

TRESI MOORE WEEKS

The Weeks Law Firm, PLLC
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Tresi Moore Weeks is an attorney and founder of The Weeks Law Firm, PLLC in Plano, Texas, where she assists clients with estate planning, special needs planning, probate and guardianship. As an advocate for her own child, she became active with the disability rights and advocacy community. Her special needs law practice has grown out of these experiences and her desire to help other families with loved ones with disabilities.

Tresi is the Chair of the Board of Directors of Disability Rights Texas, and serves on the Board of Directors of several organizations, including Coventry Reserve, Estate Planning Council of North Texas, Dallas Estate Planning Council, Dallas Society of Financial Service Professionals and the Collin County Bar Association. She also serves on the Advisory Council of My Possibilities in Plano and the Communities Foundation of Texas.

Tresi frequently gives presentations and workshops about special needs trusts and guardianship for parents, attorneys, CPAs, financial advisors and educators. Tres and her husband are active members of Watermark Community Church in Dallas.

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Education

Baylor University School of Law
J.D., 1987

Baylor University
B.A., 1984

Licenses

Supreme Court of Texas

U.S. District Court, Northern District of Texas

U.S. Court of Appeals, Fifth Circuit

Awards, Activities, Memberships

Board of Directors:

- Collin County Bar Association
- CCBA Estate Planning and Probate Section (Past President)
- Estate Planning Council of North Texas
- Dallas Estate Planning Council
- Disability Rights Texas (Chair of the Board)
- Coventry Reserve
- Dallas Society of Financial Service Professionals
- My Possibilities: Advisory Council Member
- Communities Foundation of Texas: Advisory Council Member

Planning Committee Member and Speaker:

- UT CLE Special Needs Trust Conference

Awards:

- D Magazine Best Lawyers 2019
- Superlawyers 2019
- Voted Best Attorney/Law Firm: Plano Star Courier Readers' Choice Award 2016, 2017



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“Children with Disabilities in Family Law Cases”

Attorney Tresi Weeks of the Weeks Law Firm, PLLC will discuss maximizing the wellbeing of a child with disabilities in family law cases. She will explore the statutes that allow child support to be ordered beyond the age of 18 for children with disabilities. The presentation will detail crucial government benefits that may be available for a child with special needs, the eligibility requirements for the different programs, and how those benefits are affected by child support payments. She will explore ways to protect those benefits through the use of special needs trusts and specific decree language. Tresi will provide guidance when advising divorcing parents to prepare new wills and perhaps a special needs trust so that life insurance and other assets can be left to the child when the parent dies, without affecting SSI and Medicaid.



CHILDREN WITH DISABILITIES
IN FAMILY LAW CASES

Tresi Weeks
Weeks Law Firm



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Children with Disabilities
in Family Law Cases

- ◆ Child support for child with disabilities
- ◆ Protecting child's government benefits
- ◆ Interaction between child support and benefits
- ◆ Special Needs Trusts
- ◆ How SNT lawyer can help you




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Planning for Children with Disabilities

- ◆ Divorce rate higher
- ◆ Litigation or collaborative process
- ◆ Consider needs of child with special needs
- ◆ Very different than needs of other children




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Planning for Children with Disabilities


- ◆ Goal: best life possible for child
- ◆ Child provided for financially
- ◆ Maximize resources for child
- ◆ Lifetime of child



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◆ CHILD SUPPORT




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CHILD SUPPORT

- ◇ Tex. Fam. C. 154.123
- ◇ Amount > guidelines if rebut presumption that guideline amount is in best interest
- ◇ Justify variance if unjust or inappropriate
- ◇ Consider all factors




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CHILD SUPPORT

- ◇ Tex. Fam. C. 154.123(b) support factors:
- ◇ (1) age and needs of child
- ◇ (2) ability of parents to contribute to support
- ◇ (3) financial resources available for support
- ◇ (13) special or extraordinary educational, health care or other expenses



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CHILD SUPPORT

- ◇ Factors for support: child's needs
 - ◇ Medical
 - ◇ Therapeutic interventions
 - ◇ Attendant care




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CHILD SUPPORT

- ◆ Factors for support: ability of parents to contribute
 - ◆ Caregiver parent
 - ◆ Stay-at-home, part-time or underemployed
 - ◆ Instead of paid help




