

Post-Emancipation Support Available Only If Adult Child Is Under Guardianship

By Marisa W. Higgins, Esq.

The Massachusetts Appeals Court recently clarified the obligation of a non-custodial parent to pay support for an adult disabled child beyond age twenty-three (23). In Vaida v. Vaida (No. 13-P-1827), the Court found that continued support beyond the age of emancipation is not available to adult children who are not incapacitated persons placed under guardianship.

By way of background, for most non-custodial parents, the obligation to pay child support terminates upon their child's attaining the age of emancipation, which is anywhere between the ages of eighteen (18) and twenty-three (23). In cases where an adult child is incapable of self-support due to mental illness, intellectual disability, or physical incapacity, Massachusetts Probate and Family Courts have traditionally invoked their equity jurisdiction to order non-custodial parents who are financially able to contribute to the support of their adult son or daughter. The Vaida case makes clear that the use of such equity jurisdiction to award support post-emancipation is available only in cases where the adult child is under guardianship.

In the Vaida case, the mother filed a Complaint in Equity in the Norfolk Probate and Family Court against the father, seeking continued child support for their son, Evan, who was a partial quadriplegic as a result of injuries sustained in an accident when he was approximately seven (7) years old. The Complaint in Equity was filed once Evan reached the age of emancipation and the child support ordered under the Judgment of Divorce terminated.

The Norfolk Probate and Family Court allowed the father's Motion for Summary Judgment, finding, in part, that no action in equity for post-emancipation support is recognizable under Massachusetts law, absent a finding of incapacity by the Court in connection with a guardianship action. Despite

his significant medical and physical needs, Evan attended and graduated from college. No guardian had ever been appointed for Evan, and the evidence presented at trial established that Evan did not meet the criteria for guardianship since he is not an incapacitated person. The current statutory language allows a guardianship only for "incapacitated persons."

The mother appealed the decision to the Appeals Court, which affirmed the Probate and Family Court's ruling that post-emancipation support is not available to adult children who are not incapacitated persons placed under guardianship. The Vaida Court recognized the Massachusetts Probate and Family Courts' equity jurisdiction but determined it was not available in situations where the incapacitated person has not been placed under guardianship. Since Evan is not an incapacitated person and cannot be placed under guardianship for those reasons, he does not meet the criteria for the Court's use of equity jurisdiction to order post-emancipation support.

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