

LEGAL ALERT

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PARENTAL RESPONSIBILITY AND PUBLIC POLICY

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The practice of family law takes on difficult and emotional issues. Nowhere is this more keenly experienced than when parents seek to terminate a co-parent's parental rights on account of his or her failure to be interested in the child, or as a result of frustration that results from years of spotty or nonexistent child support payments.

Interestingly, many parents believe that the responsible parent (generally, the one who enjoys primary physical custody) may request that the courts terminate a negligent parent's rights, if the negligent parent agrees to do so. Usually, the frustrated custodial parent has concluded that it would be better for the child if the "deadbeat" parent were removed entirely from the child's life in lieu of struggling with continual conflicts about unpaid child support and/or inconsistently exercised parenting time. The courts have seen many cases where the father offered to terminate his parental rights in return for a waiver of child support and/or a one-time cash payment to the mother.

In fact, aside from being morally objectionable, such a stipulation for termination is not an option under Michigan law. Unlike most other states, Michigan does not terminate the obligation to pay child support upon the termination of a parent's rights, voluntarily or involuntarily. By not terminating child support, the Michigan courts have made it clear that a child's right to financial support from both parents is a right that cannot be bargained away by his or her parents. What follows is a clarification of the state of Michigan law on this and related issues.

Child Support Obligations Continue Even After a Termination of Parental Rights.

Michigan law holds that the termination of parental rights does not terminate a parent's obligation to support his or her child. Only by adoption can a parent completely sever the parent-child relationship from a financial point of view. As already mentioned, Michigan's is the minority

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position; most states hold that the termination of parental rights also terminates any responsibility to support one's child. Michigan is joined only by the states of Rhode Island and West Virginia. The courts in these states reason that terminating the financial obligation with the parenting rights risks allowing child support to be "bargained away," which thereby undermines a child's inherent right to adequate

parental support. As stated by the Court of Appeals of Michigan, to hold otherwise would be to provide an incentive for parents to voluntarily terminate their rights to avoid paying child support.

The Michigan Court of Appeals' position on this issue appears to be firmly entrenched. In *Evink v Evink*, the Court stated that it was "deeply troubled" by the opposing position adopted by most states, and in *Van Laar v Rozema*, the Court took a dim view of agreements that purport to sign away the rights of a child, particularly when the result of such an agreement may be that the child becomes a public charge.

While there is merit to the Michigan Court of Appeals' position on this issue, practically speaking, it may cause difficulties in the lives of parents. Occasionally, a father has offered to voluntarily

terminate his parental rights in return for the mother giving up her child's right to financial support, and many custodial parents seriously wish to accept this sort of offer. Upon being advised of the law that prohibits this sort of contractual arrangement, the custodial parents were concerned that without the financial incentive, the other parent would continue to avoid paying support and would insist on parenting time that they neither deserved nor regularly exercised, causing undue stress to their child(ren). Ironically, the custodial parents were convinced that it was in the best interests of their children to sever *all* ties with the other parent, child support notwithstanding, while the law declares it is in the children's best interests to insist upon financial support from the parent, no matter the extenuating circumstances.

Child Support is Not "On the Table" in a Divorce Negotiation.

An agreement between divorcing parents that provides that one parent is not obligated to abide by a child support order if that parent agrees to sever ties with his or her children is not enforceable as a matter of Michigan law. The reasoning behind this position is consistent with the principles explained above – that a child's welfare is the primary concern of the family courts, child support is an integral part of this welfare, and it, therefore, cannot be "bargained away" in the course of custody negotiations fraught with emotion, potential intimidation, and duress.

Consequently, an agreement between parents with regard to child support will never suspend the authority of the trial judge to enter or to amend a child support order. Neither will provisions in a consent judgment of divorce that put a ceiling on the amount of child support a parent will pay, or which makes the payment of such support contingent upon one party's remarriage be enforced by a court. In fact, the Court went so far as to state that such provisions "should not be included" in judgment of divorce and considered them not only unenforceable, but "misleading" to those who rely upon the judgment.

Stepparents, Paternity Questions and Other Related Topics of Interest.

As stated above, absent adoption, the legal obligation to financially support a child remains with his or her natural (i.e., biological) parents. As a general rule, a

stepparent therefore has no legal obligation to support a stepchild.

While a stepparent does not have a support obligation, and despite the general rule that a person cannot be obligated to support a child absent a biological parent-child relationship or valid adoption, according to the principles of equity a father who holds himself out as the parent of a child that is not biologically his own may be required nonetheless to financially support that child under certain limited circumstances. In *Nygaard v Nygaard*, the father agreed to raise a non-biological child born to his wife as his own, and persuaded his wife to not give up the child for adoption. Under these circumstances, the Court held that the father was obligated to support the child, despite the lack of a biological link.

While it may seem self-evident, the Michigan courts have held that fathers are not allowed to disclaim parenthood of a child during a custody battle to further their strategic ends. These courts have also regularly held that the circumstances of conception have no effect on whether a father is obligated to support his child. In one case, these courts rejected a father's claim that he was not obligated to support his child because the mother had misrepresented that she was using birth control when the child was conceived. They held that misrepresentation of birth control use is not an appropriate mitigating factor when computing child support where each parent is able to bear the full cost of the child's support.

No easy fix is offered by Michigan law for parents involved with a co-parent who does not respect the need to support his or her child. And the voluntary severing of parental rights cannot be used as a bargaining chip. While to many parents this limitation may seem unfair and paternalistic, the purpose of the law furthers the same goal as those of most parents – to ensure children grow-up with a roof over their heads and food in their mouths.

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