

APPELLATE COURT
of the
STATE OF CONNECTICUT

Judicial District of Fairfield
At Bridgeport

A.C. 8480
SANDRA CARLSON BUCY

v.

PAUL C. BUCY

BRIEF OF AMICUS CURIAE
THE AMERICAN PSYCHOLOGICAL ASSOCIATION
IN SUPPORT OF SANDRA CARLSON BUCY
WITH ATTACHED APPENDICES

For Amicus Curiae:

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INTEREST OF AMICUS CURIAE

The American Psychological Association's interest in this case is described fully in its Application for Permission to Appear as Amicus Curiae and to File Amicus Brief (attached as Appendix A).

STATEMENT OF ISSUES

1. Whether the trial court was clearly erroneous in concluding that a licensed psychologist's services to a child for treatment of anorexia, bulimia, and an adjustment disorder were "medical expenses" as that term was used in a decree dissolving the parties' marriage.

2. Whether the trial court was clearly erroneous in finding that certain sessions between the psychologist and the child's mother, which were conducted solely to assist in treating the child, also constituted medical expenses covered by the divorce decree.

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ARGUMENT

I. The Trial Court Correctly Interpreted the Judgment of Dissolution As Requiring Defendant/Appellant to Pay the Treatment Costs for a Child Suffering from Anorexia, Bulimia and an Adjustment Disorder.

Paragraph 8.2 of the parties' Separation Agreement required Defendant/Appellant to "pay all medical, dental and orthodontia expenses for the children not covered by insurance," in excess of specified amounts. This language was incorporated into Paragraph 31 of the Judgment of Dissolution (the "Judgment") governing the parties' divorce. In such a situation, the parties' intent should govern, Cocco v. Cocco, 166 Conn. 37, 40-41, 347 A.2d 72, 73-74 (1974), but "[t]his intent must be determined from the language of the instrument." Kolkmeier v. Kolkmeier, 18 Conn. App. 336, 340, 558 A.2d 253, 255 (1989) (quoting Sweeney v. Sweeney, 9 Conn. App. 498, 500-501, 519 A.2d 1237 (1987)). Moreover, the words used by the parties "must be accorded their common meaning and usage." ^{1/} Discerning the intention of the parties is a question for the trier of fact, subject to reversal only if "clearly erroneous". Baldwin, 19 Conn. App. at 423, 562 A.2d at 583; Albrecht v. Albrecht, 19 Conn. App. 146, 152, 159, 562 A.2d 528, 531, 534 (1989). In the present case, the common usage of the term "medical expenses," the parties' purposes, and the most rational interpretation of the Judgment, all support the trial court's ruling.

^{1/} Cocco, 166 Conn. at 41, quoting Beach v. Beach, 141 Conn. 583, 588-89, 107 A.2d 629, 632 (1954). See also Baldwin v. Baldwin, 19 Conn. App. 420, 422, 562 A.2d 581, 583 (1989).

A. "Medical Expenses" Is Commonly Understood to Include Psychologists' Services for Serious Disorders.

The term "medical expenses" is commonly used to mean "expense[s] . . . incurred and paid primarily for the prevention or alleviation of a physical or mental defect or illness." Black's Law Dictionary 885 (5th ed. 1979) (emphasis added). Many rulings in this and other jurisdictions hold that the term "medical expenses" as used in divorce decrees includes the treatment of the children's mental disorders by psychologists. 2/

Treatises on the drafting of separation agreements note that in lieu of an exhaustive listing of health services, it is commonly understood that the phrase "medical expenses" includes all necessary health care costs, including those provided by non-physicians. See, e.g., 1 A. Lindey & L. Parley, Lindey on

2/ See e.g., Michel v. Michel, 13 Conn. L.T. 18 (May 4, 1987)(term "medical expenses" in judgment of dissolution includes treatment by psychologist); Santos v. Santos, 13 Conn. L.T. 2 (January 12, 1987)(same); Sterbling v. Sterbling, 519 N.E.2d 673, 676 (Ohio App. 1987)("the term 'medical expenses' [used in divorce decree] . . . covers all expenses and treatment of the child's health and well-being, whether physical or mental"); Martin v. Martin, 538 So.2d 765 (Miss. 1989)(psychological services for drug addiction fall within definition of "medical expenses"); In Re Marriage of Susan Zapata, 1988 Ill. App. Lexis 1534 (Sept. 29, 1989)("medical expenses" includes psychologists' services)(copy attached as Appendix B); Engar v. Raizin, 525 So.2d 470 (Fla. Dist. Ct. App. 1988) ("responsibility for a child's medical expenses includes expenses related to psychological care"); Sulman v. Sulman, 510 So.2d 908 (Fla. Dist. Ct. App. 1987)("extraordinary medical expenses" includes psychologists' services); Ticel v. Ticel, Slip. Op. No. 961 (Ohio App., Dec. 31, 1981)(same)(copy attached as Appendix C); Kahn v. Kahn, 532 P.2d 541 (Ariz. App. 1975)(same); Davis v. Davis, 153 N.W.2d 879 (1967)(rejecting distinction between treatment for physical problems and needed treatment for psychological problems).

