

IN THE MATTER OF ZAYAS

SUPREME COURT (Schofield, C.J.): December 24th, 1996

Legal Aid and Assistance—assessment of resources—“resources”—for purposes of Legal Aid and Assistance (Assessment of Resources and Scale of Contribution) Rules, r.7, “resources” of minor’s parents are income and capital without deduction of living expenses

Legal Aid and Assistance—assessment of resources—income—under Legal Aid and Assistance (Assessment of Resources and Scale of Contribution) Rules, r.5(3), applicant’s ordinary living expenses not deductible as expenses relating to particular circumstances of case when computing income

The appellant applied as next friend for legal assistance to commence proceedings on behalf of her son to recover damages for personal injury.

The combined income of the child’s parents exceeded the £5,000 limit specified by the Legal Aid and Assistance Ordinance, s.13(1). They possessed no capital. In accordance with the Legal Aid and Assistance (Assessment of Resources and Scale of Contribution) Rules, r.7, the Registrar treated the resources of the parents as those of the child, and, under r.5(1), included in the computation of the child’s income the entire income of the parents, making discretionary deductions under r.5(3)(g) for playgroup and school fees for the child. Since the remainder of the income still exceeded the s.13 limit, legal assistance was refused.

On appeal, the appellant submitted that the Registrar had wrongly refused to grant legal assistance since (a) on the proper construction of r.7, the parents’ “resources” were their assets, after the deduction of the family’s living expenses, available for the payment of legal fees, and were not synonymous with “income” within the meaning of r.5(1); and (b) in the exercise of his discretion under r.5(3)(g), the Registrar should have deducted the child’s living expenses as well as the expenses occasioned by his special needs.

Held, dismissing the appeal:

(1) The Registrar had properly refused to grant legal assistance. Since the meaning of “resources” in the Legal Aid and Assistance (Assessment of Resources and Scale of Contribution) Rules, r.7 was income and capital, without the deduction of living expenses, and since under r.5(1), “income” was to be calculated as income from all sources, the child’s income exceeded the limit specified in s.13 of the Legal Aid and Assistance Ordinance, and legal assistance was not available to him. To define “resources” otherwise would place a minor applying for legal

assistance in a better position than an adult, since r.7 applied only to minors (page 402, line 27 – page 403, line 13).

(2) For the same reason, and because ordinary living expenses did not relate to the particular circumstances of this case, the Registrar had properly deducted only the expenses relating to the child’s special needs under r.5(3)(g). The appeal would be dismissed (page 403, lines 14–28).

Case cited:

(1) *R. v. Barnsley Supplementary Benefits Appeal Tribunal, ex p. Atkinson*, [1977] 3 All E.R. 1031; [1977] 1 W.L.R. 917, *dicta* of Bridge, L.J. applied.

Legislation construed:

Legal Aid and Assistance (Assessment of Resources and Scale of Contribution) Rules (1984 Edition), r.5: The relevant terms of this rule are set out at page 402, lines 5–15.

r.7: The relevant terms of this rule are set out at page 401, lines 41–45.

Legal Aid and Assistance Ordinance (1984 Edition), s.13(1) (as amended by Legal Aid and Assistance (Amendment) Ordinance, s.2(a)): The relevant terms of this sub-section are set out at page 401, lines 36–37.

C.A. Gomez for the appellant.

25 **SCHOFIELD, C.J.:** This is an appeal against the Registrar’s decision
to deny legal assistance to the applicant. The applicant is the mother of
Stephen Zayas who, at his delivery at St. Bernard’s Hospital, Gibraltar, on
September 4th, 1986, suffered brain damage which has left him severely
incapacitated. His parents hold the medical staff at the hospital
responsible for the injuries to their son and wish to take action against the
Government of Gibraltar. They have no capital and their joint income
30 leaves them with insufficient to instruct a solicitor. If the court had a
complete discretion in the matter I am certain that legal assistance would
be made available to the applicant. As it is, the court must keep within the
limits set by the Legal Aid and Assistance Ordinance, low as those limits
may be.

