

## Health Cost Tied to College Tuition



*College tuition can include premium for student's health-care insurance.*

With the start of school looming, college-bound kids — and their parents — are scrambling to find ways to pay the upcoming education costs.

Folks who are divorced and sharing these bills may also be subject to trial court orders regarding post-secondary education that include health-care insurance expenditures.

In this case, Dad and Mom divorced in 2005 while their 19-year-old daughter was enrolled in college.

### **Dad Ordered to Keep Coverage**

Along with ordering Dad to keep medical coverage for the girl until she was 23, the trial court directed both parents to pay her educational costs in proportion to their incomes.

Dad appealed. And after the Court of Appeals failed to agree with him on several support issues, he turned to the Indiana Supreme Court.

Citing a 2003 case, Dad argued insurance coverage and payment of

health care should not be included as educational expenses, but rather they should be considered child support, terminable at age 21.

But the Court was unconvinced and noted, instead, that there was a conflict between two holdings of the Court of Appeals on this issue.

In resolving the matter, the Supreme Court focused on the intent of the General Assembly in formulating the child support statutes.

### **Health-care Premiums Included**

“Many (U. S.) colleges . . . include health insurance premiums as a mandatory part of semester tuition charges,” the Court stated.

“This common practice may explain why the legislature did not address health insurance costs for college students in greater detail” in enacting the support statutes.

Even so, the underlying goal of the statutes is “to authorize support for dependent children up to and during college,” noted the Court.

Therefore, “[t]he cost of tuition is just one of many factors which may be considered in assessing the amount of support needed to provide an adequate education.”

As such, the Court continued, “[t]o the extent there is a conflict in

the case law, we hold that a post-secondary educational order may include medical, dental and optical insurance costs, as well as other health-care costs, where the court finds such costs appropriate.”

### **Child Must Remain Enrolled**

The payment of these insurance and health-care costs, though, “must be contingent upon the child remaining enrolled in a post-secondary educational institution.”

Because the order at hand was not expressly contingent upon the daughter’s remaining enrolled in a post-secondary educational institution, the Supreme Court remanded to the trial court for this purpose.

Affirmed and remanded.

See *Cubel v. Cubel*, 876 N.E.2d 1117 (Ind. 2007).♦

### **SPOTLIGHT ON:**

- **Health-care Costs Are Tied to Payments for Education....1**
- **Mother Seeks to Set Aside Paternity Affidavit of Child....2**
- **Reality Checks: \$\$ Mistakes....2**
- **Dad Says 21-year-old Son Is Not Truly “Incapacitated”...3**
- **Parental Rights Are Taken from Drug-addicted Mom.....4**

**REALITY CHECKS:**

When you are caught up in the emotions of divorcing, there are money-gobbling mistakes you cannot afford to make.

✓ Make copies of all important financial records, such as banking statements or brokerage accounts.

✓ If your assets are moderate, consider mediation. It is usually cheaper, more flexible and less adversarial than going to court.

✓ Talk with a tax specialist to minimize the total taxes you and your ex-spouse may pay during your separation and after divorce.

✓ Don't underestimate or omit your expenses in putting together an initial post-separation budget.

✓ Be wary of a settlement offer that looks too good to be true; it probably is. Be fair, but verify the numbers upon which it is based.

✓ Don't forget about inflation. It can significantly impact the costs of your child's college education as well as your ability to retire.

✓ Be sure to update your estate documents and change the beneficiaries on any life insurance policies or retirement accounts.

✓ Insure your settlement in case of the disability or premature death of your ex-spouse.

SOURCE: *Settlements: Fifteen Critical Financial Mistakes Often Made in the Heat of Divorce* at <http://www.divorce360.com/articles>.

## Mother Seeks to Set Aside Paternity Affidavit of Child



### *Toddler was trapped in a tug-of-war between Mom and her legal Dad.*

Is it possible for a man's paternity to be "revoked" three years after he and Mom knowingly executed a false affidavit of paternity?

The Court of Appeals said no.

Soon after Mom and Dad began dating in the fall of 2003, the woman learned she was pregnant.