Separation Agreements and Antenuptual Contracts § 15.03[A]

(1989). If parties intend to limit covered health care services, the separation agreement should exclude particular categories of services. Id. The Separation Agreement and the Judgment in this case did not do so. Hence the common, plenary meaning of "medical expenses" should be applied. 3/

B. The Parties' Reasonable Intent Was To Include The Services.

The Judgment required Defendant/Appellant to pay necessary, major expenses of the parties' children, including medical insurance (§30), life insurance (§32), and specified college expenses (§33). As this Court is aware, the common premise of such Judgments is that the larger wage earner (often the husband) will pay for those particularly costly items necessary for the children's well-being. The standard therefore is not whether the service is provided by a "medical" person (a physician) but whether the "treatment to the child ... was reasonably necessary for her health and well being, including mental and physical." 4/ As one court ruled, "we do not believe

3/ Defendant argues that the Judgment's specifying "dental and orthodontia" services must somehow be construed to limit the other phrase, "medical expenses." This is illogical. Dental expenses are often specified in divorce decrees because in children they are common, expensive, and somewhat optional. "Medical expenses" is a far broader category. Indeed, at least one court has ruled that in an agreement to pay all "medical, dental or optical expenses," psychologists' services are within "medical expenses." In re Titko, Slip Op. No. 21-CA-88, (Ohio App. March 23, 1989). (Copy attached as Appendix D.)

4/ Smith v. Smith, 405 So.2d 896, 897-98 (Miss. 1981). See also cases cited in footnote 2 above; Martin, 538 So.2d at

[Footnote continued]

the courts should allow a child to be deprived of necessary and reasonable mental health care." Sulman, 510 So.2d at 909. As another court ruled, "It is clear from the terms of the Agreement that the parties intended [the father] ... to be responsible for any health problems that might arise concerning his children." 5/

Consider an example. Suppose that the parties' child was hit by a car and required surgery, hospitalization, podiatric care, physical therapy, and psychological therapy for residual pain. It is unreasonable to conclude that a father and mother would intend that the first two services would be paid for as "medical expenses" -- but that the child would be denied the subsequent, rehabilitative services simply because they are provided by non-physicians. In sum, whether something is a "medical expense" depends on whether the child incurs needed healthcare services, and not on whether the professional service provider happens to be a physician. 6/ Indeed, Connecticut's

4/ [Footnote continued]

766("[P]sychological expenses incurred in treatment of the minor child are to be included as medical expenses for which the father is obligated to pay," because they are a "normal extension of necessary medical expenses" and necessary "to protect the health and welfare of the minor child").

5/ Kahn, supra 532 P.2d 545. Accord, Davis, 153 N.W.2d at 881("The proper care and maintenance of the minor daughter of the parties include tending to her emotional and psychological problems as well as her physical problems").

6/ Thus, under a marital decree, "It makes no difference whether the attending specialist is a psychologist or a psychiatrist who is also a physician; the method used in the

[Footnote continued]

"freedom of choice" law governing all health insurance plans declares broadly that "benefits payable for the services of a licensed physician .. shall be payable for the same services when the services are lawfully rendered by a [licensed] psychologist." Conn. Gen. Stat. § 38-174d(d). Cf. Conn. Gen. Stat. § 38-501(q) ("medical professional" includes clinical psychologist).

In an important, related area of law, it is well-established that psychologists' services are expenses of "medical care" for purposes of tax deductions. ^{7/}

C. Treatment for Anorexia and Bulimia is a "Medical Expense".

The child whose expenses are at issue in this case suffered from anorexia, bulimia, and an adjustment disorder. Anorexia and bulimia involve abnormal self starvation, followed by bingeing and purging of food. Defendant/Appellant contends that his daughter experienced merely "vomiting, when you boil it

^{6/} [Footnote continued]

diagnosis and prognosis of the patient is the same. Both are equally justified. ... "Sterbling, *supra* 519 N.E.2d at 676 (emphasis added). See also, Zapata, *supra*. Cf. Arkansas Blue Cross and Blue Shield v. Doe, 733 S.W.2d 429 (Ark. App. 1987).

