

# The Non-Nuclear Family: Baby Mamas (and Daddies)

By Andrew S. Katzenberg

The term “baby mama” means a mother who is not married to her child’s father. It goes without saying, a “baby daddy” is a father who is not married to his child’s mother. These terms have become popularized over the last 20 years in part through pop culture, most notably the Outkast song “Ms. Jackson,”<sup>1</sup> which was dedicated to “all the baby mamas’ mamas,” as well as the list of celebrities who are baby daddies—former New York Jets’ cornerback Antonio Cromartie (14 children, eight women), Rolling Stones frontman Mick Jagger (eight children, five women) and former heavyweight champion Evander “The Real Deal” Holyfield (11 children, six women)—to name a few. However, the real reasons for its increased usage are the facts that 40 percent of children are born out of wedlock<sup>2</sup> and between 40 percent to 50 percent of marriages end in divorce.<sup>3</sup> Essentially, there is more than a 50 percent chance this is or will be your reality.



Single parents or parents with children from different relationships have more complex issues than married couples or issues that married couples do not have at all (e.g., child support, selection of guardian, concerns about the other parent etc.). Many of these issues apply to any person in this situation, not just the rich and famous. However, there is often an additional layer of complexity when you are a “star”—publicity, wealth and image/sponsorship-ability.

Though this article cannot save you from the drama of co-parenting with a partner you are no longer dating or married to, by using examples of some of our most well-known athletes and stars it will provide insight on issues frequently experienced by baby mamas and daddies.

## Is This a Bad Look?

In the age of social media and immediate access to information, everyone knows everything about everyone. This is even more true when it comes to celebrities. The number of gossip columns, magazines, websites and blogs has only increased over time, reporting not just one’s highs but more often than not one’s lows. The impact of negative publicity might affect you personally as well as financially.

Usually, the mainstream public initially casts a negative light on men having children out of wedlock or having children with multiple partners. The media often seizes on any opportunity when things are not going your way. In 2012, DailyMail.com called out “The Real Deal” Evander Holyfield as a “deadbeat dad” for his unpaid child support payments in excess of \$550,000.<sup>4</sup> In 2016, *The New York Post* reported that Antonio Cromartie’s baby mamas complained about how little time he spends with his children and that his children need to use Google to find out about their dad.<sup>5</sup>

However, the news is not always all bad. But it depends on what you are doing. Take Mick Jagger, for example. Reviews about his eighth child are fairly glowing. This is because he agreed to pay thousands of dollars a month in support and buy a multi-million dollar home for his child. He also jumped on a transatlantic flight from London to New York for the birth.<sup>6</sup>

Obviously we are not all in Mick’s shoes, but the take away is that there are things you can do to positively impact your image in the media or in your community. You just can’t sit back and let it come to you. You have to engage it and turn it in the direction you want.

## What Is This Going to Cost Me?

Two words—a lot. One of the premier cases for hefty child support payments stems from former Green Bay Packer wide receiver Antonio Freeman. The standard support guidelines did not apply because he was a multi-million dollar superstar. Instead, the judge used his discretion to determine the support payments needed for Mr. Freeman’s daughter to live the lifestyle one would expect her to have if she lived with her NFL dad. To make matters worse, once Antonio got his big contract, he was hauled back into court by his baby mama to increase his child support payments based on his increased income.<sup>7</sup>

It is reported that Antonio Cromartie’s annual child support payments are \$336,000. Though this might seem small in comparison to his current multi-million dollar contract, his career will end before he is 40. His cash flow will substantially slow down, but his payments might not. Plus, many athletes, though making large amounts of money by comparison to the general public, might not be

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so fortunate with their contracts that \$336,000 (closer to \$600,000 before taxes) is insignificant during their career.

