JUDGE BROWN concur.