

We Have A Special Needs Child. How Will This Impact Our Divorce?

February 27, 2014 | by

Dear Ask the Attorney:

My husband and I are getting a divorce and we have a special needs child who is twelve years old. Our child is in a wheelchair and she cannot care for herself. Will the fact that our child is special needs impact our divorce, and if so, how?

E.M.

Dear E.M.:

In divorce cases where there are young children, generally custody and child support may be issues. In a case involving a special needs child, these custody and child support issues may be more complex and additional issues may need to be addressed. In many instances, the specific disability or special needs of the child will determine how extensively the divorce is impacted.

Generally, when custody and child support are at issue, the court will try to make a determination that is in the “best interests of the child.” When addressing the best interests of a special needs child, the court may need to be educated regarding the child’s disability and possibility of that child becoming emancipated. For example, a child with special needs who is able to care for himself or herself and who will be able to live an independent adult life may present more typical custody and support issues as compared to a child with more severe disabilities.

You mentioned that your child is in a wheelchair and that she cannot care for herself. A question to ask is whether your child will become emancipated as an adult or whether she will require care for the rest

of her life? In general, when a child is unlikely to be emancipated as an adult, the parties may need to address considerations beyond custody and child support. In some cases, equitable distribution may be impacted, such as when the marital home and/or automobile are handicapped-equipped for the child. Alimony also may be impacted because the custodial parent may not be able to support him or herself, even in cases where the marriage is short-term, depending upon the facts of the case.

The following list, while not exhaustive, sets forth some issues to consider in a divorce with a special needs child requiring lifelong care: custody; child support; medical insurance; life insurance naming the child as beneficiary; allocation of the costs for unreimbursed medical care, home health aides, and special therapies or therapeutic interventions; transportation and visitation arrangements; allocation of the costs for ongoing educational opportunities; whether the child will be eligible for Supplemental Security Income (SSI) and/or other governmental benefits; and whether a special needs trust should be created. For a detailed discussion regarding special needs trusts, please see this [page](#). Another issue that may need to be addressed is whether a guardian should be appointed to represent the disabled child when there is conflict between the parents. For a detailed discussion of a recent case of first impression before the New Jersey Supreme Court regarding this issue, please see this [article](#).

There may be additional issues to consider depending upon the specific facts of each case. The facts of every case are different, and as such you should consider contacting an attorney.