

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2017 CA 1573

IN THE MATTER OF
THE INTERDICTION OF
CASSIDY MORGAN KEITH

Judgment Rendered: JUN 22 2018

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Appealed from the
21st Judicial District Court
In and for the Parish of Livingston, Louisiana
Trial Court Number 152,133

Honorable Elizabeth P. Wolfe, Judge

* * * * *

Laura Thornton
New Orleans, LA

Attorney for Appellant
Defendant – Cassidy Morgan Keith

Robert H. Harrison, Jr.
Watson, LA

Attorney for Appellee
Plaintiff – Angela Hudson

* * * * *

BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.

McClendon, J. concurs.

JEW

Mt.

WELCH, J.

Cassidy Morgan Keith appeals a trial court judgment ordering her full interdiction. Because we find that the trial court erred in determining that a full interdiction was warranted, we reverse the judgment of the trial court, render a judgment of limited interdiction with respect to Cassidy's financial affairs and medical decisions, and remand this matter for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

On May 4, 2016, Angela Hudson filed a petition seeking to have her daughter, Cassidy, interdicted. At the time the petition was filed, Cassidy was eighteen years old. According to Ms. Hudson, Cassidy suffered from various mental and developmental defects and had recently been admitted to a psychiatric facility pursuant to a physician's emergency commitment. Ms. Hudson claimed that Cassidy suffered from confusion and short term memory loss, did not comprehend her current situation, was easily influenced, could not change or exchange money, could not complete simple day to day tasks, and had other deficiencies. Ms. Hudson further claimed that because of these deficiencies, Cassidy was unable to care for herself or to manage her own affairs and that a limited interdiction was not appropriate. Therefore, Ms. Hudson sought to have Cassidy interdicted, to be appointed as Cassidy's curatrix, and to have Cassidy's older sister, Chelsea Keith, appointed as undercuratrix.

In addition and based on the affidavit of Cassidy's treating physician, Dr. Henry T. Young, Jr., Ms. Hudson sought an *ex parte* temporary interdiction of Cassidy. See La. C.C. art. 391 and La. C.C.P. art. 4549. According to Dr. Young's affidavit, he had been Cassidy's primary care doctor since 2004, she had multiple formal psychiatric testing done at an early age, and her records indicated diagnoses of attention deficit and hyperactivity disorder ("ADHD"), bi-polar disorder, learning disability, mild mental retardation, anxiety, depression, and

autism spectrum. Dr. Young stated that Cassidy had been on psychiatric mood altering medications from a young age, had been held back on more than one occasion in her educational career, and had attended special education classes. He also stated that Cassidy was unable to manage financial or medical decisions in her own best interest and had a limited understanding of those interests, which would not improve over time. Based on Ms. Hudson's petition and Dr. Young's affidavit, the trial court ordered the temporary interdiction of Cassidy, with Ms. Hudson appointed as temporary curator. The trial court also appointed an attorney at law to represent Cassidy.

Thereafter, Cassidy, through her court appointed attorney, filed an answer to the petition, essentially denying the allegations of the petition. Cassidy also maintained that it was not necessary for her to be interdicted because she was capable of caring for herself and managing her own affairs. Notably, during the pendency of the interdiction proceedings, Cassidy became pregnant. The father of the child was her boyfriend, Dillon Babin, whom she had been dating for over a year and had planned to marry; however, the order of temporary interdiction precluded the marriage.

A trial on the merits was held on March 10, March 14, and June 16, 2017. Thereafter, the trial court signed a judgment on July 3, 2017, which, among other things, determined that Ms. Hudson had proven, by clear and convincing evidence, that Cassidy was a person of the full age of majority who was unable to consistently make reasoned decisions regarding the care of her person or property and whose interests could not be protected by a less restrictive means other than full interdiction; ordered the full interdiction of Cassidy; appointed Ms. Hudson as Cassidy's curatrix; appointed Chelsea as undercuratrix; and ordered Ms. Hudson to have Cassidy evaluated by the State of Louisiana, Office for Citizens with Developmental Disabilities ("OCDD") to see if she was eligible for services from

that agency, and in the event that OCDD determined that such services were available, Ms. Hudson was ordered to utilize such resources.

