EMANCIPATION – WHAT DOES THIS MEAN AND WHEN DOES IT OCCUR?

OVERVIEW

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1. First, what is *emancipation*?

Emancipation has a variety of meanings and consequences.[2] **Most commonly, emancipation refers to events or circumstances in which a child gains the right to self-determination and the responsibility for self-support.[3]** Our discussion will focus on child support emancipation. In other words, we are interested in the changes in the life circumstances of children that end their parents' obligations to support them. Relief from those obligations based on those changes is often referred to as *emancipation*.[4]

As long as the question is up, what, in general, is *emancipation*? According to my Webster's (New Collegiate, 1975) the word is derived from the Latin *emancipare*, "to transfer ownership of." According to my old Black's (fn.2), under ancient Roman law, a son was enfranchised by his father by an imaginary sale. Later, under the Emperor Justinian, the procedure was abolished in favor of a simpler proceeding of "manumission before a magistrate." We all know *emancipation* from Lincoln's famous proclamation. At its root, then, emancipation is the transfer of a bundle of rights and responsibilities from an owner or custodian to the ward.

In some cases, including many child support cases, there are court proceedings to determine whether a child is emancipated. These are not applications for emancipation. Unlike Lincoln, the court does not emancipate or grant freedom. Rather, the court determines whether emancipation has already occurred, in the circumstances presented.

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[1] Originally prepared for MCAA Child Support Conference, May 14, 2010, and revised for present conference.

[2] In *In re Sonnenberg,* [cite], the Minnesota Supreme Court noted that " … the significance of the word 'emancipation' is not exact and it is used sometimes to signify a mere gift by a father to his son of the latter's earnings, and sometimes to signify the complete severance, so far as legal rights and liabilities extend, of the parental relationship." In my previous career as a legal aid attorney, emancipation was of interest to determine when a minor child was, nonetheless, entitled to receive public assistance in the child's own name.

[3] *Black's Law Dictionary,* rev. 4th ed., West Publishing Co., 1968.

[4] Most importantly for our purposes at Minn. Stat. § 518A.39, subd. 5.

In some states, the circumstances that constitute emancipation may be codified. Read, for example, the discussion of the law of Mississippi in the *Hill* case discussed below.[5] Minn. Stat. § 518A.26, subd. 5, lists the circumstances in which a child support obligation normally ends. However, Minnesota also has a body of case law with respect to emancipation. **Note carefully that there are cases where children are emancipated by life circumstances other than those listed at Minn. Stat. § 518A.26, subd. 5**. Those children may lose the right to support, notwithstanding that the circumstance is not one listed in the statute.

2. How does Minnesota law define *emancipation* for purposes of child support?

The most important statutory provisions are at Minn. Stat. §§ 518A.26, subd. 5, and 518A.39, subd. 5. Actually, what the law defines is the word "child", not the word "emancipation".

Minn. Stat. § 518A.26, subd. 1, provides that the definitions at § 518A.26 apply to chapters 518A and 518.

Minn. Stat. § 518A. 26, subd. 5, provides that:

" 'Child' means an individual under 18 years of age, and individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support."

Minn. Stat. § 518A.39, subd. 2(a) provides that:

> **[t]he terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair: … (8) upon the emancipation of the child, as provided in subdivision 5.**

Minn. Stat. § 518A.39, subd. 5 lists the circumstances for automatic termination of support as follows:

> **(a) Unless a court order provides otherwise, a child support obligation in a specific amount per child terminates automatically and without any action by the obligor to reduce, modify, or terminate the order upon the emancipation of the child as provided under section 518A.26, subdivision 5.**

[5] *Hill v. Hill*, [_____ NW2d _____], Minn. Ct. App.,No. A09-787, January 26, 2010, at 6, fn. 1, citing Miss. Code Ann. § 93-11-65(8) (Supp. 2009). It appears that under Mississippi law if a child marries, joins the armed forces, is convicted of a felony and sentenced to more than two years incarceration, obtains full-time employment, or cohabits with another person without the approval of the legal custodian, the court is obliged to declare the child emancipated and terminate the child support obligation.

(b) A child support obligation for two or more children that is not a support obligation in a specific amount per child continues in the full amount until the emancipation of the last child for whose benefit the order was made, or until further order of the court.

(c) The obligor may request a modification of the obligor's child support order upon the emancipation of a child if there are still minor children under the order. The child support obligation shall be determined based on the income of the parties at the time the modification is sought.

Thus, the definition of *child* at section 518A.26 in effect defines emancipation for child support purposes. This definition, previously found at Minn. Stat. § 518.54, subd. 2, has been in effect since May 18, 1983. As noted by Child Support Magistrate Brad A. Johnson in an article for the 2008 Family Law Institute, "Virtually all existing child support orders are now controlled by this definition."[6]

3. What is the age of majority?

The age of majority is the age at which a child becomes an adult, and, generally, gains the rights of an adult: the right to live where one chooses, to make one's own medical decisions, to stop attending school, to consume alcohol, to vote, etc. At one time all of these rights were attained at the age of 21.