^{7/} See I.R.C. §213; Treas. Regs. §1.213.1 ("medical care" includes expenses for "prevention or alleviation of a ... mental defect or illness."); Rev. Rul. 63-91, 1963-1 C.B. 54 (non-physician psychotherapists' services do qualify for the deduction); Rev. Rul. 143, 1953-2 C.B. 129 (psychologists' services qualify for deduction); Fischer v. Commissioner, 50 T.C. 104 (1968)(same); Lichterman v. Commissioner, 37 T.C. 586 (1961); Hendricks v. Commissioner, 35 T.C. 1223, 1237 (1961) ("certainly the definition of medical expenses is sufficiently broad to include amounts paid to qualified psychologists. ...")(Copies attached as Appendix E.)

down", and thus did not suffer from medical problems. (T. 182.) In fact, anorexia nervosa and bulimia are recognized by professionals as serious disorders which, if not properly treated, can have severe physical consequences, sometimes including death. (R.48-49.) A leading treatise, Harrison's Principles of Internal Medicine (11th ed. 1987) (hereinafter "Harrison's") states that "[e]maciation [in anorexics] is equivalent to that seen in the concentration camp victims of World War II." Harrison's, Chapter 73 at p. 398 (11th ed. 1987). Harrison's lists a number of dangerous physical symptoms associated with anorexia, including hypertension, anemia, cessation of menstruation, abnormal blood sugar tolerance, decreased bone density, and sudden death. Id. at 398-99. Numerous studies have found other physical results of anorexia, including muscular weakness, neurochemical abnormalities, low potassium levels, brain atrophy and cardiac arrhythmias. 8/ Physical dangers of bulimia can include choking on food, pneumonia, acute gastric dilatation, gastric or esophageal rupture, pancreatitis, brain tissue dehydration, and hypovolemic shock. 9/

8/ See, e.g., Hoffman, et. al., "Cerebral Atrophy in Anorexia Nervosa: A Pilot Study," 26 Biol. Psychiatry 321-24 (1989); Fava, et. al., "Neurochemical Abnormalities of Anorexia Nervosa and Bulimia Nervosa," 146:8 Am. J. Psychiatry 963-71 (1989); Shur, et. al., "Physical Complications in Anorexia Nervosa," 153 British J. Psychiatry 72-75 (1988). (Articles attached as Appendix F.)

9/ Harrison's at 399; Hall, et. al., "Physical Illness Encountered in Patients With Eating Disorders," 30 Psychosomatics 174-91 (1989); Andersen, "Inpatient and Outpatient Treatment of Anorexia Nervosa," in Brownell & Foreyt, Handbook of Eating
[Footnote continued]

One recent study found that "serious and very serious illness occurs most frequently in patients with a history of mixed anorexia and bulimia." In that study, 32% of patients with mixed anorexia and bulimia experienced "serious medical illness"; 84% had "significant medical complications"; and several suffered a "catastrophic medical illness". ^{10/} Indeed, "the most authoritative sources available suggest that ... anorexia nervosa is a severe disorder with a mortality [death] rate between 5% and 18%." ^{11/} In sum, the lower court was correct in finding that "bulimia and anorexia are serious and sometimes fatal eating disorders." (R. 52).

While anorexia and bulimia have some physical effects, the indicated treatment is psychotherapy, which is "the primary form of therapy for weight maintenance and subsequent psychological maturation and improvement." ^{12/} Indeed, effective psychotherapy can abate or cure the disease, and prevent further physical effects. One expert describes the three essential phases of treatment as (1) nutritional

^{9/} [Footnote continued]

Disorders 335 (1986) ("Handbook") ("Repeated purging ... causes hypokalemic alkalosis, with occasional cardiac arrhythmia. ... The low potassium, however, is one reason thought to be responsible for death in acute cases of anorexia nervosa"). (Articles attached as Appendix F.)

^{10/} Hall, et al., supra at 180-82.

^{11/} Id. at 174.

^{12/} Yager, "The Treatment of Eating Disorders," 49:9 J. of Clin. Psychiatry 18-25 at 21 (1988). See also, Bruch, "Anorexia Nervosa: The Therapeutic Task," in Handbook at 332.

rehabilitation, (2) intensive psychotherapy, and (3) maintenance of these. ^{13/} Another study recommends "cognitive restructuring" therapy, and suggests that the majority of bulimics can benefit from family therapy, stress management therapy, and similar psychological approaches. ^{14/} Virtually all published articles that recommend treatments for this disorder include some type of individual, group, and/or family therapy. Once again, there is copious support for the trial court's finding that "the record makes it clear that psychotherapy is an appropriate and effective method of treating bulimia and anorexia." (R. 52.)

II. Sessions With the Mother to Aid The Child's Treatment Were Valid Medical Expenses.

A separate issue in this case is whether the cost of sessions between Plaintiff/Appellee and her daughter's psychologist also should be included within the child's medical expenses. The proper conclusion is that the sessions are included if they were a necessary service to the child under accepted professional standards for treating the child's

^{13/} Andersen, supra at 338.