From this judgment, Cassidy has appealed, challenging the trial court's determination that Ms. Hudson had proven by clear and convincing evidence that Cassidy could not make reasoned decisions regarding her own care and that there were no less restrictive means to protect her interests.

LAW AND DISCUSSION

A court may order the full interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity, is unable consistently to make reasoned decisions regarding the care of his person and property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means. La. C.C. art. 389. Thus, only if a person is *consistently* unable to make reasoned decisions regarding the care of *both* his person *and* his property, or to communicate those decisions, is he a candidate for full interdiction.

For a person to be interdicted, the inability to make reasoned decisions regarding the care of his person and his property *must result from an infirmity*; a person who is merely caring for his person and property in an imprudent manner, but who does not suffer from an infirmity affecting his ability to make reasoned decisions is not a candidate for full interdiction. La. C.C. art. 389, Revision Comments-2000, (b). However, categorizing the infirmity from which a person suffers is significantly less important than *evaluating his functional ability to make reasoned decisions* and to communicate those decisions. *Id.* A decision is not unreasoned merely because it appears risky, unwise, or imprudent. *Id.*

A person is unable to consistently make reasoned decisions if, for example, he suffers from an infirmity which intermittently deprives him of reason. La. C.C. art. 389, Revision Comments-2000(d). Full interdiction is a last resort and, as a result, is warranted only when a person's interests cannot be protected by less

restrictive means; a person's interests can be protected by less restrictive means if, for example, his interests (1) are currently being protected by other legal arrangements, including a procuracy, mandate, or trust, or (2) could be protected by other legal arrangements, including a limited interdiction. La. C.C. art. 389, Revision Comments-2000, (e).

A court may order the *limited interdiction* of a natural person of the age of majority, or an emancipated minor, who due to an infirmity is unable consistently to make reasoned decisions regarding the care of his person *or* property, *or* any aspect of either, or to communicate those decisions, and whose interests cannot be protected by less restrictive means. La. C.C. art. 390. Thus, a limited interdiction is proper when either form of incapacity is proven and necessity is shown. **Interdiction of Cornwell v. Cornwell**, 97-425 (La. App. 3rd Cir. 10/15/97), 702 So.2d 938, 942-943.

The petitioner in an interdiction proceeding bears the burden of proof by clear and convincing evidence. La. C.C.P. art. 4548. To prove a matter by clear and convincing evidence means to demonstrate that the existence of a disputed fact is highly probable, that is, much more probable than its nonexistence. **In re Interdiction of DeMarco**, 2009-1791 (La. App. 1st Cir. 4/7/10), 38 So.3d 417, 424. The determination of whether to order interdiction, is a finding of fact. Thus, the trial court's judgment will not be set aside in the absence of manifest error or unless it is clearly wrong. See **Interdiction of Cornwell**, 702 So.2d at 940, citing **Stobart v. State, Through DOTD**, 617 So.2d 880, 882 (La. 1993).

On appeal, Cassidy argues that the trial court erred in finding that Ms. Hudson had proven, by clear and convincing evidence, that Cassidy could not make reasoned decisions regarding her own care and her property and that there were no less restrictive means to protect her interests. Cassidy notes that at trial, Ms. Hudson relied solely on the testimony of herself and Dr. Young and that this

testimony was insufficient to meet Ms. Hudson's heightened burden of proof with respect to her interdiction. Cassidy points out that Dr. Young is a family physician who not only lacked the expertise necessary to render an opinion as to whether Cassidy was capable of making reasoned decisions regarding the care of her person or property, but also failed to make any assessments regarding her intellectual and adaptive functioning or capacity. In addition, Cassidy maintains that Ms. Hudson's testimony failed to establish that Cassidy could not make reasoned decisions regarding her own care, was unsupported by any other evidence offered at trial, and was also so internally inconsistent that a reasonable fact finder would not give her testimony any credit.

Cassidy further argues that her decisions, which the trial court cited in its finding that full interdiction was warranted, may be characterized as unwise, but did not rise to the level of being unreasoned. Further, while Cassidy openly admitted that she needed help with respect to financial matters (due to her limited math capabilities) and medical decisions (due to her limited reading capabilities), Cassidy contends that she presented evidence, through her own testimony and the testimony of Dr. Alan Taylor, a board certified clinical psychologist, that she can and does consistently make reasoned decisions regarding her own care and that there were less restrictive means than a full interdiction to protect her interests. We agree.

