

A Client Benefits From Einhorn Barbarito' Team Approach

Drawing upon a team of attorneys made up of members of its Matrimonial/Family Law Department and the Trusts & Estates Department, Einhorn, Barbarito, Frost & Botwinick argued a case of first impression before the Supreme Court of New Jersey. Though the Supreme Court only hears approximately 10% of the cases it is asked to review each year, Einhorn Barbarito' team developed innovative arguments that resulted in the Supreme Court agreeing to hear an important case for special needs children. On August 20, 2013, the Court entered its decision on the merits of the case.

This case of first impression involved the client's request to modify his property settlement agreement in a manner that benefited his special needs child. Namely, instead of paying child support to his former spouse as he had agreed in his divorce agreement, he sought to pay child support to a special needs trust for the benefit of the child. This seemingly modest change to his agreement is extremely important because a portion of child support paid to a parent counts as income for the child for the purposes of calculating governmental benefits such as Supplemental Security Income (SSI). In other words, the child support paid to the client's former spouse disqualified his child from potentially receiving governmental benefits that could support the child's lifestyle and needs. A special needs trust, however, is a type of trust that can receive and hold assets for the benefit of a disabled individual. If the trust is drafted properly, those assets are available to the disabled child, but not considered a financial resource of the disabled child for the purposes of applying for and receiving governmental benefits.

With the benefits of a special needs trust in mind, the client requested an order from the trial court that he be permitted to pay his child support into a special needs trust instead of directly to his former spouse as his agreement required. The trial court denied his request on the basis that he agreed to pay the support directly to his former spouse in his divorce agreement. After the trial court's denial, he hired Einhorn Barbarito to appeal the decision. Patricia M. Barbarito and Bonnie C. Frost, partners in the Matrimonial/Family Law Department began the process required to appeal a trial ruling. Knowing

that special needs trusts require particular knowledge, they asked their colleagues from the Trusts and Estates Department, Gary R. Botwinick and Christopher J. Roman, to assist in developing the legal arguments that would be the foundation of the appeal.

After an appellate court affirmed the trial court's decision, the four members of the team, Ms. Barbarito, Ms. Frost, Mr. Botwinick and Mr. Roman, joined together to write the Supreme Court petition. The petition requested that the Supreme Court consider, for the first time, the use of a special needs trust to receive child support payments even though the parties had agreed otherwise in their divorce agreement. In addition, the petition requested that the Supreme Court determine whether a guardian should represent the disabled child in the case because his parents had conflicting interests.

On August 20, 2013 the Supreme Court of New Jersey decided unanimously that a parent seeking to modify a negotiated agreement for the support of a disabled child through the establishment of a special needs trust must present a specific plan for the child and demonstrate how the proposed plan will benefit the disabled child. The Court also found that a trial court should seriously consider appointing a guardian to represent a disabled child when there is conflict between the parents. This ruling provides a road map for not only the client, but for the general public, to revise a property settlement agreement when the revision is in the best interest of a disabled child. It was at the urging of the team at Einhorn Barbarito that the Court entered this important decision that could have a significant impact on support for special needs children.

Einhorn, Barbarito, Frost & Botwinick, PC is a comprehensive, full-service law firm devoted to serving a broad range of legal needs in New Jersey since 1961. With more than 50 years in business, Einhorn Barbarito, located in Denville, NJ, has developed a reputation for dedication to the community and its people.
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