

ZELNICK V. ADAMS

SUPREME COURT OF VIRGINIA, 2002
263 VA. 601, 561 S.E.2D 711

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FACTS Jonathan Ray Adams (Jonathan) was born on April 5, 1980, the son of Mildred A. Adams (Adams or mother) and Cecil D. Hylton, Jr. (Hylton or father). Jonathan's parents were never married. Nevertheless, the Florida courts did determine Hylton's paternity of Jonathan. Jonathan's grandfather, Cecil D. Hylton, Sr. (Hylton Sr.), died in 1989 and had established certain trusts under his will, which provided that the trustees had sole discretion to determine who qualified as "issue" under the will.

In 1996, Adams met with an attorney, Robert J. Zelnick (Zelnick), about protecting Jonathan's interest as a beneficiary of the trusts after she had unsuccessfully attempted to get Jonathan recognized as an heir. Adams explained that she could not afford to pay Zelnick's hourly fee and requested legal services on her son's behalf on a contingency fee basis. Zelnick subsequently informed Adams that he had examined a copy of the will and that he was willing to accept the case. Adams went to Zelnick's office the next day, where Zelnick explained that the gross amount of the estate was very large. Nevertheless, Adams signed a retainer agreement (the contract) for Zelnick's firm to represent Jonathan on a one-third contingency fee.

In May 1997, Zelnick initiated a legal action on Jonathan's behalf. A consent decree was entered on January 23, 1998, which ordered that Jonathan was "declared to be the grandchild and issue of Cecil D. Hylton" and was entitled to all benefits under the Will and Trusts of Cecil D. Hylton.

In March 1998, Jonathan's father brought suit against Adams and Zelnick, on Jonathan's behalf, to have the contract with Zelnick declared void. Upon reaching the age of majority, Jonathan filed a petition to intervene, in which he disaffirmed the contract. Jonathan filed a motion for summary judgment asserting that the contract was "void as a matter of law" because it was not a contract for necessities. Jonathan argued that the 1997 suit was unnecessary due to the Florida paternity decree which conclusively established Hylton's paternity.

The trial court granted Jonathan's motion for summary judgment and ruled that the contingency fee agreement was not binding on Jonathan because he was "in his minority" when the contract was executed. This appeal followed.

DECISION Judgment reversed and remanded.

OPINION Lemons, J. In this appeal, we consider whether a contract for legal services entered into on behalf of a minor is voidable upon a plea of infancy or subject to enforcement

as an implied contract for necessities and, if enforceable, the basis for determining value of services rendered.

Under well- and long-established Virginia law, a contract with an infant is not void, only voidable by the infant upon attaining the age of majority. [Citation.] This oft-cited rule is subject to the relief provided by the doctrine of necessities which received thorough analysis in the case of *Bear's Adm'x v. Bear*, [citation].

In *Bear*, we explained that when a court is faced with a defense of infancy, the court has the initial duty to determine, as a matter of law, whether the "things supplied" to the infant under a contract may fall within the general class of necessities. [Citation.] The court must further decide whether there is sufficient evidence to allow the finder of fact to determine whether the "things supplied" were in fact necessary in the instant case. If either of these preliminary inquiries is answered in the negative, the party who provided the goods or services to the infant under the disaffirmed contract cannot recover. If the preliminary inquiries are answered in the affirmative, then the finder of fact must decide, under all the circumstances, whether the "things supplied" were actually necessary to the "position and condition of the infant." If so, the party who provided the goods or services to the infant is entitled to the "reasonable value" of the things furnished. In contracts for necessities, an infant is not bound on the express contract, but rather is bound under an implied contract to pay what the goods or services furnished were reasonably worth. [Citation.]

"Things supplied," which fall into the class of necessities, include "board, clothing and education." [Citation.] Things that are "necessary to [an infant's] subsistence and comfort, and to enable [an infant] to live according to his real position in society" are also considered part of the class of necessities. [Citation.] ***

Certainly, the provision of legal services may fall within the class of necessities for which a contract by or on behalf of an infant may not be avoided or disaffirmed on the grounds of infancy. Generally, contracts for legal services related to prosecuting personal injury actions, and protecting an infant's personal liberty, security, or reputation are considered contracts for necessities. [Citation.] "Whether attorney's services are to be considered necessities or not depends on whether or not there is a necessity therefor. If such necessity exists, the infant may be bound.... If there is no necessity for services, there can be no recovery" for the services. [Citation.]