In Minnesota, the "age of majority" is literally defined by statute: " 'Majority' means with respect to an individual the period of time after the individual reaches the age of 18." Minn. Stat. § 645.451. The same statute supplies corresponding definitions for "minor", "adult", "minority", and "legal age or full age". However, the picture is complicated by a statutory scheme in which the above rights are now parceled out over time. Thus, Minn. Stat. § 645.452 provides, "*Except as otherwise provided by statutes,* every disability of minority at common law shall cease when a person reaches 18 years of age." [Emphasis added.]

Formerly, when a child attained the age of majority, that event was sufficient in most cases to terminate the obligation to support the child. Under Minn. Stat. §§ 518A.26, subd. 5, and 518A.39, subd. 5, this is no longer true.

Some of us recall that during the Viet Nam War there was a national movement to extend the franchise, i.e., the right to vote, to everyone 18 years of age and older. (The argument was that anyone old enough to be conscripted and die for his country was old enough to have a vote in the election of his representatives.) Minnesota changed the age of majority, by law, from 21 to 18 years effective June 1, 1973. L. 1973, c. 725.

[6] "Obligation Termination: Emancipation and Graduation," Brad A. Johnson, Magistrate, Second Judicial District.

A rash of cases followed in which obligors, with 18-year-old children, who had been ordered to provide support until the children reached the "age of majority," asserted that the change in law now meant that they could stop paying support. *See, e.g., Brugger v. Brugger,* 229 N.W.2d 131 (Minn. 1975). The supreme court found that they were still subject to the obligations based on the age of majority in the statute in effect at the date the support obligations were imposed. *Id.*

4. Does Minn. Stat. § 518A.26, subd. 5, always determine child support emancipation?

No. First, read the order!

If you want to know whether a child support obligation is still effective, **the statute is only the default standard.** The court order that originally imposes a support obligation, whether in a dissolution of marriage, in a parentage action, or an action to establish support under Minn. Stat. § 256.87, usually includes a paragraph delimiting the duration of the obligation to provide support. This paragraph may simply refer to or recite the statutory standard. It may list some of the classical circumstances of emancipation not listed in statute, e.g., military service, or marriage. In some cases, it may provide for continuation of support beyond the usual circumstances. For example, the parents of a child with special needs may undertake the care and support of the child beyond the age of majority. Parents may also undertake the funding of a college education. These provisions are binding.

Then, consider other life circumstances of the child.

There are other life circumstances of a child that, by long tradition, terminate the support obligation. These include that:

the child has married;
the child has entered military service;
the child is in long term incarceration and will never return to reside with the obligee; or,
the child has established his or her own long term residence, is self-supporting, and is operating as an autonomous adult.

The first two are relatively unarguable. With documentation or a credible report that they have occurred, you can advise your child support agency to stop charging with little risk. They may do so without asking you. The last two can be questionable. In those cases it may be better to bring a motion to end the obligation based on emancipation and let a judge or magistrate decide the issue.

Write the order.

A good child support order establishing a support obligation includes a paragraph delimiting the duration of the order. It's not fatal if the order does not include such a

paragraph. Minn. Stat. §§ 518A.26, subd. 5, and 518A.39, subd. 5, provide a default standard. Still, a child support order is more effective to the extent that it includes a plain statement of the expectations imposed on the obligor, and it is more readily enforced to the extent that it provides guidance to the court that may have to interpret it later.

A good order may simply indicate that the child support obligation shall be in effect until the affected child is emancipated under the definition at Minn. Stat. § 518A.26, subd. 5, or it might list some of the other circumstances in which you would yield. Here is an example:

Duration of Duty to Support

> [U/With regard to each child, u]nless a competent court orders otherwise, the duty to support the child shall continue until the child is married, in military service, deceased, 18 years old and not attending secondary school, or 20 years old, whichever is first.

5. When and how can the child support obligation be extended past the age of majority?

If the special needs of a child were not accounted for in the duration paragraph of the order establishing the obligation, case law formerly supported extension of support for children with special needs. Now, under Minn. Stat. §§ 518A.26, subd. 5, and 518A.39, subd.5(c), a child support obligation does not automatically terminate at the age of majority if the child "by reason of physical or mental condition, is incapable of self-support." *Maki v. Hansen,* 694 N.W.2d 78 (Minn. App. 2005), at 83.

Therefore, the child support agency should be advised to continue charging support past the age of majority when it has good evidence that the child is incapable of self-support by reason of disability. The burden is on the obligor to request a determination to the contrary.

I cannot formulate any other circumstances in which there would be a need to move the court to modify and extend the obligation past the age of majority, except to revive an obligation that has already terminated by operation of law or court order.

