



Special needs require special lawyers.

Special Needs Trusts for Minors and the Parents' Obligation of Support (Part I)

BY KEMP SCALES

A long-established and well-known rule of law is that parents have a duty to support their minor children. But what if the minor child has resources of his or her own? Will this reduce the parent's support obligation? In particular, what if the minor child is the beneficiary of a special needs trust and receiving public benefits to cover basic support needs? Does this make a difference? These are the questions this article will attempt to answer.

But first, a caveat. Explaining the law, in the final analysis, means predicting how courts will decide cases involving that law, an inherently uncertain undertaking. Even discounting arbitrary factors such as the political views and temperament of the judge (who, after all, is human), child support laws are enacted by the states, not the federal government, and so how courts decide such cases necessarily varies from depending upon the particular state law. Also, a decision in any case (particularly a child support case) is dependent upon the unique facts of that case.

Still, there are some general rules that apply. This article will look at the general rules by examining how the courts of one state, Pennsylvania, handled two cases involving a father's obligation for support of his minor children who had significant assets of their own. The article will conclude with a summary of the traps for unwary parents and advice on how to avoid them.

Parental duty of support: As noted above, parents have a duty to support their minor children. More specifically, they are to support them in a manner consistent with the parents' standard of living. And, of particular relevance when their children are beneficiaries of a trust, parents are to use their own funds to cover their support obligations and not look to funds belonging to the child.

First Pennsylvania Child Support Case – Custodial Account. An opinion in a 1987 case decided by the Pennsylvania Supreme Court (Pennsylvania's highest court), *Sutliff v. Sutliff*,¹

is an interesting illustration of how such general legal principles can be applied to a particular set of facts (and also illustrative of the uncertainty of predicting results).

This was typical child support case in that it involved a divorce action, an order by the trial court requiring the father to pay support for his minor children who lived with their mother, and an objection by the father claiming he shouldn't have to pay this support.

But the case was unusual not only because the father was wealthy (net worth of \$3,000,000 and a yearly income of \$130,000), but because the minor children had substantial assets of their own (each had about \$115,000 in a custodial account). Also, the father and his business associate were the custodians of these accounts.

The father appealed the child support order, claiming that he should not be required to support children who had substantial assets of their own.

The court's opinion dealt with two main issues: a parent's support obligation for minor children who have assets of their own; and the potential conflict of interest involved when a parent is custodian of an account for his or her minor child.

Parent's support obligation for minor children who have assets of their own

As to the first issue, the court began by noting certain general principles of law regarding child support:

The purpose of child support is to promote the best interest of the child.

The legal obligation of parents is to provide for the reasonable expenses of raising the child, more than the "bare necessities." ("Indeed, parents have a duty to support their minor children even if it causes them some hardship.")

Child support is a parent's personal obligation. A parent's support duty is not affected by a minor child's own means or earning potential.

As noted, a minor child is entitled to be maintained by his or her parents regardless of the child's own estate.

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Having read this far, and given these general statements and the facts of the case, I thought the Supreme Court would certainly affirm the trial court's decision in favor of the mother. And, as I read further, this is what the court seemed to be about to do when it stated flatly, "We hold that a parent's obligation to support minor children is independent of the minor's assets." But this general principle was qualified by noting that it was only true "where the parent has sufficient funds to reasonably support the minor without seriously depriving himself or other persons to whom he has a similar obligation." OK, I thought, a reasonable qualification, but not one that would seem to apply in this case. After all, a father with \$3,000,000 and an annual income (in 1987) "in excess of \$130,000" was clearly able to support three minor children from his own funds "without seriously depriving himself." But this was not clear to the Supreme Court. It sent the case back to the trial court to determine "whether this father has sufficient means to meet his children's needs without using their own property."

Potential conflict of interest involved when a parent is custodian (or trustee) of an account (or trust) for his or her minor child

As noted, a minor child is entitled to be maintained by his or her parents regardless of the child's own estate. But because minors cannot hold property in their own name, a minor child's "own estate" will almost always be held in a custodial account or trust, with a "custodian" or "trustee" in charge of the estate during the child's minority (and sometimes beyond). As the Sutliff case illustrates, this second issue can be a trap for the parent of minor children with assets of their own who acts as custodian or trustee for the children.

Again, the Court began by noting certain basic legal principles:

- Like a trustee, a custodian for a minor's account has a duty of loyalty to the minor and is expected to use the property for the minor's benefit and act only in the minor's interest.
- When a parent is also custodian for his or her minor child's account, this dual obligation comes into conflict. In such a case, the parent may not credit a custodial distribution against his or her own support obligation.²
- A parent-custodian who uses custodial funds to satisfy his or her own support obligation violates this duty of loyalty and is subject to surcharge and removal for such violation.

Applying these principles to the father's conduct, the Court said the record was plain the father and his business associate exercised their powers as custodians of the children's property to fulfill part of the father's support obligation. This amounted to a breach of loyalty by the father. "We also believe that these facts present a conflict of interest which would require the custodians' removal." ^{EP}

(This is the first of a two-part series. Part II, which will appear in next month's issue, will examine how the child support obligation applies to parents who have a minor child who is the beneficiary of a special needs trust.)

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1 *Sutliff v. Sutliff*, 515 Pa. 393; 528 A.2d 1318 (1987).

2 "The trustee's discretion . . . is normally to provide types of support or other benefits that fall beyond the parental obligation. This is particularly so when a parent is trustee or co-trustee . . ." *Restatement of the Law - Trusts* (3rd), p. 312.