

Parents' Obligations Toward College Costs – It's Not Child's Play

July 3, 2014 | by

How college tuition and costs are paid is a decision usually made by parents and their children at the family kitchen table. However, in the case of divorcing or divorced parents, this decision may be made in a courtroom.

The court has a role known as *parens patriae*, which means the court will act to protect the interests of the children within its jurisdiction. Particularly, the court has the authority to order or enforce parent's duty to contribute to the cost of the child's education. To aid in the court's determination, the Supreme Court of New Jersey recognized a list of factors, established in the case of [Newburgh v. Arrigo](#), to be considered by the court when determining college contribution:

- (1) whether the party, if still living with the child, would have contributed toward the costs of the requested higher education;
- (2) the effect of the background, values and goals of the parent on the reasonableness of the expectation of the child for higher education;
- (3) the amount of the contribution sought by the child for the cost of higher education;
- (4) the ability of the parent to pay that cost;
- (5) the relationship of the requested contribution to the kind of school or course of study sought by the child;

- (6) the financial resources of both parents;
- (7) the commitment to and aptitude of the child for the requested education;
- (8) the financial resources of the child, including assets owned individually or held in custodianship or trust;
- (9) the ability of the child to earn income during the school year or on vacation;
- (10) the availability of financial aid in the form of college grants and loans;
- (11) the child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance; and
- (12) the relationship of the education requested to any prior training or to the overall long-range goals of the child.

Typically, a divorce settlement agreement will contain language that the parties will share the cost of college education in proportion to their respective incomes, assets and ability to pay, leaving the determination as to the amount of the actual financial contribution to the future. When that time arrives, if the parties cannot agree, an application may be made to the court and the decision is placed in the court's hands. Likewise, if the divorce settlement agreement is silent on the issue of contribution toward college educational costs when the time arrives and the parties cannot agree, the issue may be brought before the court for determination.

On June 26, 2014, a Superior Court Judge in Ocean County, New Jersey, seized the opportunity to expound upon the Newburgh factors, particularly with respect to factor #11 – the child/parent relationship and factors #3, 4 and 6 – the amount of money being sought and the parent's ability to pay.

At the time of hearing, the parties' oldest son had just completed his first year of college at Rutgers University and was transferring to the University of Miami. The mother brought an application for an order compelling the father to contribute toward the son's college costs.

The father and son's relationship was strained; it had been even before the finalization of the divorce. In fact, the parties' divorce agreement contained a provision that they were to attend counseling. The son refused to participate in joint counseling. His father maintained that he wanted to have a relationship with his son following the divorce and that although the court noted he did not pursue the counseling "aggressively," he wanted to repair the relationship with his son and was willing to attend counseling. However, the son flatly refused. The court observed:

"if an adult 'child' refuses to have a relationship with a parent without a clear showing of exceptional circumstances, and if that child further refuses to participate in trying to heal the relationship, such as joining the parent in professional counseling, then the child's message rings loud and clear that from his or her own subjective perceptive, the parent/child relationship no longer has any value."

This type of "*dismissive attitude toward the parent/child relationship*" rang offensive to the court and the court determined that the hypocrisy of the son not wanting a relationship but wanting his father's money to pay for tuition was "*fundamentally unfair and inequitable to the parent, even after considering all of the applicable criteria under Newburgh.*" The court took an equitable approach finding that where there is a fractured relationship between a college age student and a parent, if there is no proven abuse (or compelling reason to keep the parent and student physically apart), the court can compel the student to attend joint counseling with the parent as a condition of the student receiving ongoing financial assistance from the parent for college tuition.

In addition, the court addressed the issue of Newburgh factor #3 - "the amount of contribution sought by the child for the cost of higher education"; factor #4 - "the ability of the parent to pay the cost"; and, factor #6 "the financial resources of both parents".

The Judge reiterated that "*regardless of what school a student personally wishes to attend, no parent should be expected to contribute more than he or she can reasonably afford.*" In this case, the student was transferring from a state school, Rutgers University, to a more expensive private university, the

University of Miami.

The court also pointed out that the amount a court orders the parents to contribute should consider the other children of the parents. In families where there are multiple children, the financial impact must be viewed in light of all children so that there is not a preference for the first born child. The court must fashion a *“reasonable and fairly balanced plan addressing all the children’s educational needs instead of just those of the oldest child, especially if, ... the younger children are all teenagers and the issue of college tuition is likely to resurface before the court in relatively short order.”*

The judge, therefore, fashioned an order where the parties’ respective contributions would be spread out over an 8 year period at amounts established by the court with the combined total contribution per year to be allocated between the children so that each will receive an equal amount; if one of the children attends a school that costs less than the \$20,000 allocated for a 4 year college degree for each child, the parents may be entitled to a refund or reallocation of the unused funds after graduation.

The court’s order is consistent with the court’s statutory authority to create trusts or other security devices to assure payment of reasonably foreseeable medical and educational expenses. Ultimately, the court concluded that if the parties’ oldest child decides to transfer to University of Miami, then it would be his own obligation to secure the remaining funds above and beyond the mandatory contributions imposed by the court or, he can choose to remain at Rutgers.

The court also ordered the father’s obligation to contribute to son’s college expenses is contingent upon the son attending at least 5 parent/child counseling sessions, and the court reserved discretion to order more sessions.

This decision should assist litigants, courts and college student children of parents who are divorced or separated to take a common sense, reasonable approach toward addressing college education contributions; it should create the opportunity to avoid such cases in the future by specifically addressing this issue in the settlement agreement; and most importantly, guide their children not to view their parents as an open checkbook.