

TO EMANCIPATE OR NOT?

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Ah, Spring! Warm weather, green grass, dandelions and high school graduations!

It is also that dreaded time of year when child support attorneys, officers, agents and support staff wrestle with often vexing emancipation issues.

There should be some comfort remembering that the child support agency (the public authority) is not a tribunal. The vast majority of contested emancipation issues will have to be resolved by a magistrate or district court judge.

The following all encompassing, ever changing fact situation may or may not have easy, clear-cut answers, depending on the law, your point of view, and the magistrates and judges in your county.

Really, the point is to give you a place to start in any emancipation analysis. Selected case law, statutes and even a district court memorandum are cited where useful in the endnotes.

**ALL ENCOMPASSING EVER CHANGING FACT
SITUATION: THE PARIPATETIC (OR PROBLEMATIC)
CHILD**

Mother and Father were divorced in Minnesota in 2008 and have one joint child, Hunter. Mother has sole physical custody. Father is ordered to pay child support in the dissolution decree.

Hunter is 17, and in the fall of his senior year at Blissful Suburbs, Minnesota High School (BSHS). His grades are low, primarily from skipping class and failing to complete assignments. Hunter's intention is to graduate and go to college, but he feels he can only complete high school by attending class elsewhere.

His girlfriend, Cecelia, is always on his mind.

Hunter withdraws from BSHS and moves out of his mother's house, but immediately moves in with his aunt and uncle to attend a new high school—Green Acres, Minnesota High School (GAHS).

Mother gives aunt and uncle written authorization to make medical and education decisions on Hunter's behalf, and signs over to them use of the child support debit card. Hunter's grades immediately improve, and he appears on track to graduate from GAHS in May of the following year.

Father calls Child Support Officer (CSO) for the case and demands that the support obligation be terminated because Hunter is emancipated.¹

He further argues that even if Hunter is not emancipated, Mother should pay child support or, at the very least, his support obligation should be modified.²

What should the CSO do?³

What should the county attorney do?⁴

1. What if Hunter, still 17, never enrolled in a new high school?
2. What if Hunter, now 18, drops out of GAHS, moves back in with Mom, but expressed an intention to go to a local alternative school (LAS), with night classes that allowed him to work full-time by day?⁵
3. What if the LAS reports that Hunter is still "attending" but, because of his propensity to cut classes and fail to complete assignments will only earn one credit?⁶
4. What if Hunter while still 17 drops out of BSHS, and without Mom's permission, moves into an apartment with his now pregnant girlfriend Cecelia and gets a full-time job at Jiffy Lube?⁷
5. What if Mom claims that Hunter is nonetheless working independently toward his GED and she is still providing him with financial support?⁸
6. What if Hunter and Cecelia, who gives birth to Hunter's child, move back in with Hunter's Mom while Hunter, now 18, returns to BSHS?⁹
7. What if Hunter is 18, living at home, attending BSHS, but continues to live at home and attend BSHS after marrying Cecelia?¹⁰
8. What if Hunter, now 18 and still living with Aunt and Uncle while attending GAHS, gets into a serious automobile accident and suffers a traumatic brain injury which causes him to leave GAHS and move back in with Mom?¹¹
9. What if Mom and Dad obtained the dissolution decree and child support order in another state, where the age of emancipation is 21, before both moving separately to Blissful Suburbs? Before Hunter turned 18, Dad registered the support order for enforcement and modification and obtained a Minnesota order modifying his support obligation. Hunter is now 19, a high school graduate and attending college. Does Dad's support obligation now stop?¹²
10. What if additional provisions of the other state's emancipation statute call for emancipation if the child is working full-time, or cohabiting with another person without a parent's approval?¹³

11. What if the original 2008 dissolution decree states that child support is payable until the child is emancipated, turns 18, or graduates from high school, whichever comes first? Hunter graduated from college at age 17 and is living at home while considering his options for higher education.

12. Would any of these issues be easier if we simply used a different definition of "child"?¹⁴

13. How does one graduate from a virtual high school?¹⁵

¹ See ***Gilbertson v. Graff***, 2008 WL 2497009 (Minn. App. 2008). A decision to modify child support obligations lies in the broad and sound discretion of the trial court and will not be reversed for abuse of discretion unless it has reached a clearly erroneous conclusion against logic and facts on the record. ***Disrud v. Disrud***, 474 N.W.2d 857, 859 (Minn. App. 1991). Whether a child is emancipated is a finding of fact not to be set aside unless clearly erroneous. ***Streitz v. Streitz***, 363 N.W.2d 135, 137 (Minn. App. 1985). ***Gilbert*** lists three occurrences that will terminate a support obligation: (1) Child turned 18, or 20 while still in secondary school; (2) child became emancipated; or (3) child died. Here, child discontinued school but was only 17. Child was not otherwise emancipated because Mom still providing financial support and signed authorization allowing aunt and uncle to make medical or educational decisions on child's behalf.

