

Expert Says Child Support Poll Results Show "Crack" in Court System

By MICHELE KIMBALL

A recent poll shows that custodial parents are not receiving their child support payments.

Almost half of the poll respondents, 43 percent, said they are not receiving one dime of court-ordered child support payments. The poll, conducted by GFK Roper and commissioned by Divorce360.com, further illuminated the discrepancy – just 25 percent of custodial parents are receiving their payments. Of the rest, 17 percent, are getting some of the payments, but not getting all they are due, 6 percent are fighting to get child support.

The independent polling agency spoke by phone with more than 1,500 people. The margin of error for the study is plus or minus 2.6 percent.

Part of the issue is that noncustodial parents, who are not living full-time with their children, don't like paying child support, according to Brette McWhorter Sember a former family law attorney and author of several books about divorce, including "The Divorce Organizer & Planner," and "Child Custody, Visitation and Support in New York." She said she thinks noncustodial parents don't see how the money they pay goes directly to the care of their children. "I believe child support is essential, but from the point of view of the person paying it, it seems as if it benefits the other parent more than the child," Sember said. Those who are not receiving the child support should be prepared to ask the court for help getting the money, Sembler said. "You need to become familiar with the court system and learn how to use it," Sember said. "You need to get the child support paid through the state enforcement agency when possible so that they can make sure it is paid."

Sember said the discrepancy between what's ordered by the court and what is actually received can be attributed to many factors, from resentment about paying at all to frustration that the custodial parent is not using the money in the way the noncustodial parents wants it to be used.

NONPAYMENT AS EXCEPTION?

Sari M. Friedman, the general counsel for the Fathers Rights Association of New York State & Fathers Rights Association of Long Island, said the poll results are not indicative of what she sees. Friedman said most noncustodial parents are paying to child support. If they are not, Friedman said, it could be because they do not have a job or an income that the state can garnish for child support. Also, some circumstances make it difficult for the noncustodial parent to pay.

Perhaps the noncustodial parent had a higher income when the divorce decree was signed and can no longer make the payments. Sometimes, Friedman said, if the noncustodial parent owns a business, the state can't see all of the income earned, and the amount ordered is inaccurate. "People are always exaggerating their side. And sometimes the truth may fall somewhere," Friedman said. "It is up for the judge to believe someone and decide what to order."

There are many possible scenarios that force a noncustodial parent into the trap of not making child support payments, and once it starts, it may become an endless cycle, she said. "And then it becomes like a rat on a wheel, and the arrears add up," Friedman said.

Jeffrey Leving, a Chicago attorney who specializes in representing fathers in custody cases, believes most noncustodial parents pay their child support. Leving is the author of two books, "Fathers' Rights," and "Divorce Wars." He also co-authored the Illinois Joint Custody Law, and he gave testimony before both branches of the Illinois Legislature on Joint Custody, Grandparent's Visitation and Child Support Accountability bills.

He cautions that while nonpayment exists, it is also not solely a women's issue. "Basically what I see is that custodial parents, whether they are mothers or fathers, both have issues with nonpayment of support," Leving said. "Nonpayment of support is not gender-specific."

Leving said he thinks some parents don't pay child support because they tie their payments to the amount of visitation they are getting. Though support and custody are separate entities, he said it is hard for some people to look at them that way. "One parent uses the children as tools to negotiate and tools for revenge, and the other parent uses his income," Leving said. "Even parents who love their children do this, and they don't realize it. They are just so caught up in the divorce."

He said that parents who have more contact with their children are more likely to pay support. However, the process of divorce becomes so adversarial, that is difficult to negotiate. "To correct these problems, you really have to use honey before vinegar," Leving said. "And if you use honey first, you won't have to get to the vinegar."

And if the honey and vinegar don't work, "They better get a very skilled attorney," Leving said. He said custodial parents must find an attorney trained in marital law who is willing to be dogged and creative because it is very difficult to get a noncustodial parent's financial information. "It's not easy to collect support if the noncustodial parent is not going to pay and instead fight you," Leving said.

GETTING ADEQUATE CHILD SUPPORT

The best case child support scenario includes flexibility in the original divorce decree, said Colette Frey-Bitzas, a certified financial planner from Financial Planners for Women. In her practice, she often advises clients to make room in child support payments for their children's future needs. At first, her clients focus on their spouses' current salaries and what percentage they need.

"Unfortunately, there is more to picture," Frey-Bitzas said.

As children grow, the cost of clothing increases, they may participate in expensive school activities, they may need dental work or more complicated medical care and they may attend college and need help with tuition. "Try to be as detailed as possible and try to leave the door open for things you have not thought of," Frey-Bitzas said.

Generally, it is the financial negotiations that tie up the divorce process, Frey-Bitzas said. "The custodial issue is generally one of the primary focus of attorneys. 'Let's make sure the children are settled,'" Frey-Bitzas said. "It's the financial issue that carries on in court."

She said her clients are usually surprised by the financial negotiations. She attributes it to the fact that people are still reeling from the divorce. "They are emotionally crippled people who need to think clearly. I find initially people underestimate what is going to happen," Frey-Bitzas said. "They fail to recognize that the children are going to get older, and there are going to be additional expenses."

When custodial parents are not receiving the support they need, they must go back to the court system. It may be financially difficult, Frey-Bitzas said, because they will need an attorney and will pay more legal fees. But it may be beneficial to have the court reevaluate the situation. "If financial circumstance changes, you can go back to the court and have it revisited, and the income can be adjusted, be it upward or downward," Frey-Bitzas said.

She said she is not surprised at the number of people who reported that they are not receiving child support. She said it is common for a noncustodial parent to disregard the support order. "The piece of paper is worth nothing unless it is followed through on," Frey-Bitzas said. "I think there is a big crack in the system.'

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