6. Can a child support obligation be revived?

Say that a child support obligation has ended by operation of law or court order. Say that the child has developed a disability after attaining majority, or suffered an accidental injury causing long term disability, and returns to the residence and care of one of the child's parents. May the court order the obligation revived?

Older case law suggested that child support duties, once terminated, cannot be reinstated. In *McCarthy v. McCarthy,* 222 N.W.2d 331 (Minn. 1974), the Minnesota

Supreme Court suggested that the parties had better deal with the issue of their child's disability and the need for ongoing support following the age of majority before he reached that age. In *Krech v. Krech,* 624 N.W.2d 310 (Minn. App. 2001), the parties omitted any provision for support of their 19-year-old disabled daughter in their stipulated judgment and decree. The Minnesota Court of Appeals rejected the mother's request, over a year later, to reopen the judgment. The court's analysis was directed to the criteria for reopening a judgment under Minn. Stat. § 518.145, subd. 2.

More recently the Court of Appeals referred to the suggestion in *McCarthy* as *dicta* and indicated that reinstatement of a child support obligation is possible. *Maki v. Hansen,* 694 N.W.2d 78 (Minn. App. 2005). In *Maki* a child support magistrate granted the obligor's motion to terminate his child support duty when the obligee failed to provide documentation that the child's disability, Down's Syndrome, rendered him incapable of self-support. The *pro se* obligee failed to effect a timely appeal, and ultimately brought a motion to reinstate the obligation. The obligor argued against reinstatement of the obligation but the Court of Appeals remanded the case to the district court for determination whether the child had ever emancipated under the definition at Minn. Stat. § 518A.26, subd. 5.

7. Which law governs the duration of the duty to support a child when the parties and child no longer reside in the state where the duty was established?

The Minnesota Court of Appeals addressed this issue in *Hill v. Hill,* __ N.W.2d __ , Court File No. A09-787 (Minn. App. January 26, 2010). The parties divorced in Mississippi. The decree of dissolution provided that the obligor must make child support payments until all three children are emancipated. Both parties and all three children moved to Minnesota. The parties agreed that, in the facts of this case, under Mississippi law, the obligation would terminate at age 21, and, under Minnesota law, at age 20.

The Uniform Interstate Family Support Act (UIFSA) has been enacted in all 50 states, among other reasons, because the federal government made enactment a condition of participation in the Federal Title IV-D program. In Minnesota, UIFSA appears at Minn. Stat. ch. 518C. From the outset, UIFSA was understood to provide that duration of the child support duty must be decided under the law of the state whose court established the obligation. In *Hill* the Court of Appeals noted that the provision as to choice of laws was ambiguous. *Id.* at 6. In the end the court relied upon the intent of the authors, the Commission on Uniform Laws, and their commentary at the time the uniform act was first written, to declare that the law of the issuing state governs the duration of the obligation, and that any modification of the original provision must be in accordance with the law of the issuing state.

Theresa Farrell-Strauss handled this case on behalf of Hennepin County. I spoke with her about the case and she told me that the obligor was under the impression that completion of "secondary school," in Minn. Stat. § 518A.26, subd. 5, refers to completion of college. This had no bearing on the outcome of the case. However, Theresa said it's worth pointing out that there is a widespread misconception that

college is secondary school. In his article, *supra,* Magistrate Johnson points out that there is a definition of "secondary school" at Minn. Stat. § 120A.05, subdivision 13. For purposes of that chapter, a secondary school is one that educates students in grades 7 through 12, or any portion of those grades. (The definition also includes a requirement that there be a "building" and "equipment.")

APPENDIX

An Emancipation Decision Model for County IV-D Child Support Agencies[7]

1. When should the child support officer *automatically* stop charging or continue charging, i.e., in the absence of a court order or advice from the county attorney?

Answer: See the flow chart, below. When the flow chart gives a clear answer, follow it.

2. When should the child support officer tell parents or custodians that they must bring their own motions regarding emancipation?

Answer: When they disagree with the standard answer (in the flow chart), or the answer given by the county attorney, or they want child support to resume after it has already stopped.

3. When should the child support officer consult with the county attorney?

Answer: When the answer in the flow chart seems doubtful, or when a parent or custodian disagrees with the answer.

4. In "borderline cases," i.e., in those cases when both answers appear possible, should a child support officer continue or stop charging?

Answer: It is usually better to stop charging than to run the risk of overcharging. If possible, check with the county attorney.

5. When should the county reinstate a child support obligation automatically, i.e., without a court order?

Answer: If the obligation was terminated by error. Otherwise, check with the county attorney. A court order may be required.

6. When should the county bring a motion for reinstatement?

Answer: Check with the county attorney if reinstatement appears appropriate for any reason except agency error.

[7] Thanks to Brad Thiel, Program Manager, Anoka County Office of Child Support, for consulting on this.

Emancipation Decision Flow Chart