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Only Incidental

Children are not intended beneficiaries of parents' property settlement agreement

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The Supreme Court has made it clear that it will not afford a minor child standing to sue a parent for direct support.

In *Chen v. Chen*, PICS Case No. 06-0411 (Pa. March 20, 2006) Baer; Cappy, C.J.; Castille. J.; Saylor, J., all concurring, J. (22 pages), the justices answered the question of whether children may sue or intervene in an action to enforce provisions in their parents' property settlement agreement. Both the trial court and the Superior Court held that the child (emancipated at the time of suit) could intervene in her mother's support action because the child was a third party intended beneficiary of her parents' property settlement agreement. Both courts relied upon the Restatement (Second) of Contracts Section 302, and *Guy v. Liederbach*, 459 A.2d 744 (Pa. 1983). The Supreme Court heard the father's appeal and reversed both the trial court and the Superior Court; holding that the child may be a third party beneficiary but is not an intended (versus incidental) beneficiary of the contract between the parents.

Wheamei Chen and Richard Chen were married in 1977, had two children, and divorced in 1983. The parties entered into a Property Settlement Agreement whereby Wheamei (mother) had physical and legal custody of their daughter, Teresa, and the father had physical and legal custody of Robert, the son.

The property settlement agreement contained a provision for child support: "[Father] agrees and contracts to pay to [Mother] the sum of \$25.00 per week as child support of the child, [Daughter] who will be in the custody of [Mother]. [Father] further agrees that upon obtaining regular employment or upon any increase in salary, the aforementioned support award will be increased in accordance with the Northampton County Domestic Relations Guidelines. [Father] hereby waives, releases and renounces any and all claims to child support for [Son]." Until Teresa was 18, father paid to mother \$25 per week. During Teresa's minority, father never increased the amount of child support and mother never sought an increase in the child support amount.

Teresa turned 18 in February 2000 and two months later, mother filed a petition requesting enforcement of the property settlement agreement and requesting that the court hold father in contempt. Mother sought to collect the arrearages based on father's salary increases over the years. Daughter, upon turning 18, filed a petition to intervene. She asserted that she was an intended third party beneficiary and that she had a legally enforceable interest.

In *Guy*, the Supreme Court overruled, in part, *Spires v. Hanover Fire Insurance Co.*, 70 A.2d 828

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(Pa. 1950). Spires had a very restricted definition of intended beneficiary, which stated that the contracting parties had to expressly intend in the contract to benefit the third party. The Guy court expanded upon that interpretation and adopted the more liberal Section 302(1)(b) of the Restatement.

The trial court found that the daughter was an intended beneficiary of the agreement and granted her petition to intervene. The trial court and Superior Court both found that the mother intended to give Teresa the benefit of the promised performance. After daughter was permitted to intervene, her mother withdrew as a party. The result was that daughter and father were the resulting plaintiff and defendant to the action. The trial court interpreted the agreement as an independent contract because the agreement had been incorporated but not merged into the divorce decree. The trial court found that father had a duty to increase his support payments under the agreement and that by not doing so, he had breached the agreement. The trial court made a determination that the father owed more than \$59,000.

First Impression

The Superior Court noted that whether a child could sue a parent to enforce a support provision based on a property settlement agreement was an issue of first impression in Pennsylvania. The Superior Court applied the Guy test and found the daughter was an intended beneficiary and the parties intended to provide for the daughter and that the mother intended to give the daughter the benefit of the support payments. The father filed for allowance of appeal, which was granted. The father argued that their daughter was not an intended beneficiary, but rather an incidental beneficiary. He further stated that if the court upheld daughter's intervention, it would open the door to a child suing a parent "by equating the right to be supported with the right to support payments."

Writing for Supreme Court, Judge Max Baer in Footnote 13, noted that there would have been no question that the mother could have enforced her agreement with father but that since she withdrew as a party her claims were not before the court. Perhaps if the mother had stayed in the case, this opinion would ever have been written. I believe that the Supreme Court would not have permitted allowance of the appeal had the mother stayed in, because her rights are unquestioned and the Superior Court would have enforced her right to get the benefit of the agreement. In short, there most likely would have been no appeal to the Supreme Court. However, the proceedings in Chen put Teresa in the position of suing her father for past due child support. The Supreme Court of Pennsylvania clearly did not like this situation.

In Footnote 15, the Supreme Court stated that mother is not obligated to "pay money" to daughter but rather is obligated to support her. In the same footnote, the court stated "Father, as promisor is not paying Mother as promisee, money to satisfy Mother's obligation to support daughter, but rather to satisfy his own obligation to support his child."

The majority in Chen discussed at length policy considerations against permitting a child to sue a

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parent for child support. The court is very clear to stress "agreements and orders direct the non-custodial parent to pay support monies to the custodial parent." Therefore, this court concluded that the parent in the agreement did not intend for the payments from the father to go to the child directly in the form of cash. Baer wrote, "To construe the Agreement as providing Daughter a direct interest in the individual payments as opposed to support generally could open a Pandora's Box."

The court went on to state ". . . we conclude that strong public policy favors denying the child standing to keep the specific dollars one parent owes the other for the child's generalized support . . . absent special circumstances such as a direct designation that a benefit be paid to the child or the custodial parent's inability to enforce the agreement due to death or disability." The Supreme Court found that the daughter was not an intended beneficiary. No one intended for the cash payments to be made directly to the daughter and the mother intended to use the support for the benefit of the daughter.

It is clear that the policy considerations of the majority were far more important than considerations of contract law. Opening the door for a child to sue a parent for direct payment of support was simply a path this court did not want to take. There are three concurring opinions by Chief Justice Ralph J. Cappy and Justices Ronald D. Castille, and Thomas G. Saylor. Saylor was joined by Justice J. Michael Eakin.

Cappy and Castille took issue with the majority for having any discussion outside of contract law. Their concurring opinions state that a straightforward application of the two-part test stated in *Guy* and the Restatement Section 302 is all that was necessary and there should have been no discussion of policy considerations. Only Saylor (and Eakin) would rely solely on a public policy analysis rather than on a contract analysis. The moral of the story is that the Supreme Court will not afford a minor child standing to sue a parent for direct support. •

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