^{14/} Rybicki, et. al., "An Empirical Assessment of Bulimic Patients Using Multiple Measures," 14 Addictive Behaviours 249-260 (1989); Wilson, "Cognitive-Behavioral and Pharmacological Therapies for Bulimia," in Handbook 450-475; Yager, supra; Fairburn, "Cognitive-Behavioral Treatment for Bulimia," in Garner, et al. Handbook of Psychotherapy for Anorexia and Bulimia, 161-192 (1985). (Articles attached as Appendix G.)

disease; otherwise they are not. This is a factual issue for the trier of fact.

Obviously, independent therapy services for the benefit of a mother are not medical expenses of the child. But, as in this case, where certain sessions with a parent are needed to benefit the child, they are covered medical expenses of the child. The standard is whether the services "are a necessary part of the overall treatment of the child." Michel v. Michel, 13 C.L.T. 18 (May 4, 1987). Accord Santos v. Santos, 13 C.L.T. 2 (Jan. 12, 1987). As an analogy, if a physician is treating a diabetic child, he/she may need to train the parents on proper insulin dosages, proper injection techniques, and proper diet to keep the child healthy. Charges for such sessions would be valid medical expenses for the child. Similarly, under accepted treatment techniques a psychologist may need to meet with the parent of an anorexic and bulimic child, to explain proper diet supervision, proper stress management, how to deal with recurring symptoms, and how to foster the child's full recovery. ^{15/} The trial court correctly found that under accepted practice, "[p]art of the recommended treatment of an

^{15/} Indeed, "traditionally, treatment of eating disorders has focused on patients and their immediate environment (e.g., the hospital, family, etc.)" Kuechler & Hampton, Learning and Behavioral Approaches to the Treatment of Anorexia Nervosa and Bulimia in Blinder, et al., The Eating Disorders 423, 430 (1988). "The evidence that lack of family cohesion and inconsistency in parental affection are clearly associated with bulimia calls for ... assessment of these aspects of relationships in families of bulimics." Scalf-McIver & Thompson, "Family Correlates of Bulimic Characteristics in College Students," 45 J. Clinical Psychology 466-473 (1989). (Emphasis supplied.)

adolescent who is suffering from bulimia and anorexia is to meet with the parents." (R. 49) See also, Santos, supra. We stress that this does not authorize the ex-spouse to charge her former spouse for her own therapy. In this case, when the psychologist "felt that the plaintiff wife wanted to delve into her own problems, she billed such services to the plaintiff wife." Tr. Ct. Op. at 8.

CONCLUSION

The trial court properly concluded that (1) anorexia and bulimia are serious illnesses; (2) psychologists commonly and effectively treat such diseases; (3) the cost of such treatment is commonly understood as a "medical expense;" and (4) some therapy with the mother was a valid expense necessary to the child's treatment. These conclusions of the trial court should be affirmed.

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APPENDICES

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- D. In re Titko, Slip Op. No. 21-CA-88, (Ohio App. March 23, 1989)
- E. Hoffman, et. al., "Cerebral Atrophy in Anorexia Nervosa: A Pilot Study," 26 Biol. Psychiatry 321-24 (1989); Fava, et. al., "Neurochemical Abnormalities of Anorexia Nervosa and Bulimia Nervosa, 146:8 Am. J. Psychiatry 963-71 (1989); Hall, et. al., "Physical Illness Encountered in Patients With Eating Disorders," 30 Psychosomatics 174-91 (1989); Shur, et. al., "Physical Complications in Anorexia Nervosa," 153 British J. Psychiatry 72-75 (1988); Andersen, "Inpatient and Outpatient Treatment of Anorexia Nervosa," in Brownell & Foreyt, Handbook of Eating Disorders 333-349 (1986).
- F. Rybicki, et. al., "An Empirical Assessment of Bulimic Patients Using Multiple Measures," 14 Addictive Behaviours 249-260 (1989); Wilson, "Cognitive-Behavioral and Pharmacological Therapies for Bulimia," in Handbook 450-475; Yager, "The Treatment of Eating Disorders," 49 J. Clinical Psychiatry 18 (1988); Fairburn, "Cognitive-Behavioral Treatment for Bulimia," in Garner, et al. Handbook of Psychotherapy for Anorexia and Bulimia, 161-192 (1985).
- G. I.R.C. §213; Treas. Regs. §1.213.1; Rev. Rul. 63-91, 1963-1 C.B. 54; Rev. Rul. 143, 1953-2 C.B. 129; Fischer v. Commissioner, 50 T.C. 104 (1968); Lichterman v. Commissioner, 37 T.C. 586 (1961); Hendricks v. Commissioner, 35 T.C. 1223 (1961).