

COMMENTARY

FAMILY LAW

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Examining Emancipation and Child Support Obligations in Pennsylvania

Issues relating to one's child or children, whether in an intact family or not, can often present difficult challenges. Typically, the challenges faced by separated parents have the potential to get significantly more complicated than those faced by intact families.

Many of the problems faced by parents who have decided to no longer stay together revolve largely around custody and support. Accordingly, as part of any consultation or discussion with a parent, the subject of child support inevitably needs to be thoroughly explored and explained as the topic has significant impact on the client and has the potential to become a hot button issue between the parties. In addition, the subject of child support raises many questions for parents which include issues such as how child support is calculated, the amount of support a client will receive or owe and the duration of any potential child support obligations.

Calculating the amount of child support is subject to many factors including: income and deductions of each party; amount of children; custodial time of each parent; costs of health insurance; private school tuition, and other relevant factors as explained in the Support Code. However, the duration of the

child support obligation is typically an easier concept for the practitioner to explain.

The general rule in Pennsylvania is that a parent's obligation to pay child support terminates when the child turns 18 years old or graduates from high school, whichever event occurs later. This duration rule serves an important function in terms of providing predictability as to when a parent's obligation to pay or receive support will cease. However, as with most rules, there is an important exception — when the parties are the parents of a child with a physical or mental condition and the condition prevents the child from supporting himself when he reaches the age of emancipation.

CAN'T SUPPORT THEMSELVES

This exception clearly has the potential to remove much of the predictability a parent would have with regard to duration of their obligation to pay or receive support on behalf of their child.

The burden of proving that the child should continue to receive support is on the parent seeking support for the child. Once it is determined that a particular child suffers from a mental or physical condition which prevents her from supporting herself at the time of emancipation, a parent contesting the continuation of the order will be required to support her child or children unless: 1) the child is physically and mentally able to engage in profitable employment; and 2) employment is available to that child at a supporting wage.

What constitutes a physical or mental condition? What qualifies as gainful employment? What constitutes a supporting wage?

These are all issues for discussion and carefully reasoned legal argument.

Through case law which has come down in the past few years, the Superior Court has provided some guidance regarding the above issues in various opinions. The court has essentially stated that even if a child is able to work in some capacity, if she is unable to fully meet her expenses and otherwise meet the qualifications for the exception to the emancipation law, she will continue to receive support.

Neither the Superior Court nor the state Supreme Court has specifically clarified how long a parent support's obligation to a child who is over 18 and has graduated high school will last. However, a child's attainment of employment which fully provides for their reasonable needs, or a child's full recovery from a physical or mental condition, would likely be enough to terminate the support matter. The marriage or cohabitation of a non-emancipated child may also be grounds for termination of the order.

Once any of these events occur, the practitioner representing the parent paying the obligation would be wise to advise their client to file a petition to terminate the obligation in order to protect their client's rights.

In addition to the recognition of a non-emancipated child's continuing right to support if she establishes a mental or physical disability which prevents her from fully supporting herself, the court has found that a child who has been previously declared emancipated in a support realm can be declared as non-emancipated upon a change in circumstances after the declaration of her emancipation.

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BURDEN ON PARTY SEEKING SUPPORT

It is important for the practitioner to note that, under these particular circumstances, it is the burden of the party seeking support to establish that the previously emancipated child now needs to be declared as non-emancipated.

Regarding this issue, the state Supreme Court agreed in its 1989 opinion in *Maurer v. Maurer* "that a child may move in and out of emancipation and the mere fact he at one time qualified as an emancipated minor, does not foreclose the divestiture of emancipation when circumstances change."

It appears that, as with modifications of an order for a child who is not past the age of typical emancipation, modification of a previously terminated support order can be modified as well if the appropriate change in circumstances is plead and successfully proven.

Despite the established case law and statutory provision in the Commonwealth regarding a parent's obligation to continue a support obligation for a child who is over 18 and has graduated high school, these cases and laws in no way impose a burden on the parent to pay for the non-emancipated child's college expenses.

Pennsylvania law does not currently provide for parents of intact families or non-intact families to pay for the college expenses of their children. In fact, in 1994, the Supreme Court found that any such requirement for parents of non-intact families to be forced to pay college expenses for their children is unconstitutional and a violation of the equal protection clause.

In recent years, the majority of my consultations with potential clients include the above recitation of the relevant law regarding emancipation. Some of these discussions may be arising due to less than favorable economic conditions, combined with children with borderline issues.

It appears, though, that the emancipation rules have become increasingly more relevant for more significant reasons. In the last 15 years, there has been a significant

increase in the diagnosis of mental and physical conditions in children. Cases of children with Asperger's Disorder, Autism Spectrum Disorder, severe cases of ADD and ADHD, bi-polar disorder and personality disorders, along with a multitude of physical ailments, have served to create a large influx of Individualized Education Plans and 504 Plans for children.

The court may be faced with cases related to whether or not a child should appropriately be emancipated and whether there should be a change in the support guidelines established for these non-emancipated children.

These diagnoses can certainly help the court to determine whether or not the child has a condition and whether that condition will impede her ability to fully support herself through gainful employment. The ability to better diagnose these conditions in children, along with special regimens at school and increased doctor and specialist visits, help to create a paper trail and medical history. This documentation may serve as potential evidence to avoid — or prove — that emancipation should in fact occur once the child attains the appropriate age.

In addition, many organizations have been established to help children with various conditions assimilate into the working world and help them find suitable employment to potentially sustain themselves. The help of these organizations may also provide reasonable assistance to the court in determining whether a support order should continue or not. Of course, as with all cases, each particular matter will turn on the specific potential condition of the child, her functioning with the condition and the specific facts of the case.

These issues surrounding emancipation create a potential for significant litigation. The court may be faced with cases related to whether or not a child should appropriately be emancipated and whether there should be a change in the support guidelines established for these non-emancipated children. How a termination date will be set for these support orders, how any disability or other benefits received by the non-emancipated child will calculate into the child's support order and whether both parents will be required to provide support for the non-emancipated child if he or she is able to live independently, but still have reasonable financial needs which are not met by their employment, are additional issues which a court may have to decide.

Each of these issues has the potential to develop into law over the coming years; it will be important for practitioners to stay abreast of developments in the emancipation area. •