Additionally, the child support payment is just the minimum that is required. The amount you actually spend on your child may be far greater. I recently sat down with an NFL player whose payments for his two children exceed \$100,000 annually. This is a huge financial burden regardless of whether by choice or not. The numbers are just not going to add up at some point. This is one of the reasons that 78 percent of NFL players are either bankrupt or in financial distress within two years of retirement and 60 percent of NBA players are bankrupt five years after retirement.<sup>8</sup>

Of course, there are solutions. You might be able to modify the amount of support after your career is over, but this certainly is not guaranteed. The best option is sitting down with your financial advisor. Take a look at your income versus your expenses and figure out what needs to be done so you can continue to live your lifestyle without going broke in your early 40s. Remember, the average professional athlete retires within five years: NFL average career is 3.3<sup>9</sup> years, NBA is 4.8,<sup>10</sup> MLB is 5.6<sup>11</sup> and NHL is 5.5.<sup>12</sup> You have to take five years (or more if you're lucky) of income and make it last for the next 50.

## Who Takes Care of My Children When I Am Gone?

Your baby mama or baby daddy. That's right, your child's remaining parent will automatically become the guardian of your child regardless of your wishes. If your "ex" does not want to be the guardian or is not alive, then the story gets a little more complex. If you do not have a will that names a guardian, then a court will appoint a guardian for your child. Any relative could petition the court to be the guardian. This person would not only care for your child but also control any money you leave to your child. Sometimes people you would not want to be the guardian try to become the guardian for the wrong reasons. However, if you create a will, you can name the person you want as guardian and avoid this potential disaster.

Unfortunately, even if you do have a will naming a guardian, this does not guarantee that person will become the guardian. It is possible that single parents might not name the same guardian in their respective wills. For example, you name your brother as guardian and your "ex" names her brother as guardian. In this case, preference is given to the wishes of the second to die. The best strategy to avoid this problem is to have a straight conversation with your "ex" and mutually agree on the right person. Sometimes the answer is just learning to work together as parents à la New England Patriots quarterback Tom Brady and actress Bridget Moynahan.<sup>13</sup>

## How Do I Protect the Money I Give to My Children?

Though you cannot guarantee who the guardian might be, you can control who will have access and control of your child's inheritance. Trusts are invaluable when it comes to single parents as trusts can be used to both protect the child from others as well as him/herself.

As discussed above, the person who becomes the guardian of your child will also have control over the assets left to your child while your child is a minor. This is often not ideal when the guardian is an "ex" or some other third party. The fear is these people will use your child's money for their own benefit rather than your child's. For example, they may take lavish trips or purchase cars or homes under the guise that it is for the benefit of your child even though they also reap the benefit of those items. Alternatively, the guardian may spend the money in a manner you would not have on your children.

Of course, once your child turns 18, he or she will gain control of the assets. The concern here is that an 18-year-old with access to a large amount of money may not make the best decisions. An 18-year-old is likely to spend the money purchasing extravagant and unnecessary gifts for him or herself or others (*e.g.*, your "ex," his girlfriend or her boyfriend), which you would not have wanted. Additionally, your child may have no incentive to become a productive member of society (*e.g.*, go to college, get a job, etc.).

The solution to both these problems is to place the assets in trust for the benefit of your child. This can be for gifts during life or at death. The trust is controlled by a person you and only you appoint—the trustee. The trustee follows your wishes and instructions on how the assets should be managed and used for your child. The trustee can only use trust funds for your child's benefit (and no one else). Singer Whitney Houston did this for her daughter Bobbi Kristina. She divorced Bobby Brown in 2007, and to protect her assets left to her daughter she placed them in trust.<sup>14</sup>

By placing the assets in trust, the guardian has no control over your child's inheritance. So your "ex" cannot touch your money. The trust also protects your 18 year old child from him/herself and others. The trustee remains in control as long as you want. This could be age 25, 35 or forever if you so desired. Finally, the trust builds in an additional layer of creditor protection. This means if your child gets sued by someone (*e.g.*, a car accident) or gets divorced, the assets in the trust are protected.