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CHILD SUPPORT

- ◆ Financial impact on caregiving parent:
 - ◆ Unable to work
 - ◆ Time caring, transporting
 - ◆ Cost of caring for child




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CHILD SUPPORT

- ◆ Factors for support: financial resources available
- ◆ Government benefits
 - ◆ SSI/Medicaid
 - ◆ Medicaid waiver programs




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CHILD SUPPORT

- ◆ Factors for support: special or extraordinary educational, health care or other expenses
- ◆ Entire lifetime of child




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CHILD SUPPORT

- ◆ Tex. Fam. C. Sec. 154.302
- ◆ Support beyond age 18 for disabled child
- ◆ Either or both parents support
- ◆ Indefinite period of time




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CHILD SUPPORT

- ◆ Tex. Fam. C. Sec. 154.302: if court finds:
- ◆ Child requires substantial care and personal supervision because of a mental or physical disability; and
- ◆ Child will not be capable of self-support; and
- ◆ Disability exists before age 18




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CHILD SUPPORT

- ◆ Factors: existing and future needs
- ◆ Care manager
- ◆ Parent provides care or pays for care
- ◆ Public benefits may help w/medical care




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CHILD SUPPORT

- ◆ Budget for needs of child
- ◆ Expert—person-centered plan
- ◆ Care manager evaluate, assist with budget
- ◆ Plan services needed and cost




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CHILD SUPPORT

- ◆ Original suit—finding of disability if not sure will not be self-supporting
- ◆ Suit for support can be brought at any age. Tex. Fam. C. 154.305(1)
- ◆ Brought by parent, legal guardian or adult child not mentally disabled. Tex. Fam. C. 154.303(b)
- ◆ Caregiver may not be able to afford modification



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◆ GOVERNMENT BENEFITS




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GOVERNMENT BENEFITS

- ◆ Means-tested public benefits
- ◆ Supplemental Security Income (SSI)
- ◆ \$771 for food and shelter




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GOVERNMENT BENEFITS

- ◆ Medicaid
 - ◆ Medical/drug coverage
 - ◆ Waiver programs
 - ◆ Therapy
 - ◆ Home services



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GOVERNMENT BENEFITS

- ◆ NOT
 - ◆ Social Security Disability (SSDI)
 - ◆ Medicare




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GOVERNMENT BENEFITS

- ◆ Eligibility
 - ◆ Disabled: Unable to engage in ANY substantial, gainful activity because of a medically determinable physical or mental impairment




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GOVERNMENT BENEFITS

- ◆ Eligibility: Income
 - ◆ Monthly income less than \$2,000
 - ◆ Income = wages, cash, debit cards, food and shelter
 - ◆ Parents' income deemed to child before age 18




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GOVERNMENT BENEFITS

- ◆ Eligibility: Income
 - ◆ Parents' providing food and shelter is income
 - ◆ In-kind support and maintenance
 - ◆ Reduces SSI by 1/3




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GOVERNMENT BENEFITS

- ◆ Eligibility: Resources
 - ◆ Countable Resources (assets) less than \$2,000
 - ◆ Not countable: home, car, personal items
 - ◆ \$1 of SSI = Medicaid




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GOVERNMENT BENEFITS

- ◆ Medicaid waiver programs
 - ◆ Provide services in-home or in community
 - ◆ Instead of nursing home or institution
 - ◆ Waiting lists




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GOVERNMENT BENEFITS

- ◆ Medicaid waiver programs
 - ◆ Medically Dependent Children Program (MDCP)
 - ◆ Community Living Assistance and Support Services (CLASS)
 - ◆ Deaf Blind Multiple Disabilities (DBMD)
 - ◆ Home and Community-based Services (HCS)




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GOVERNMENT BENEFITS


- ◆ Medicaid waiver programs
 - ◆ Star + Plus Home and Community-Based Services (HCBS)
- ◆ Parents' income not deemed
- ◆ Offset for benefits not appropriate