At trial, Ms. Hudson testified that she was Cassidy's mother and that Cassidy was born on July 11, 1997, when Ms. Hudson was 18 years old. Ms. Hudson also testified that Cassidy had one older sister, Chelsea, and one younger sister, Carlee. Both Carlee and Cassidy were pregnant at the time of the trial. Ms. Hudson stated that she knew from Cassidy's birth that Cassidy suffered from some type of mental deficiency, that Cassidy did not begin to talk until she was nearly five years old, and that because of her delayed speech, most people assumed her to

be deaf or mute. Ms. Hudson stated that Cassidy's medical records indicated that she suffered from ADHD, bi-polar disorder, learning disability, mild mental retardation, anxiety, depression, and autism. Ms. Hudson explained that due to these conditions, Cassidy did not attend regular classes in school, but rather was enrolled in special education classes from first grade all the way through high school, except for her junior high years, when she was homeschooled. Ms. Hudson claimed that Cassidy was homeschooled during those years because Cassidy kept getting suspended and would beat on the walls, throw chairs, pull her hair out, and was unable to handle the work; however, she did not offer Cassidy's school records or other evidence to support or corroborate her testimony in this regard.

With respect to Cassidy's high school education, Ms. Hudson testified that Cassidy was enrolled at Live Oak High School in the special education program, but she was not able to graduate with a high school diploma nor was she able to obtain her graduate equivalency degree ("GED"); rather, she received a certificate of achievement for participating. Ms. Hudson testified that Cassidy had never had a job, had never applied for a job, and probably could not make change for a dollar bill. Ms. Hudson further testified that Dr. Young had been Cassidy's physician for her entire life and that he had prescribed her Ritalin, Depakote, Topamax, and several other medications. However, when Cassidy met and started dating Dillon Babin, Cassidy quit taking her medications and began smoking marijuana. Since the temporary interdiction was entered, Ms. Hudson has not allowed Cassidy to see Dillon, even though she is pregnant with his child.

Ms. Hudson also testified about an incident that occurred between Cassidy and Carlee after leaving Dr. Young's office one day. Ms. Hudson had taken Cassidy to Dr. Young to get Cassidy back on her medication. After the appointment, Cassidy and Carlee got into a fight and Cassidy locked her hands over her younger sister's mouth and nose and attempted to smother her. Cassidy

then stated that she was going to kill herself. At that point, Ms. Hudson brought her to a psychiatric unit at the hospital where she had to be restrained. Ms. Hudson testified that Cassidy was released five weeks later.

Ms. Hudson stated that Cassidy did not have the mental capacity to know when she needed to go to the doctor, as evidenced by the fact that Cassidy had previously contracted a sexually transmitted disease, but did not seek medical treatment until Ms. Hudson found out six months later when the STD reached a critical stage. Ms. Hudson claimed that Cassidy had short term memory loss; however, she later contradicted herself when she testified that Cassidy had a photographic memory. Although Ms. Hudson also claimed that Cassidy was unable to care for herself and would cause harm to others, Ms. Hudson admitted that she had recently gone on several overnight trips (to Oklahoma and to New Orleans) and that she allowed not only Cassidy to stay at home by herself, but she also left a young child (who was a member of their family) under her care.

Ms. Hudson's testimony further established that she was currently controlling all of Cassidy's income—*i.e.* both her monthly social security disability funds (which constitutes approximately one-half of the funds Ms. Hudson receives in a month) as well as the \$20,000 lump sum payment Cassidy received from social security for back sums owed to her on behalf of her father. Ms. Hudson testified that the lump sum payment Cassidy received, as well as the benefits, were used to pay Cassidy's "bills" and expenses.

