

## CHILD SUPPORT: DEALING WITH A SPECIAL NEEDS CHILD

The issue of child support is certainly one of the most litigated issues in divorce and custody proceedings in Texas, especially considering that the quality of a child's life is directly affected by the Court's disposition. This never holds more true than when a child the subject of a suit has special needs. In such cases, determining the child's reasonable needs becomes increasingly difficult due to the child's specific limitations and what that means in terms of court-ordered monetary support.

Under Texas law, the application of the child support guidelines (20% of net resources for 1 child, 25% of net resources for 2 children) is presumed to be reasonable unless the Court determines that the application would be unjust and inappropriate under the circumstances (Tex. Fam. Code Ann. §154.122). The Family Code has outlined additional factors for the Court to consider in determining whether the application of the guidelines would be unjust or inappropriate, including the special or extraordinary educational, health care, or other expenses of the parties or of a child (Tex. Fam. Code Ann. §154.123). Keep in mind that any additional child support in excess of the guidelines enumerated in the Family Code may only be awarded based on the needs of the child. *See Rodriguez v. Rodriguez*, 860 S.W.2d 414 (Tex. 1993).

However, the Texas Supreme Court has held that "needs" is not limited to the bare necessities of life, and that the guiding principle of the Court is always the best interest of the child. *Id.* A Court may consider a party's expenditures on food, clothing, utilities, automobiles, home repairs, property taxes, birthday and Christmas expenses, and day care costs incurred for the benefit of the child. *See Scott v. Younts*, 926 S.W.2d 415 (Tex.App.–Corpus Christi 1996, writ denied). Additionally, Texas courts have held that funds expended for housekeepers, travel, private school tuition, counseling, extracurricular activities, educational books, and summer camp could be considered as "needs" of the child for child support purposes. *Id.* Further, it should be noted that when determining the net resources available for child support, the Court may assign a reasonable amount of deemed income attributable to assets held by the party paying child support which are not currently producing income. *Norris v. Norris*, No. 03-12-00108-CV, 2013 Tex.App. LEXIS 1884 (Tex.App.–Austin 2013).

It is important to remember that if a party is seeking child support in excess of the guidelines based on the special needs of a child, the requesting party should provide the Court with a detailed summary of the child's monthly expenses that is segregated from their own expenses.