Both knew he had not fathered the child, but they began living together and agreed that he would be identified as the father.

### **Dad Named as Legal Father**

In April of 2004, a baby girl was born. The boyfriend and Mom signed and filed a paternity affidavit naming him as the father.

They lived as a family until 2006 when the couple separated.

After that time, Dad not only visited the toddler, but he also provided financial support for her.

In April of 2007, Dad sought to establish custody, support and parenting time. But Mom contested his petition on the ground he was not the baby's biological father.

The trial court agreed and set aside the affidavit, declaring it was "fraudulently executed."

But the Court of Appeals found otherwise.

### **Paternity Actions under Law**

"Paternity can be established only by filing an action under Ind.Code Art. 31-14 or by filing a paternity affidavit" under the pertinent statute, it noted.

Focusing on the legislative intent in formulating the paternity statutes, the Court was determined to sidestep any manipulation of these laws by a mother.

It found "[t]herefore, once a mother has signed a paternity affidavit, she may not use the paternity statutes to deprive the legal father of his rights, even if he is not the biological father."

### **Girl Knows Only Him as Dad**

In this case, Dad is the only father the girl has ever known.

"He is her legal parent and has assumed all the responsibilities . . . thereto," wrote the Court.

"Changing his legal status at this late date is not in the best interests" of the child, the father or the state of Indiana.

Reversed and remanded.

*In Re Paternity of H.H.*, 879 N.E.2d 1175 (Ind.App. 2008). ♦

# Incapacitated Adult Gets Support



*Young man was hospitalized three times for psychiatric treatment.*

Time and again, the stresses of caring for an incapacitated child can take a toll on the marriage of Mom and Dad.

The child in this case, though, was a 21-year-old man when the divorce proceedings were filed.

Married in the fall of 1980, Mom and Dad had two children, one of whom is a son named A.L.

## **Boy Suffers Psychotic Episode**

At the age of 16, the teenager experienced a psychotic episode while at school. He was hospitalized for psychiatric treatment.

At that time, he suffered delusional thinking and was diagnosed with schizophrenia.

Since then, A.L. has taken five various antipsychotic medications. He has also been hospitalized two more times for psychiatric care.

After graduating from high school in 2004, the young man attended college as a part-time student, while living with his parents.

Some 15 months later, Mom and Dad separated, and A.L. remained with his mother.

After having difficulty with college coursework, he dropped out after four semesters and got a job.

## **A.L. Gets Own Apartment**

In January of 2007, one month before the boy's 21st birthday, A.L. and his mother agreed he should move into his own apartment.

He did — but Mom supplied him with a car as well as money for gas, food, insurance and clothing. She also paid his rent.

In May of 2007, the final hearing was held on a petition for dissolution of the parties' marriage filed by Dad a year earlier.

Having settled all property matters, Mom and Dad focused on the sole issue between them: Was their 21-year-old son emancipated?

The trial court decided he was not and thereby ordered Dad to pay \$500 per month in child support.

## **Dad Says A.L. Not Incapacitated**

Dad appealed, arguing the court had erred in declaring A.L. was incapacitated and, therefore, not emancipated. But the Court of Appeals disagreed.

Relying on several statutorily-prescribed exceptions that prevent the termination of a parent's duty to support a child, the Court cited Indiana Code §31-16-6-6(a)(2).

It provides the duty to support a child ends when the child becomes 21 years of age “unless any of the following conditions occurs: . . . (2) The child is incapacitated.”

According to prior Court cases, “incapacity” has been defined as the “state of being incapable; want of capacity; . . . inability; incapable; disability; incompetence.”

## **Young Man Earns \$4,000 Yearly**

At the time of the hearing, A.L. was delivering pizzas part-time. He worked 20 to 30 hours weekly, earning \$4,000 per year plus tips.

This job, plus his independent apartment living, indicated he “can provide for himself,” argued Dad. But the Court found otherwise.

Because the evidence showed Mom “facilitate[d] his independent living with a high level of financial support,” the Court could not say that the trial court's finding was clearly erroneous.