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◆ INTERACTION BETWEEN CHILD SUPPORT AND GOVERNMENT BENEFITS




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INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◆ POMS
- ◆ Program Operations Manual System
- ◆ <https://secure.ssa.gov/poms.nsf/home!readform>
- ◆ https://www.ssa.gov/OP_Home/handbook/handbook.html
- ◆ Texas Medicaid for Elderly and People with Disabilities Handbook (MEPD)
- ◆ <https://hhs.texas.gov/laws-regulations/handbooks/medicaid-elderly-people-disabilities-handbook>



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INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◆ Child support = payment to meet child's need for food/shelter
- ◆ Cash or in-kind
- ◆ Voluntary or court ordered
- ◆ Poms SI 00830.420




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INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◆ Child support is income to child regardless of name on check
- ◆ Even if doesn't receive money
- ◆ Reduce or lose SSI
- ◆ Lose SSI = lose Medicaid




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INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◆ "Child" = under 18 or under 22 and regularly attending school designed for paying job
- ◆ POMS SI 00501.010 (B) (3)
- ◆ 2/3 of payment is income if paid by absent parent




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INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◆ Support > 1 child
- ◆ Order states each child's share
- ◆ If not divide equally
- ◆ If no order, must prove intent




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INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◆ In-kind support and maintenance
- ◆ Pay food/shelter directly is income
- ◆ But reduces SSI check by 1/3, not \$ for \$
- ◆ Will have to prove to SSA
- ◆ Example: pay \$600 rent, SSI is \$771 - \$257 = \$514




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INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS


- ◊ Arrearage:
- ◊ If parent gives to child it's income
- ◊ If parent doesn't give to child, not income
- ◊ Will have to prove to SSA



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◊ SPECIAL NEEDS TRUSTS




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SPECIAL NEEDS TRUSTS

- ◊ Special Needs Trust
- ◊ Not countable resource if properly drafted
- ◊ Distributions not income if distributed correctly
- ◊ Retain SSI/Medicaid



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SPECIAL NEEDS TRUSTS

- ◆Types of SNTs: Self-settled special needs trust
- ◆Money that belongs to beneficiary
- ◆Medicaid payback



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SPECIAL NEEDS TRUSTS

- ◆Types of SNTs: Third-party special needs trust
- ◆Someone else's money
- ◆Gift, will, life insurance benefits
- ◆No Medicaid payback




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SPECIAL NEEDS TRUSTS

- ◆Self-settled or first party trust for child
- ◆Child support paid directly to trust
- ◆Cost of trust recouped by maintaining SSI/Medicaid



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SPECIAL NEEDS TRUSTS

- ◇ Irrevocable Court order
- ◇ Payment to trustee of SNT
- ◇ Not income to child
- ◇ Maintain eligibility for SSI/Medicaid



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SPECIAL NEEDS TRUSTS

- ◇ Report to SSA for trust review
- ◇ Don't reduce child support by SSI
- ◇ State specific amount of support to avoid offset




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SPECIAL NEEDS TRUSTS

- ◇ Example:
- ◇ Support \$600 w/out SNT
- ◇ reduces SSI to \$171 (\$771-600)
- ◇ $\$600 + \$171 = \$771$
- ◇ With SNT: $\$600 + \$771 = \$1,371$




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SPECIAL NEEDS TRUSTS

- ◇ Example:
- ◇ Support \$800 w/out SNT
- ◇ Lose SSI/Medicaid
- ◇ SNT: $\$800 + 771 = \$1,571$ plus Medicaid




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SPECIAL NEEDS TRUSTS

- ◇ Life insurance ordered per decree or agreement
- ◇ Name third-party SNT as beneficiary



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SPECIAL NEEDS TRUSTS

- ◇ Wills
- ◇ Third-party SNT for will, life insurance and retirement
- ◇ Beneficiary designations
- ◇ Designate guardian



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How SNT Lawyer Can Help You

- ◆ Determining eligibility for gov't benefits
- ◆ Work with financial professional and care manager to determine amount needed for lifetime support



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How SNT Lawyer Can Help You

- ◆ Refer you to care managers, service providers, financial advisors
- ◆ Appear in court to educate judge if needed




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How SNT Lawyer Can Help You

- ◆ Bill hourly for consulting or expert work
- ◆ Flat fee for SNTs/wills based on complexity



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