

## Matrimonial MATTERS

# Children's activities and child support

Over the past few years — at least in this part of the state — divorce settlements have more and more often included provisions for the parents to pay for the children's activities such as music and sports lessons and clubs. In the past, such provisions were unusual unless the parents were well off financially or the child was exceptionally talented. The Child Support Standards Act (CSSA) [DRL §240 (1-b), also FCA §413 1(b)] is essentially silent on whether such provisions should be considered an element of child support.

There are only three areas which the statute specifically designates as being possible sources of financial contributions by parents in addition to basic child support, often referred to as "add-ons." One of these is for the provision of and payment toward health-care insurance and expenses for the child, which is detailed in several paragraphs of the law. The only other additional expenses the court may direct parents to pay are related to childcare and education:

(6) Where the court determines that the custodial parent is seeking work and incurs child care expenses as a result thereof, the court may determine reasonable child care expenses and may apportion the same between the custodial and non-custodial parent. The



By **SARA STOUT ASHCRAFT**  
Daily Record  
Columnist

non-custodial parent's share of such expenses shall be separately stated and paid in a manner determined by the court. ( 7 ) Where the court determines, having regard for the circumstances of the case and of the respective parties and in the best interests of the child, and as justice requires, that the present or future provision of post-secondary, private, special, or enriched education for the child is appropriate, the court may award educational expenses. The non-custodial parent shall pay educational expenses, as awarded, in a manner determined by the court, including direct payment to the educational provider. [DRL §240 (1-b)

(6)(7), FCA §413 1(b)] While it could be argued that some of a child's activities could possibly fall under paragraph 7. For example, a child who is a math whiz at age 6 could possibly benefit from "enriched education" in the form of a university-sponsored math team and a young soccer player who has potential as the

next Beckham might benefit from professional coaching. However, the law makes it clear that these sorts of add-ons are at the discretion of the court.

As one appellate decision puts it: "Not expressly delineated as add on expenses in the statute are summer, extracurricular and/or weekend activities. Basic child support, when calculated properly is presumed to meet all the child's basic needs. Thus, the expenses of leisure, extracurricular and enrichment activities such as after school clubs, sporting activities, etc., are not awarded separately but are encompassed within the basic child support award." *Michael J.D. v. Carolina E.P.*, 138 AD3d 151, 25 NYS3d 196 [1st Dept., 2016].

The First Department added that if a court decides to order parents to pay for such activities, "... [I]t is a deviation from the basic statutory formula and required analysis under the commonly referred to paragraph 'f' factors. Pursuant to Domestic Relations Law §240[1-b-[f]] (Family Court Act §413 1[f]) unless the court finds that the non-custodial parents pro-rata share of the basic child support obligation is unjust or inappropriate upon consideration of certain factors enumerated in the CSSA, the child support calculation under the statute is presumptively correct." There are 10 "f"

factors, but the ones most likely applicable to payment of extracurricular activities are: "(1) The financial resources of the custodial and non-custodial parent, and those of the child, (2) The physical and emotional health of the child and his/her special needs and aptitudes, [and] (3) The standard of living the child would have enjoyed had the marriage or household not been dissolved."

It should be noted that while in most child support cases the additional payments for uncovered expenses of a child are sought for ordinary extracurricular activities, the statute does provide that the court can award payment for "special" education. In a case in which the child does have special educational needs beyond that provided by a school, courts seem to be more open to considering ordering payment above basic child support than in a case in which the add-on expense is for an ordinary club or team sport.

That being said, the parties are always free to agree to pay for such add-on activities. However, it is a good idea to include a provision that the activity contributed to must be agreed upon by the parties.

*Sara Stout Ashcraft is a partner in Ashcraft Franklin & Young, LLP. She concentrates her practice in the areas of matrimonial and family law.*