35 Section 13(1) of the Legal Aid and Assistance Ordinance (as amended)
provides: “Subject to this Part legal assistance shall be available for any
person whose income does not exceed £5,000 a year” Rule 7 of the
Legal Assistance (Assessment of Resources and Scale of Contribution)
Rules (“the Rules”), made under s.19 of the Legal Aid and Assistance
40 Ordinance, provides:

45 “In the case of a minor, the resources of the father and mother of
such person, or, if there is no father or mother, of the guardian, or, if
there is no such guardian, of the person who maintains the minor,
shall be treated, for the purposes of these rules, as the resources of
the minor.”

Mr. Zayas, the father of Stephen, is a Corporal in the Gibraltar Regiment and earns a net salary of £7,888 per annum. Mrs. Zayas has obtained casual work as a librarian for three months of this year and has earned in that capacity £214 per month. Rule 5(1) of the Rules reads:

“Subject to the provisions of subrule (3), there shall be included in the computation of the income of a person seeking or receiving legal assistance the total income from all sources which he may reasonably expect to receive during the period of computation.” 5

The relevant part of sub-r. (3) reads as follows:

“There shall not be taken into account in computing the income of a person seeking or receiving legal assistance— 10

...
(g) such other amounts as the Registrar may consider ought not to be taken into consideration, having regard to the particular circumstances of the case.” 15

In pursuance of that rule, the Registrar excluded from the computation of the applicant’s income £40 per month, which she pays for a playgroup for Stephen and £20 in respect of school classes. Even when one takes into account those deductions, the parents of the minor still receive a total annual income well in excess of the £5,000 referred to in s.13(1) of the Ordinance. On that basis the Registrar felt obliged to refuse legal aid in this matter. 20

It is argued for the applicant that the learned Registrar erred in finding that the word “resources,” as contained in r.7, is synonymous with the words “income and capital” in s.13(1) of the Ordinance. It is argued that the word “resources” is distinct from the term “income and capital” and means “available assets.” It is further argued that available assets are those which are available for the payment of legal expenses after the deduction of normal living requirements. However, my copy of *The Concise Oxford Dictionary* indicates that “available assets” is the United States definition of the word “resource.” The most useful definition is “a stock or supply that can be drawn on.” This would, of course, in connection with money, mean capital and income. I derive further assistance from the English Court of Appeal decision in *R. v. Barnsley Supplementary Benefits Appeal Tribunal, ex p. Atkinson* (1). In that case the court was asked to interpret the meaning of the word “resources” under the Supplementary Benefits Act 1966 in connection with a regular cash allowance and provision for maintenance given to a student by his family. Bridge, L.J. had this to say ([1977] 3 All E.R. at 1036): 25 30 35 40

“There is no definition of ‘resources’ in the Act. Giving the word its ordinary English meaning, we think that it is clearly proper to treat a regular cash allowance from a parent to a student or the regular provision for him of maintenance in the family home during vacations as part of the resources of that student.” 45

It seems clear that income forms part of the resources of a person, as does capital.

5 It appears to me that although the Rules are unhappily worded in that they do not use the words “income and capital” as in the Ordinance and do not contain a definition of the word “resources,” it was the intention of the legislature for the word “resources” to be related back to the words “income and capital” in s.13 of the Ordinance and to be regarded as synonymous therewith. To hold otherwise and to hold that “resources” means assets available for the payment of legal expenses after deduction of living expenses would be to put a minor whose parents or guardians are applying for legal assistance in a better position than an adult who is applying for legal assistance on his own behalf. That cannot have been the legislature’s intention.

10 The applicant also argues that the learned Registrar ought to have exercised his discretion under r.5(3)(g) to deduct from the computation the minor’s living expenses instead of limiting his consideration to the needs special to Stephen. Again, this argument would put a minor on a better footing than an adult applying on his own behalf whose ordinary living expenses (and those relating to his family if he is a family man) would not be deducted in any computation of his income and capital. Rule 5(3)(g) requires the Registrar to have regard to the particular circumstances of the case when making an allowance in computing an applicant’s income. To accept the applicant’s argument is to disregard that requirement. Ordinary living expenses are not particular to the circumstances of a given application. In my view the learned Registrar exercised his discretion properly in only deducting an amount relating to Stephen’s special needs for a play group and after-school classes.

25 The appeal is dismissed.

Appeal dismissed.