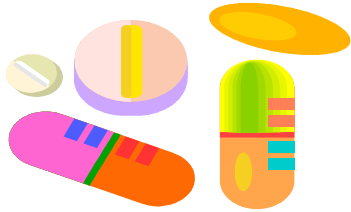
Affirmed.

See *Liddy v. Liddy*, 881 N.E.2d 62 (Ind.App. 2008). ♦



*Record showed A.L. had difficulty when enrolled part-time in college.*

# Parental Rights Taken from Mom



*Mom tested positive for marijuana as well as for various other drugs.*

Very few concepts in the legal system are more sacrosanct than the bond between a parent and child.

The right of parents to establish a home and raise their children is even protected by the 14th Amendment of the U. S. Constitution.

Given this, the case at hand — in which the parental rights to eight kids are terminated — is striking.

## **Eight Children of Five Men**

Here Mom gave birth to eight children of five men. The seventh child tested positive for marijuana at delivery in April of 2003.

At that point, the Marion County Department of Child Services (MCDCS) made an agree-

ment with Mom that if she would get drug abuse counseling, the kids would be allowed to stay with her.

In September, MCDCS filed a petition alleging all seven were children in need of services (CHINS).

Thus began a downward spiral in which the kids were placed in the custody of their Grandma, and Mom gave birth to another baby.

This one also tested positive for marijuana and was sent to Grandma.

## **Incidences of Child Abuse**

In early 2006, the MCDCS took the kids from Grandma, due to substantiated incidences of child abuse, and put them in three foster homes.

It then petitioned to end Mom's parental rights in May of 2006. A year later, this motion was granted.

On appeal, Mom contended the termination was clearly erroneous, but the Court of Appeals disagreed.

“The purpose of terminating parental rights is not to punish the

parents but to protect the children involved,” noted the Court.

The juvenile court must therefore “subordinate the interests of the parents to those of the children.”

## **Habitual Patterns of Conduct**

It “*must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child,*” continued the Court.

The evidence shows Mom had over a year — between the time her kids were put in foster care and the final hearing — to get help with her addiction and parenting issues.

During that period, she not only tested positive for several drugs but dropped out of a treatment program. She neither visited her children nor did she stay engaged with them.

Judgment affirmed.

See *A.J. v. Marion County Office of Family and Children*, 881 N.E.2d 706 (Ind.App. 2008). ♦

## **NEWTON BECKER BOUWKAMP PENDOSKI, PC**

ATTORNEYS AT LAW

317 • 598 • 4529

<http://www.nbbplaw.com>

317 • 598 • 4530 (fax)

**M. Kent Newton**  
**Carl J. Becker**  
**Alan A. Bouwkamp**  
**Lana Pendoski**  
**Judith Vale Newton**  
**Leah Brownfield, Paralegal**  
**Courtney Haines, Paralegal**  
**Jane Callahan, Administrator**  
**Mary Myers, Legal Assistant**

[knewton@nbbplaw.com](mailto:knewton@nbbplaw.com)  
[cbecker@nbbplaw.com](mailto:cbecker@nbbplaw.com)  
[abouwkamp@nbbplaw.com](mailto:abouwkamp@nbbplaw.com)  
[lpendoski@nbbplaw.com](mailto:lpendoski@nbbplaw.com)  
[jnewton@nbbplaw.com](mailto:jnewton@nbbplaw.com)  
[lbrownfield@nbbplaw.com](mailto:lbrownfield@nbbplaw.com)  
[chaines@nbbplaw.com](mailto:chaines@nbbplaw.com)  
[jcallahan@nbbplaw.com](mailto:jcallahan@nbbplaw.com)  
[mmyers@nbbplaw.com](mailto:mmyers@nbbplaw.com)

FAMILY LAW FOCUS is intended to provide updates on matters of family law. Information contained herein does not constitute legal advice, nor is this publication intended to identify all developments in family law that may affect the reader's case. Readers should not act or refrain from acting on the basis of this material without consulting an attorney. Transmission or receipt of this information does not create an attorney-client relationship. Copyright © 2008. NEWTON BECKER BOUWKAMP PENDOSKI, PC. All rights reserved.