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When your ex won't pay

We've all read the dismal stories about non-custodial parents and ex-spouses who are defaulting on their child-support payments. But has anyone thought to ask why these people aren't paying?

By Diana Shepherd

You read about them every day: so-called "Deadbeat Dads and Moms" who refuse to pay child support even though they're living in the lap of luxury. There they are, jetting off to Hawaii again without a thought for their offspring who go to school hungry and in ragged old clothes. But how accurate is this picture?

"The true 'Deadbeat' parent is quite rare," says Nancy Caruso Pascucci, a Chicago mediator, attorney, and an adjunct professor at the DePaul University College of Law. "If the non-custodial parent can't pay, there's usually a good financial reason for it: he or she has lost a job, agreed to more than he or she could really afford to pay in the settlement, or has remarried and has a new family to support."

Pascucci cites the example of one of her clients who -- before he hired her -- agreed to pay 70% of his net earnings to his ex for child support, and now doesn't have enough to live on. This situation is obviously unfair, but it's part of his legal separation agreement and he has to go back to court to try to get it changed. To avoid getting yourself into such a fix, Pascucci advises you to consult an attorney before signing any documents. "Your attorney can go over the ramifications of an agreement before you sign it," she says, "so you'll know exactly what you're agreeing to."

"Large, frequent doses of media attention, legislative scrutiny, and public outrage have made child support the most debated and least understood aspect of family law," writes Chicago attorney Jeffery M. Leving in his excellent book *Fathers' Rights*. "The child support system is not working -- not for parents, not for children, and not for society," he concludes.

Gene is a 35-year-old man who has been wrangling with his ex-wife about child support for and access to their eight-year-old daughter, Katy, for the past three years. "I'm in and out of court all the time," he says bitterly. "I've already spent more on legal fees than I would have had to spend to support Katy to age 18 - - about \$200,000." Gene stopped paying child support 15 months after his ex, Mary, stopped allowing him to see their daughter. "She hauls me into court regarding payment, and I haul her into court regarding access. I was a great father -- she only denies access to yank my chain. Do you really think it's in Katy's best interests that she grow up without knowing her father?" Probably not -- but is it in her best interests to grow up without adequate financial support, either? Studies show that the children who adjust best to divorce are those who remain in close contact with both parents -- as long as those parents are not in constant conflict. So assuming that Gene and Mary can agree to resolve their issues with each other -- through counseling, therapy, or mediation, for instance -- Gene is correct in thinking that it would be in Katy's best interests to have regular, positive contact with her father. But until that happens, Gene must separate his anger at Mary from his obligations to Katy and start making child-support payments again. Although some divorcing parents try to combine the two issues, the law says that child support and access are independent covenants. And rightly so: otherwise, an abusive parent could refuse to pay support unless the custodial parent allowed their child to spend time with him or her.

Yesterday's unresolved issues fuel today's conflict

Old arguments, old hurts, and anger from the past can cause couples to behave like Gene and Mary -- each of whom is completely uninterested in trying to see things from the other's point of view, and each would rather spend the next decade fighting in court than admit any responsibility for creating and maintaining the deadlock they're in now.

"Most people think that their opinions are the only valid ones to hold: they're totally right, and the other person's totally wrong," says Chicago attorney Forrest Bayard. "In a divorce, a parent can become more committed to getting his or her own way than to being fair to the children."

Bayard asks divorcing parents to create future goals for their families, and then to ensure that their actions are consistent with reaching those goals. For instance, a non-custodial parent might say, "I want my kids to feel happy and secure, I want to have a great relationship with them, and I want them to stay with me on weekends and for a month every summer." Obviously, withholding child support that he or she can afford to pay is not the way to attain these goals.

We've all read the dismal stories about non-custodial parents who are defaulting on their child-support payments. Here are some new statistics that show things in an entirely different light. Recent U.S. Census Bureau data states that fathers with joint custody pay their child support 90% of the time; fathers with visitation pay their child support 79.1% of the time, and fathers with neither joint custody nor visitation pay their support only 44% of the time. What does that tell you about the probable outcome of denying your spouse access to his or her kids?

How is the money spent?

Liz does pay her child support for their two kids to her ex-husband, Joe, but she's getting increasingly upset about the way he seems to be spending it. "Last year, he took trips to the Caribbean and Europe, and our children are walking around looking like street urchins -- ragged and ill-fitting clothes and sneakers that are more hole than shoe," she fumes. "When they come to visit me, I end up buying them clothes and toiletries -- even though I'm now on a very limited budget." Liz thinks it's adding insult to injury that she's footing the bill for her ex to live "the good life" while their children do without, and she has considered withholding support until Joe proves to her that her money is being spent on the children. "But how could I face my kids if I stopped paying for them?" she asks. Liz, who owns and runs a small retail business, works too many hours to have her kids on a full-time basis. But she has recently begun to examine her options more closely to see if there's any way she could have primary custody and still be able to support her family. "Until then, I just have to come up with coping strategies -- such as getting good-quality hand-me-downs from my sister's kids, and keeping most of these clothes at my apartment so my kids will have something decent to wear when they're with me."

Parents like Liz feel it's wrong that the courts are only interested in whether or not support is paid, and not how it's spent. "The law is quite clear," says David Frumm, a principal partner at the Chicago-based law firm of Frumm & Frumm. "Custodial parents aren't required to provide a monthly accounting for the payments they receive, but they do have a responsibility to use the funds to provide adequate care to their children." Of course, the definition of "adequate care" is somewhat subjective: for some, it's clothes on the back and food on the table; for others, it's private schools and ski vacations.

Frumm suggests that a non-custodial parent should be allowed to make direct payments to individuals or entities providing goods and services to their children -- such as school and camp fees, extracurricular activities like music or sports lessons, and even rent payments. "A non-custodial parent can request that these provisions be included in the marital settlement agreement," says Frumm. That way, if you're a non-custodial parent who doesn't want or can't have custody of the kids, you can be sure that some of your money is going to directly benefit your kids. And these direct payments will be taken into consideration when assessing how much child support you should be paying to your ex.

I can pay -- but I won't

Most experts agree that the percentage of non-custodial parents who can easily afford to pay their child support but refuse to do so because they simply don't want to comply with court-ordered support is quite low. There are as many reasons for non-payment as there are reasons to fall in or out of love. The most common "justifications" for withholding support seem to be: an effort to force one's ex to comply with court-ordered access; suspicion that the money isn't being spent on the kids; and a simple desire to anger one's ex.

If your ex won't pay, and you really have made every effort to meet him or her halfway -- by encouraging full access to the children, and involving your ex in decisions about their lives, for instance -- then there are legal remedies available to you.

"In Illinois, we use 'Orders of Withholding' to collect child support from a recalcitrant spouse," says Frumm. Served upon your ex's employer, this Order compels the employer to pay child support either to the court or directly to the custodial parent. If your ex is self-employed, you can serve the corporation with the Order.

"Another alternative is to establish a trust from which the custodial parent can withdraw funds in the event that child support isn't received in a timely fashion," adds Frumm. And the new 'Personal Responsibility and Work Opportunity Act' contains powerful new child-support enforcement measures that

could increase child-support collections substantially; for more information about some of these reforms."

Interesting Fact:

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