

Does A Divorced Parent Have To Pay For A Child's College Education?

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Many parents are unable to save for college and rely on aid, scholarships, grants and loans (student and parent) to pay for their child's education. It is a daunting expense as every year the cost of college goes up even though there has been little or no inflation or increase in wages for several years. After COVID disrupted and may have extended many students' college careers, should divorced parents have to pay for an extra semester or an extra year of college?

Can Courts Order Divorced Parents to Pay for a Child's College Education?

Many would argue that to make divorced parents pay for college, when intact families can decide to not pay for their children's college education costs, is unconstitutional (i.e., certain parents are being treated differently than other parents). But New Jersey takes the position that divorced parents, if they have the means (as well as other factors it considers), may be obligated to pay for the college education of their children.

As stated in our [previous blogs](#), the facts of every case influence the end result so that the outcome in one case may not be the same in another even though the central issue in dispute is the same. The decision of whether divorced parents should pay for their children's college expenses is no different and turns on the facts of that family.

Many States Give Courts Authority to Order Divorced Parent(s) to Pay for Child's College Costs

The following states have laws or case law that give courts the authority to order a non-custodial parent to pay for some form of college expenses: Alabama, Arizona, Colorado, Connecticut, District of

Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Montana, New Jersey, New York, North Dakota, Oregon, South Carolina, South Dakota, Utah, West Virginia and Washington.

As you can see, this is about half of the states in the union.

Most Courts Enforce Agreements to Pay for Child's College Expenses

Even in states that do not require divorced parents to pay for college, and even if all support for children stops at graduation from high school or age 18, if the parents have made an agreement to pay for their children's college expenses, those terms would be enforced.

Courts Assess Several Factors in Determining a Parent's Payments

In the end, any determination by a court as to whether a divorced parent will have to pay for his or her child's college education will depend on the "circumstances including the child's needs, interests, and independent resources, the family's reasonable expectations, and the parties' financial ability, among other things," citing the case of *Dolce v. Dolce*, 383 N.J. Super. 11, 18 (App. Div. 2006). In other words, when a judge looks at the facts in any one case, a parent who cannot afford college will not be forced to pay. Of course, a judge's view of whether a parent can afford this expense is the unknown variable.

Courts Consider Income and Assets

Courts look at income and assets when determining whether a parent should pay for college. If a person has income, a house and a modest 401(k), then the court would look at one's income and expenses to determine whether a parent should contribute. If a person has a large amount of assets excluding a house and a 401(k), then the assets may be more determinative of that decision. But, for example, if the parent is over 60 with a modest income and few or limited assets, there may be no obligation to contribute. A court may decide that it would be unfair for an older parent who has only a few earning years left before retirement to use his or her income to pay for college, when his or her

child will have many future earning years to repay loans they can take out to finance college.

Other factors in addition to financial ability to pay will be considered, and this underscores the importance of the individual facts in every case.

Each Family Has its Own Facts – Financial and Otherwise - for a Court to Consider

In the case of *Gac v. Gac*, 186 N.J. 535 (2006), a daughter graduated from college and the father moved to terminate his child support payment for her. Her mother then applied for her ex-husband to pay his percentage share of the daughter's college loans. In that case, the Supreme Court held that the father was not obligated to pay a share of his daughter's college loans because he was of modest means; he had [paid child support the entire time she was in college](#); the relationship between his daughter and him was non-existent; neither his daughter nor his ex-wife had consulted him when the daughter decided which college to attend; and, his ex-wife had never asked for a contribution until he moved to terminate child support.

Looking at these facts, one can understand how the Supreme Court ruled as it did—they favored the father's position, not his ex-wife's. Perhaps the result might have been different if the father had several millions of dollars in assets and was earning more than \$250,000/year even if he had not been consulted about his daughter's college prior to her attendance and he had not been asked until after the fact to contribute to the costs.

Children May Need to Extend College Beyond 4 Continuous Years – Who Pays then?

But what if the parties have an agreement which provides that a divorced parent only pays for four continuous years of college if a student maintains a B average or better and the student was unable to maintain a B average after being forced to learn remotely during the COVID shutdown? Or, what if the student took a semester off because he or she did not want to learn remotely?

The starting point is that a court will be bound to enforce the terms of an agreement and will not second guess parental decision-making. Having said that, family court is a court of equity and a court may believe that COVID created circumstances beyond a student's control and therefore, may not strictly enforce the 4 year term or B average requirement.

If that were the case, a court most likely then would set out an outer limit for a student's completion of college, while requiring a student to maintain a "B" average if a student were attending in-person classes. If the Delta variant or another COVID variant shuts down colleges and universities again, a court's lodestar would be to do equity and strike a balance for all parties involved: the student and the payor parents.

Every case is as different as the facts of the individuals involved and the relationships they fostered during the intact marriage. The decision of whether a divorced parent will have to pay for college costs is just as variable, COVID notwithstanding.