

Autism and the Family Unit: A Matrimonial Perspective

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I. Autism

Autism Spectrum Disorder is a group of disorders, “each of which has a different etiology with overlapping features.”¹ It is a “pervasive developmental disorder of the brain” often manifesting itself in outward symptoms such as little to no speech; parroting (echolia); monotone speech with a blunt affect; obsessive compulsive behaviors; an inability to read and understand facial expressions and social cues; a preference of isolation; temper tantrums; self-injurious behaviors; an inability to appreciate or understand danger; and repetitive behaviors such as spinning, flapping, and rocking.² These symptoms can often be classified into three core areas: problems with social interaction, impaired communication skills both verbal and nonverbal, and a pattern of repetitive behavior and narrow, restricted interests.³ Autism is a fairly recently acknowledged disease, one about which there is not much information on its cause or possible cures even though it affects approximately 1 in 100 children in the United States.⁴

II. Autism and Marriage

Autism not only affects the child with special needs but the child’s parents, siblings, extended family, and community.⁵ All of these people helping and supporting an autistic child must have a thorough understanding of Autism Spectrum Disorder.⁶

Raising an autistic child can place a heavy strain on a marriage. Aside from dealing day to day with the symptoms, the variety of treatments available can lead to conflict. Treatments vary in method, frequency, intensity and price range. The physical, emotional, and financial strain on the family can often prove too much for the marriage to handle.

III. Autism and Divorce

The process of a divorce can be extremely complex and often devastating to a family. The complexity and devastation of the situation are only multiplied in a family with an autistic child. Beyond the common custody, child support and visitation issues addressed during the divorce process, a myriad of more intricate issues arise. Special needs children are more susceptible to adverse mental and physical reactions, as well as worsened medical symptoms such as “withdrawal, regression, aggression, loss of language ability, loss of social skills, loss of toilet training, emotional outbursts, loss of academic skills, depression, self-injury, hopelessness, [and] suicidal ideation.”⁷ It is important for those handling divorces involving autistic children to

take extra care and precaution to address the plethora of new challenges involved in these cases.

In determining custody in cases involving autistic children a basic best interests evaluation is insufficient. A number of factors must be considered and to varying degrees based on where a child falls on the autism spectrum. These include who the primary caregiver is, attending to child’s special needs, which parent the child has developed special bond with, and which parent has a workable schedule with child’s.⁸ In determining whether a parent’s schedule will be conducive to attending to the child’s special needs the child’s school schedule must coincide with the custodial parent’s work schedule, travel time away from the child for work must be considered. Further, to avoid setbacks in the child’s development, disruption of the child’s current living and/or schooling situation must be carefully examined.⁹

In addition to primary physical custody, parents need to agree on schooling and medical care for the child both in the short and long term. Also, how the extended family will be involved in the child’s life.

Financial issues are considerably more intricate in a divorce involving an autistic child. In determining child support, “[t]herapy, equipment, medications, supplements, dietary costs, sensory items, respite care, professionals, modification of the home environment,” added costs of child care and specialized schooling must all be taken into account. Costs of therapy alone can include speech, language, sensory integration, communication, behavioral, and socialization therapy.¹⁰ It must also be factored in that costs of child and medical care can also vary greatly over time based on the child’s specialized needs at each stage of development. Alimony is affected since round-the-clock care is often necessary for an autistic child which may inhibit one parent from working.

An eight-step approach has been suggested for addressing the additional considerations in divorce involving a special needs child:

1. Identify the special needs and determine relevance to the family court case
2. Understand why we should address special-needs issues in family court
3. Determine whether a guardian ad litem is required or advisable
4. Ascertain what information is essential

5. Evaluate the assumptions lawyers and judge may be making about people with special needs
6. Address the financial issues of the case
7. Handle custody and visitation
8. Consider utilizing a special-needs protocol to create a working plan¹¹

This approach can help to keep negotiations and considerations on track throughout the course of a divorce.

IV. Autism, Divorce, and the Courts

There are a number of key points to be considered by a judge in deciding divorce cases involving autistic children. These include the extent or seriousness of the disorder; behavioral therapy benefits; serious commitment of time; intensity and consistency of therapy at home; need of constant stimulation and reinforcement; financial strains; school districts and special programs offered.¹²

In the few appellate court decisions involving autistic children key factors were considered. In *Martocchio v. Savior*,¹³ the court focused on capacity to provide and care for the child. In awarding sole custody to the father the court noted favorably the father's voluntary continuous participation in "the study of autism and the proper treatment and care of his son," specifically citing connecting with experts, participating in support groups, and becoming a "relentless advocate" for his son.¹⁴ The court in *Martocchio* praises a caregiver eager to learn about the special needs of the child and to apply this knowledge.¹⁵

V. Conclusion

In determining the best interests of an autistic child in a divorce, judges and attorneys must educate themselves on the implications of the disorder. The care and monetary expense increase dramatically, as well as the emotional strain and hardship. Further, consistency and routine must exist in any custody and visitation plans. The special needs of each individual child on the autism spectrum must be determined and considered before any long-term custody, visitation, care, and treatment plans are determined.

Endnotes

1. Sheryl Dicker & Robert Marion, *Judicial Spectrum Primer: What Judges Need to Know About Children with Autism Spectrum Disorders*, JUV. & FAM. CT. J., SPRING 2012, at 1, 3.
2. Lawrence R. Jones & David L. Holmes, *Autism and Divorce Guidelines for Family Court Practice*, NJ LAW., FEB. 2009 at 7, 7-8.
3. Dicker & Marion at 3.
4. Jones & Holmes at 8.
5. Dicker & Marion at 2.
6. *Id.* at 2-3.
7. Margaret "Pegi" Price, *Special Needs and Disability in Custody Cases: The Perfect Storm*, 46 FAM. L. Q. 177, 183.
8. *Id.* at 190-91.
9. *Id.*
10. *Id.* at 186-90.
11. *Id.* at 178-79.
12. Jones & Holmes at 8.
13. *Martocchio v. Savior*, No. TT DFA064006261, 2008 WL 3853514 (Conn. Super. Ct. July 28, 2008) (*quoted in Dicker & Marion* at 15).
14. *Id.*
15. *Id.*

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