

The “Special Needs Child” in Divorce

Divorce is a difficult time for all family members, but especially for the children. A child that has a serious illness or difficulty prior to the initiation of a divorce proceeding may have such problem accelerate during the divorce process. We call this child the “Special Needs Child”. This child has apparent or diagnosed emotional and/or medical problems.

Special Needs children are seriously impacted by the decisions made during a divorce. It is important for parties to determine how meaningful, regular visitation will be accomplished and which parent will have the right to make major decisions on how to address the child’s emotional and medical needs. During a divorce, most parents have difficulty agreeing on issues, especially issues related to the problems associated with a special needs child.

Children will always experience some level of negative emotions during the divorce process, even in the best circumstances. When a child has a mental illness or emotional problem, how visitation periods are managed, who has the authority to make a decision on medical treatment and therapy and how such decisions will be followed and enforced in each parent’s household will greatly affect the success or failure of the final decree as it pertains to the child. It is very important to have an order that is flexible and meets the child’s changing needs, yet remains enforceable should action need to be taken due to a parent’s failure to meet the child’s needs.

Three of the most reported emotional and behavioral issues involving children are Attention Deficit Hyperactivity Disorder (ADHD) Behavioral or Conduct Disorders, Oppositional Defiant Disorder (ODD), and chemical addictions.

When a child has significant medical health problems or disabilities, parents may have very different opinions on who should be the decision maker regarding doctors, medications and regimens for a particular situation. This may be compounded by the emotions and breakdown in the marital relationship. The court must help to balance the needs and rights of the parents so that each has a voice in their child’s treatment decisions. It is also important that the parties, along with the Court, work for a consistent treatment protocol for the best interest of meeting the child’s medical needs.

The real battleground in custody cases becomes the allocation of rights and duties between the parties. This is exacerbated when the child involved has emotional and/or medical needs. Other factors that may compound issues are other children involved and whether they also have special needs. Major problems occur when there are differing views between the parents on how to best treat the problem, lack of consensus among medical and mental health professionals as to the appropriate protocol for treatment and uncertainty among family courts as to which protocol to “impose” upon the family.

Courts vary greatly on how each allocates rights and duties, even in joint managing conservatorship situations. In the event the parties cannot agree on the allocation of rights pertaining to educational and medical decisions, then the focus of a custody case becomes one of which parent can best make decisions that are in the best interest of the child.

To make a meaningful decision on the care of the child, the court will need evidence of the following:

- which parent is the most involved in the decision making as it pertains to the relevant issue.
- what are the competing theories of how to best treat the child.
- current opinions from the child’s physician and /or therapist.
- what is the generally accepted treatment for the specific condition
- what is the likelihood of each parent following the protocol selected by the court.
- how successful has the treatment been in the past
- what are the attitudes of the parents in relation to considering alternative methods if the current situation doesn’t work.
- which parent has shown a proven effort at recognizing the child’s needs and working to address them

The selection of a reputable expert in the particular field in which the child is affected is paramount to a true evaluation of the situation. Not all doctors and therapists are created equal, and the expert must be a specialist in working with the child’s specific problem.