Dr. Young testified via deposition. He testified that he was Cassidy's "regular family physician," was board certified in family medicine, and has qualified as an expert in that field. He admitted that he was not an expert in the field of either psychology or psychiatry. Prior to Dr. Young's deposition, he issued a written report (which was used to obtain the *ex parte* order of temporary interdiction), wherein he stated that Cassidy's medical history included a diagnosis

of “mild mental retardation.” During Dr. Young’s deposition, he stated that Cassidy had diagnoses “as per psychiatry and psychology” of mental retardation, Asperger’s syndrome, ADHD, anxiety, depression, developmental delay, learning disorders, oppositional defiant disorder, and obsessive compulsive disorder. However, Dr. Young could not provide a definition for mental retardation or Asperger’s syndrome, and he subsequently admitted that Cassidy was never actually diagnosed with mental retardation.

Dr. Young opined that Cassidy had extremely low functioning intellect and was somewhere in the “two percent range,” meaning that she “performs less well than 98 percent of people her age.” He also estimated that her “functioning capacity” in school would be “down in the F range.” Dr. Young stated that Cassidy “cannot plan ahead to do” simple day-to-day activities and that she was not “capable of understanding the consequences of her actions,” as evidenced by the incident that led to Cassidy being hospitalized. In addition, he stated that Cassidy had “made poor decisions” as evidenced by the fact that she took herself off of the medications that he prescribed for her. However, he admitted that Cassidy explained to him that she stopped taking the medications he prescribed because they made her feel like a “zombie” and gain weight. Dr. Young opined that Cassidy was unable to manage financial or medical decisions in her own best interest, he did not think Cassidy would ever get a driver’s license, and believed that she could not balance a checkbook. Dr. Young stated that Cassidy’s conditions would not improve because all of her diagnoses were incurable “and [that] she will be plagued with them the rest of her life.”

Cassidy testified at trial on her own behalf and understood the reason she was in court and what her interdiction would mean. Cassidy stated that she was nineteen years old and that she lived in Denham Springs. Cassidy admitted that she had trouble reading and writing; however, she was able to take and pass the

driver's license exam. While Cassidy testified that she obtained her driver's license, she stated that she was not currently driving because her car did not have an inspection sticker. She then explained how one would go about getting an inspection sticker on a car or a new driver's license if she lost her current one. Cassidy also testified that with the help of Summer Babin (Dillon Babin's mother), she opened her own checking account and that she deposited \$100 into that account that she had earned babysitting. She further testified that she knows how to go on the internet and check her account balance and explained in detail what would happen if she wrote a check and did not have sufficient funds in her account to cover it.

Cassidy testified that she was pregnant and that the father of the child was her boyfriend, Dillon Babin. Cassidy explained that she started dating Dillon Babin in September 2015, a few months after she turned 18, that he lives near her home, and that they attended the same high school. Cassidy stated that after she discovered she was pregnant, she and Dillon wanted to get married; however, the temporary interdiction prevented their marriage. Nevertheless, they continue to want to get married and have obtained a trailer from Dillon's family, which is where she and Dillon would like to live and raise their baby. Cassidy admitted that she did not have a high school diploma or GED, but only a certificate for participating and that other than babysitting, she had never been employed or had a job. However, she testified that Dillon was employed and that they had created a budget for themselves and a plan for saving money. Cassidy explained that she planned to make money by cleaning houses, like her mother, and by babysitting. Cassidy testified that in preparation of the baby's arrival, she took classes at a hospital, became certified in CPR, decorated the nursery for the baby, and has purchased baby clothes and other necessary items like a crib, a rocker, bottles, and diapers.

Cassidy admitted that she needed help in complex areas of her life, for example with financial matters and going to the doctor's office and signing papers. However, Cassidy stated that she believed she could live on her own. Cassidy testified that she has a strained relationship with her mother and that she did not want her mother to be appointed as her curator because of Ms. Hudson's controlling nature and her refusal to allow Cassidy to do things for herself. As previously noted, Cassidy testified that she had trouble reading; however, she was able to read aloud a letter in open court that she had written to the trial court requesting that Dillon's mother, Summer Babin, be appointed her curator.

Cassidy also testified that Ms. Hudson had recently taken several overnight trips wherein Cassidy had been left at home, sometimes for multiple nights. Cassidy testified that during those times, she had prepared meals for herself. Cassidy also explained that during one of those trips, Ms. Hudson went to Mardi Gras and Cassidy was left to babysit a two year old family member overnight. When the toddler got sick and began throwing up in the middle of the night, Cassidy bathed the child and then drove the child to her mother.

