

Fox Rothschild Podcast

Featuring New Jersey Family Law Attorneys Robert Epstein and Eliana Baer in Princeton

We are talking today with Robert Epstein and Eliana Baer on Fox Rothschild Podcast. Our topic is emancipation, and specifically, what impact it has on the requirement to pay – or not to pay – child support.

Robert and Eliana are attorneys with the firm's New Jersey Family Law Group. They are frequent contributors to the firm's New Jersey Family Legal Blog and helped to develop the firm's New Jersey Divorce app for mobile devices. Robert, Eliana, good morning.

Robert Epstein and Eliana Baer: Good morning. Thank you.

Question: *Every few months, it seems, a news story will emerge about a child or young adult who is, or considers him or herself to be, emancipated but who still seeks financial support from the parents in some way. Do you think this is something particular to the millennial generation or is there something else at play here?*

Eliana Baer: There definitely is research out there that supports the theory that many millennials are experiencing more financial challenges than previous generations. A Pew Study from earlier this year noted that the millennial generation is forging a distinctive path into adulthood. They are, according to this survey, the first generation in the modern era to have higher levels of student loan debt, poverty and unemployment and lower levels of wealth and personal income than the previous two generations – Generation X and the Baby Boomers – had at the same point in their lives. In many cases, that translates into a greater reliance on their parents for financial assistance.

Question: *So when the parents are divorced or separated, how does that impact the financial support?*

Eliana Baer: Well, when the children are minors or not emancipated, it's mostly clear cut. You have the divorce or separation agreement that clearly stipulates the requirements of child support.

Robert Epstein: In New Jersey, however, emancipation is a hot button issue. Generally, the law provides that a child is emancipated when he or she is no longer within the parental "sphere of influence and responsibility." Then it is deemed the "conclusion of the fundamental dependent relationship between parent and child."

Question: *Robert, can you elaborate? What does that specifically mean??*

Robert Epstein: There was a case recently decided by the Appellate Division in New Jersey that can shed some light on this. In *Rybak-Petrolle v. Rybak*, the court reversed a trial court decision emancipating the parties' then 21-year old son. In this case, emancipation was defined in the parties' settlement agreement to be whenever any of the following happened first: (1) the completion of five academic years of college; (2) marriage; (3) permanent residence away from the residence of the primary residential custodial parent; (4) death; (5) entry into the armed forces; or (6) engaging in full-time employment. The agreement also deemed emancipation deferred beyond the child's 23rd birthday so long as he was pursuing a college education with "reasonable diligence and on a normally continuous basis." Under the agreement, the father was to pay child support until emancipation occurred.

Eliana Baer: Here, the county probation department inquired as to whether the son was emancipated for purposes of child support enforcement. The mother submitted documentation indicating the son was a full-time college student who was also working two part-time jobs, and the department requested a court order for relief of support. After several hearings, the trial court denied the emancipation request from the Probation Department. On appeal, the appellate division determined a plenary session – which is a more fact-sensitive inquiry – should have occurred, and that the trial court based its ruling solely on limited questioning. So the key takeaway here is that whether a child in New Jersey – even one who is enrolled in college and working – is emancipated is a very fact-specific inquiry that requires detailed analysis and consideration.

Robert Epstein: Yes, and so the answer as to what constitutes emancipation and how it is defined can't be found in a settlement or divorce agreement or limited to one specific detail about the child's life. Courts are looking at the totality of the situation.

Question: *I recall another recent case in the news involving a parent being forced by the court to pay for his daughter's law school tuition? Is either of you familiar with that case?*

Eliana Baer: Yes, yes we are. That case was also in New Jersey, and the father was forced to pay in excess of \$100,000 for her to attend Cornell Law School.

Robert Epstein: Yes, and in this case, the parties' divorce agreement from 2009 clearly indicated that the parents would split the cost of law school provided their daughter maintained a "C" average or above.

Eliana Baer: This case was particularly interesting also because at the time of the divorce, the daughter had already been emancipated. She and her dad had a falling out after the divorce, and there was no communication regarding the choice of law school or the daughter's decision to attend Cornell. Also, she waited about three years after she graduated from college to enroll in law school, during which time she worked.

***Question:** Cornell is not an inexpensive law school, either.*

Robert Epstein: Indeed it isn't. Business Insider ranks Cornell – with total tuition at an estimated \$76,680 – as #7 on its list of Top 10 Most Expensive Law Schools.

Eliana Baer: And, the father, who was a professor at Rutgers University in New Jersey, had offered to pay a portion of the costs for the daughter to attend Rutgers Law School, a state school whose total cost is more than \$50,000 less than Cornell. Chances are, too, that the daughter would have received a scholarship at Rutgers, potentially lowering the tuition amount even more.

***Question:** And yet still, the court compelled the father to pay for Cornell, didn't it?*

Eliana Baer: Yes it did. The trial court ordered him to pay one-half of the tuition at Cornell, and the appellate division upheld that in light of the divorce agreement that indicated the parents would split the cost of law school.

Robert Epstein: In hindsight, it may have been beneficial for the divorce agreement to have more clearly stipulated the terms of law school tuition payment, including such factors as the parents' financial situation, equal say by both parents as to which law school the daughter would attend, etc. While it may be impractical to plan for every future possibility when you're entering into a divorce agreement that involves child support, these cases bring to light a number of items that need to be considered and that knowledgeable legal counsel should help their clients plan for.

***Narrator:** Well, thank you, Robert and Eliana. Listeners, to confidentially discuss child support agreements, emancipation issues or divorce and separation agreements in general, please contact Robert Epstein in Roseland, New Jersey at 973.994.7526 or Eliana Baer in Princeton at 609.895.3344.*

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