Special Needs Children and Divorce: What You Need to Know

When there are special needs children involved in a divorce, financial planning critical.

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WORKING WITH A CERTIFIED DIVORCE FINANCIAL ANALYST (CDFA®) can alleviate many of the financial concerns that accompany divorce by structuring a settlement that is not only equitable but makes long-term financial sense. A CDFA® uses information on family income, expenses, savings, and debts to construct a plan that optimizes the restructured family's financial future, addressing issues that aren't addressed by litigation, such as children's future expenses like college and weddings.

When there are special needs children involved in a divorce, planning is even more critical. Unlike "typical" children, challenged kids might be unable to support themselves as adults.

PLANNING TOGETHER FOR YOUR CHILD'S FUTURE

Once a disabled child turns 18, he or she may qualify for Supplemental Security Income (SSI). But there are restrictions on the amount of money the child can earn and save. In 2021, an adult cannot earn more than $794 a month to be eligible for SSI — $1,191 per month if married. And he or she must have no more than $2,000 in assets, or $3,000 if married, although some assets do not count toward the SSI limit, including ABLE accounts, one motor vehicle, and the home in which the claimant lives.

Without additional support from parents or elsewhere, these limitations could severely challenge a disabled person's ability to live agreeably in adulthood or to save for a comfortable retirement.

Parents can agree to periodic funding of an ABLE account, a tax-advantaged savings account for individuals with disabilities and their families established by the Achieving a Better Life Experience Act (ABLE) of 2014, to ensure financial stability for their child in their absence. Funds from these accounts can be used to cover qualified disability expenses without penalty. However, like gifting, the annual contribution to an ABLE

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account is limited to $15,000 in 2021, and the account cannot contain more than $100,000. (For other government-sponsored savings vehicles, see www.ssa.gov.)

Parents can also agree to provide a vehicle for their child or gift them a home as a part of their divorce planning process. A Special Needs Trust can further shelter assets from infringing on qualifying for SSI.

The point is that if parents can plan together to meet the needs of their children, even while divorcing, they will do themselves and their family a great service.

LEGAL SUPPORT FOR THE CUSTODIAL PARENT

Unfortunately, not all divorcing parents are able or willing to work together for the benefit of their disabled child.

According to Megan DelVecchio, a family law attorney with Pollock Begg in Pittsburgh, Pennsylvania, law provides that the obligations to provide child support normally terminates when a child becomes "emancipated." Emancipation typically occurs at age 18 or when the child graduates from high school. When a child has special needs, however, child support may be required after age 18 by "showing that the child has a mental or physical condition that prevents them from supporting themselves," she added.

Pennsylvania law uses guidelines that consider the income available to both parents to determine the amount of monthly support. DelVecchio pointed out that, "The SSI an adult child receives is not included as income for support purposes." Nor does the existence of a Special Needs Trust or ABLE account "eliminate the parent's obligation to provide ongoing support."

She suggests that the custodial parent make a detailed list of expenses incurred exclusively due to a child's disability. If a child's special expenses exceed the guideline amount of support, the court may deviate upward from the guideline calculation after an analysis of certain factors. "Deviation factors" include unusual needs and unusual fixed obligations, medical expenses not covered by insurance, and other factors relevant to the best interests of the child, such as the cost of specialty medical appointments, supplements, service animals and transportation. It is ultimately up to the court, DelVecchio noted, to determine if guideline support, SSI, and the child's earnings from employment are enough to cover deviation factors, or if more support is warranted.

Ideally, parents negotiate the support needed for their child without having to involve the court. A CDFA can be very helpful in that conversation. But if mutual discussions are not an option, a CDFA can help get the information together that would assist attorneys like Megan DelVecchio to present a strong case in court.

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Donna combines experience as an investment advisor and wealth manager, a proven approach to long-term financial planning and the unique skills of a Certified Divorce Financial Analyst® to help her clients understand and address the financial issues associated with divorce and obtain a fair and equitable divorce settlement.

Donna's background includes seven years in Chicago as a derivatives broker. She joined HBKS® Wealth Advisors in 2015.