Dr. Taylor, a psychologist, testified at trial on behalf of Cassidy. Dr. Taylor and his staff spent two to three hours observing and testing Cassidy, which included performing an assessment of Cassidy's current intellectual functioning, including an IQ test and academic capabilities, and her adaptive functioning. According to Dr. Taylor, Cassidy's IQ score averaged between 65 and 75. Dr. Taylor explained that any score below a 70 is generally considered mentally retarded. Dr. Taylor also examined Cassidy's academic abilities and determined that Cassidy read at a second grade level, had sentence comprehension and spelling abilities of a third grader, and math computation of a kindergartener. Dr. Taylor opined that Cassidy had a learning disability and borderline intellectual functioning. Dr. Taylor also stated that he administered an adaptive assessment

test, the results of which indicated that Cassidy was potty trained, knew how to wash her hands, eat properly, make her bed, and perform other simple tasks. He further stated that Cassidy was capable of making a grocery list with six items, but that she was probably not able to fill out a job application. Dr. Taylor stated that Cassidy had the same abilities and mental capacities as those who work the counter at McDonalds, however, she probably did not have the capacity to make change.

Dr. Taylor noted that contrary to Dr. Young's report, Cassidy had never been diagnosed with mental retardation. Additionally, Dr. Taylor saw no evidence that Cassidy had Asperger's syndrome or bi-polar disorder. Dr. Taylor likewise saw no evidence in the records to support the previous diagnosis of oppositional defiant disorder. While Dr. Young had testified that with regard to a person with oppositional defiant disorder, there will always be confrontation between her and the governing authority "whoever that [may]be." Dr. Taylor noted that Cassidy had never gotten in trouble at school and in fact, her teachers had noted that she was well-liked and well-behaved. Dr. Taylor also did not see any indications of Cassidy having a significant behavior problem. Rather, Dr. Taylor opined that Cassidy likely received the diagnosis of oppositional defiant disorder because of Cassidy and Ms. Hudson's "parent-child relationship" and that Cassidy was likely being rebellious or defiant. Instead, Dr. Taylor opined that Cassidy had a "phase of life problem," referring to the stress that naturally occurs when a child becomes an adult and both the child and the parent have to come to terms with the child's increased independence and attendant responsibilities. Thus, he believed that to the extent that Cassidy had behavioral issues, such as rebellion and defiance, they only appeared in her relationship with her mother and younger sister.

Notably, Dr. Taylor recommended that Cassidy would benefit from a limited interdiction with respect to complex financial transactions; however, he also recommended Cassidy apply for services from OCDD, which could provide

valuable services to help solve many of Cassidy's problems. Dr. Taylor also testified that if Cassidy were interdicted, he had grave concerns over Ms. Hudson serving as her curator; however, he did not believe that Summer Babin, Dillon Babin's mother, should be appointed as curator either.

Cassidy also presented the testimony of Ms. Maurie Duhe, a Community Services Professional, who performs eligibility determinations at the Florida Parishes Human Services Authority, a local governmental agency that contracts with the State of Louisiana to provide services for individuals with developmental disabilities. Although there was no record of Cassidy having applied for services, Ms. Duhe testified that there were many services for which Cassidy may be eligible, such as help with budgeting, finding and maintaining an apartment, vocational training and job coaching, training on handling finances and supervision in paying bills, teaching her how to care for herself, and the support of a personal case manager and support coordinator.

In rendering the judgment of interdiction herein, the trial court found that Cassidy was:

challenged ... in both the IQ testing and ... the adaptive assessment[s]; she's got impairments in judgment, self-direction, overall adaptive functioning, she demonstrates [deficits] in performance of higher level [activities of daily living], money management, decision making, [and] vocational skills As far as carrying out daily routines, ... she requires supervision with the higher skills, she has third grade and second grade and kindergarten level at reading, writing, and mathematics. ... I would say she's incapable of making sound reason[ed] decisions, due to the fact that she's ... not complied with what her physicians have with her medication and, as many young people do, the foolish decision to become pregnant out of wedlock, ... just very, very foolish; both of those things.