## How Do I Make Sure My Kids From Different Partners Are Treated Equally (or Unequally)?

When you have children with different partners you may want your children treated (i) equally or (ii) un-

equally. To achieve either result, planning steps must be taken, or the wrong result may occur.

The default law is normally that all children are treated equally. This is regardless of your actual relationship with your children. For example, if you have two children, one with an “ex” and one with your spouse, and you want one child to get a third and the other to get two thirds, your will needs to be drafted accordingly. Otherwise, each child will get half of your assets.<sup>15</sup> Alternatively, if you specifically name only one child in your Will, the others will be excluded. This was the case for actor Philip Seymour Hoffman who did not update his will after he had his second and third child. The result was that both were excluded from inheriting any of his estate.<sup>16</sup>

If you are married or thinking about getting married, that needs to be carefully taken into consideration. Spouses are usually entitled to a third of your estate regardless of what you say in your will. Moreover, there is a presumption that your spouse will favor her child (and not your children from prior relationships), and any amount your spouse’s receives will be left to *her* child and not *your* children. So if you want your children to share equally, attention needs to be given to the fact that a third of your estate might be given to one child alone, resulting in an unequal inheritance.

There are various solutions here. The best is having a prenuptial agreement that waives your spouse’s right to a third of your estate. This allows you to treat your children equally in your will without considering this factor. If there is no prenup, there are still options available. First, any assets left to your spouse can be placed in trust for her benefit, and upon her death those assets can pass equally to your children. This protects your children from your spouse favoring her child. Alternatively, you could leave half your assets to your spouse and her child and half to your other child. Often clients do a 60/40 split assuming the spouse will use some of the assets before they pass to her child, at which time they will be closer in value to what the other child inherited.

### So What Are the Things I Should Be Doing Right Now?

All of it. Deal with the issue head-on before it handles you. This means handling any of the optics of being a baby daddy or mama so they will be favorable. Get your financial house in order and actually sit down with your financial advisor to determine the impact on your finances of having a non-marital child. Finally, speak with an attorney to create a will (and trusts) to address the estate planning issues surrounding your non-marital child before it’s too late.

## Endnotes

- 1 From the Grammy Award winning album Stankonia, Arista-RCA (2000).
- 2 <https://www.cdc.gov/nchs/fastats/unmarried-childbearing.htm>.
- 3 <http://www.apa.org/topics/divorce/>.
- 4 <http://www.dailymail.co.uk/news/article-2204139/Deadbeat-dad-Evander-Holyfield-held-contempt-failing-pay-500K-overdue-child-support.html>.
- 5 <https://nypost.com/2016/01/17/antonio-cromartie-pays-336k-every-year-to-support-8-kids/>.
- 6 <https://www.dailystar.co.uk/news/latest-news/569115/mick-jagger-father-baby-number-eight-melanie-hamrick>.
- 7 Smith v. Freeman, 149 Md App 1 (Ct App 2002).
- 8 Pablo S. Torre (march 23, 2009). “How (and Why) Athletes Go Broke,” Sports Illustrated.
- 9 <https://www.statista.com/statistics/240102/average-player-career-length-in-the-national-football-league/>.
- 10 <http://www.businessinsider.com/chart-the-average-nba-player-will-make-lot-more-in-his-career-than-the-other-major-sports-2013-10>.
- 11 <https://www.sciencedaily.com/releases/2007/07/070709131254.htm>.
- 12 <http://www.ramfg.com/RAM-Financial-Group-Solutions-Professional-Athletes-Athletes-Services>.
- 13 See e.g., <https://www.yahoo.com/news/emails-between-tom-brady-and-ex-expose-how-they-126106801202.html>.
- 14 <https://www.forbes.com/sites/trialandheirs/2015/07/27/lessons-from-whitney-houstons-will-and-bobbi-kristinas-tragic-death/#133af4e46977>.
- 15 N.Y. Estates, Powers & Trusts Law 4-1.1.
- 16 <https://nypost.com/2014/07/21/philip-seymour-hoffman-didnt-want-trust-funds-for-his-children/>.



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