Other states have also broadened the definition of "necessaries" to include contracts for legal services for the protection of an infant's property rights.

In determining whether the doctrine of necessities may be applied to defeat an attempt to avoid or disaffirm a contract on the grounds of infancy, the trial court must first determine as a matter of law whether the class of "things supplied" falls within the "general classes of necessities." We hold that a contract for legal services falls within this class. However, the inquiry does not end with this determination. The ultimate determination is an issue of fact. The trier of fact must conclude that "under all the circumstances, the things furnished were actually necessary to the infant was already sufficiently supplied." [Citation.] If the contract does not fall within the "general classes of necessities," the trial court must, as a matter of law, sustain the plea of infancy and permit the avoidance of the contract. Similarly, if the contract does fall within the "general classes of necessities," but upon consideration of all of the circumstances, the trier of fact determines that the provision of the particular services or things was not actually necessary, the plea of infancy must be sustained. Where there is a successful avoidance of the contract, the trial court may not circumvent the successful plea of infancy by affording a recovery to the claimant on the theory of *quantum meruit*. However, if the plea of infancy is not sustained, the claimant is not entitled to enforcement of the express contract. Rather, as we have previously held, "even in contracts for necessities, the infant is not bound on the express contract but on the implied contract to pay what they are reasonably worth." [Citation.]

Upon review of the record, we hold that the *** reason stated by the trial court for holding that the necessities doctrine did not apply, namely that the contract "was conducted while he was in his minority and he's not bound by that," is an error of law. We hold that a contract for legal

services is within the "general classes of necessities" that may defeat a plea of infancy. ***

The trial court's determination that the necessities doctrine did not apply was made upon motion for summary judgment filed by Jonathan. Nowhere in Jonathan's motion for summary judgment is the issue raised that the services were unnecessary at the time rendered. ***. Although Jonathan argues that the services were not necessary at all because he alleges that the Florida litigation resolved the question of his inclusion as a beneficiary under the will of Hylton Sr., the timing of the services was not even mentioned as an issue, much less as a reason for granting summary judgment.

Because the trial court erred in its determination, on this record, on summary judgment, that the doctrine of necessities did not apply, we will reverse the judgment of the trial court and remand for further proceedings, including the taking of evidence on the issue of the factual determination of necessity "under all of the circumstances." Consistent with this opinion, should the trial court upon remand hold that the doctrine of necessities does not apply because the evidence adduced does not support the claim, the contract is avoided and no award shall be made.

Should the trial court upon remand hold that the evidence is sufficient to defeat Jonathan's plea of infancy, the trial court shall receive evidence of the reasonable value of the services rendered. ***

INTERPRETATION Contractual incapacity does not excuse a minor from an obligation to pay the reasonable value of a necessary.

ETHICAL QUESTION Did Jonathan act ethically? Explain.

CRITICAL THINKING QUESTION What factors should a court use in determining whether goods or services are necessary? Explain.

LIABILITY FOR MISREPRESENTATION OF AGE

The states do not agree whether a minor who fraudulently misrepresents her age when entering into a contract has the power to disaffirm. Suppose a contracting minor says that she is eighteen years of age (or twenty-one, if that is the year of attaining majority) and actually looks that old or even older. By the prevailing view in this country, despite her misrepresentation, the minor may nevertheless disaffirm the contract. Some states, however, prohibit disaffirmance if a minor misrepresented her age to an adult who, in good faith, reasonably relied on the misrepresentation. As shown

in the following case, other states not following the majority rule either (1) require the minor to restore the other party to the position he occupied before making the contract or (2) allow the defrauded party to recover damages against the minor in tort.

Practical Advice

In all significant contracts, if you have doubts about the age of your customers, have them prove that they are of legal age.