...of course, the [c]ourt may order the limited interdiction when the person, who due to an infirmity, is unable to make reason[ed] decisions about their person or their property or communicate the decisions. I can consider both, [Cassidy's attorney], especially, was pushing for less restrictive means and a limited interdiction; however, I don't find alternate, less restrictive living arrangements consistent with her needs would be met; I don't think there's a less restrictive

vehicle to help her the rest of her life besides a full interdiction. ... [Cassidy] had an expressed desire for some independence that might be medically or economically feasible, ... or possible, but it[']s not ultimately probable in her case. She needs help, she even stated she needed help. ...

Now, Ms. ... Hudson has done a lot of things right and maybe [there] have been some poor choices but not that that can't be remedied. I do find that [Ms. Hudson] has met the burden of proof ... to make a full interdiction; I will, have some orders, as per [Dr. Taylor's] recommendation, and I certainly take those to heart, in that I'm going to order a referral to OCDD...

As previously noted, only if a person is *consistently* unable to make reasoned decisions regarding the care of *both* his person *and* his property, or to communicate those decisions, and that the person's interests cannot be protected by a less restrictive means (such as a limited interdiction) is that person a candidate for full interdiction. See La. C.C. art. 389. If a person is unable to make reasoned decisions regarding their person or property, *or any aspect of either their person or property*, then person is a candidate for a limited interdiction. See La. C.C. art. 390. We have carefully reviewed the entire record in this matter and find that the evidence introduced fails to clearly and convincingly demonstrate that the *full interdiction* of Cassidy was warranted. Rather, we find that the trial court should have ordered a limited interdiction of Cassidy with respect to financial affairs and medical decisions.

The record herein clearly establishes that Cassidy suffers from developmental disabilities and that she has limited intellectual abilities. Both Dr. Young and Dr. Taylor opined that Cassidy was not capable of making decisions regarding either her financial affairs or medical decisions. Notably, Cassidy understands her conditions and limitations and openly admitted during her testimony that she needed help with regard to her financial affairs and with medical decisions. Other than those two aspects, there is no evidence demonstrating that Cassidy is consistently unable to make reasoned decisions regarding her regular

care and that her interests could not be protected by a less restrictive means, such as a limited interdiction.

We note that the trial court, in its oral reasons for judgment, found that Cassidy made unreasoned decisions regarding her care because she took herself off of the medication prescribed to her by Dr. Young and because she got pregnant out of wedlock. However, with respect to the decision to stop taking medication, the record establishes that Cassidy explained to Dr. Young that she quit taking her medication because it made her feel like a “zombie” and made her gain weight.¹ While this may have been an imprudent decision by Cassidy, it was neither unreasoned nor attributable to an infirmity. Likewise, the fact that Cassidy got pregnant out of wedlock, while possibly unwise given her age and financial situation, was neither unreasoned nor attributable to an infirmity. Furthermore, the testimony offered by Cassidy, as well as her mother, establishes that Cassidy is able to care for herself, feed herself, and that she can and has made reasoned decisions regarding her regular care.

Although Cassidy may need help with regard to her financial affairs and medical decisions, we cannot say that she is consistently unable to make reasoned decisions regarding the care of her person and find that her interests can be adequately protected by a limited interdiction with respect to those two areas. Therefore, we reverse the July 3, 2017 judgment of the trial court and render judgment of limited interdiction of Cassidy with respect to financial matters and medical decisions. This matter is remanded to the trial court for the entry of a judgment of limited interdiction pursuant to La. C.C. art. 390 and for all orders necessary to carry out the judgment of limited interdiction, including the

¹ Furthermore, at the time of trial, Cassidy was not taking her medication because of her pregnancy.

appointment of a curator. Accord **Interdiction of Cornwell**, 702 So.2d at 943-944.

CONCLUSION

For all of the above and foregoing reasons, the July 3, 2017 judgment of the trial court is reversed and judgment is rendered ordering the limited interdiction of Cassidy Morgan Keith with regard to all financial matters and medical decisions. This matter is remanded to the trial court for further proceedings in accordance with the views expressed in this opinion. All costs of this appeal are assessed to the appellee/petitioner, Angela Hudson.

REVERSED, RENDERED, AND REMANDED.