² Lower court correctly held that Mom who has sole custody is presumptively not an obligor for child support purposes. Minn.Stat.Secs. 518A.26, Subds. 1, 4. ***Bender v. Bender***, 671 N.W.2d 602, 607 (Minn. App. 2003). There was nothing in the record to overcome the presumption. However, given child's current living situation and Mom's reduced expenses, the case was remanded to determine if child support needed to be recalculated.

³ PRISM has all sorts of forms and procedures for examining an emancipation issue. But often, these forms and procedures are dependent on whether a parent will return your phone call, or the quality of the information you get. For example, you send out the “Proof of School Enrollment Request” with attached “Enrollment Verification” form. Inevitably, the “Enrollment Verification” form comes back with no verification of any kind, just the statement that, “student will graduate on IEP [individualized education plan] completion date. Completion date has not been determined by his IEP team.” If you are lucky, someone with authority will actually sign the verification and give you a phone number to call.

⁴ Well you are the one with the law degree after all! You make the call based on your assessment of the facts and the law, or punt it off for decision by a magistrate or district court judge. With experience, you will have a good sense of how your magistrates will treat a certain fact situation, but does that mean you should make the decision? If all of the answers were easy, no one would need you. On the other hand, you don't wear a black robe. Do you err on the side of letting a magistrate decide every fuzzy issue? What if you are wrong and the blowback is a nasty overpayment? **See**, Minn. Stat. Sec. 518A.52 (Overpayments); **Goplen v. Olmsted County Support and Recovery Unit**, 610 N.W.2d 686, 689 (Minn. App. 2000) (overpayment statute does not support magistrate decision to order child support agency to recover overpayment through income withholding where there were no arrears or future support payments); **Bauerly v. Bauerly**, 765 N.W.2d 108, 111 (Minn. App. 2009) (518A.52 constitutes a mandate only as to the public authority; it does not limit a district court's power to grant equitable relief).

⁵ Has Mom actually provided proof that Hunter is attending secondary school? In **Thompson v. Thompson**, 2000 WL 1052153 (Minn. App. 2000), an 18 year old was found emancipated on evidence that she was not enrolled in high school in September, enrolled as a full-time student in October, but placed on inactive status for failure to meet attendance requirements. Mom did not submit any additional evidence of attendance before the record closed. **See, also**, Minn. Stat. Sec. 120A.05, subd. 13 (“secondary school” means any school with building, equipment, courses of study, class schedules, enrollment of pupils ordinarily in grades 7 through 12 or any portion thereof, and staff meeting the standards established by the commissioner of education).

⁶ How do you get around the statement by the school that Hunter is in attendance but seems doomed to failure? It appears that some schools wish to keep as many students “in attendance” as possible because of state per pupil funding considerations. Would a finding that Hunter is emancipated be clearly erroneous? Would it matter if Hunter had to earn 14 more credits to graduate? In the unpublished **Adam v. Adam**, 1994 WL 263358 (Minn. App. 1994), the court of appeals remanded a case on the issue of “still attending”, indicating optimistically that “[w]hether a student in the State of Minnesota is attending high school or not is information that can be found.” The lower court determined that the child had “graduated” from high school in June 1993 when he did not complete two classes required for graduation in summer school.

⁷ What are Hunter and Cecelia’s intentions? Who is providing financial support—paying for the apartment, etc.? The current state of the law on this kind of emancipation is according to the unpublished **Gilbertson** case:

A minor may be emancipated by an instrument in writing, by verbal agreement, or by implication from the conduct of the parties. The critical inquiries regarding emancipation involve whether the parent relinquished control and authority over the child’s actions and the degree of severance of the parent-child relationship.

Citing In re Fiihr, 289 Minn. 322, 326, 184 N.W.2d 22, 25 (1971);
Cummins v. Redman, 312 Minn. 237, 240, 251 N.W.2d 343, 345 (1977).

⁸ Hunter is still 17. Would a GED program meet the definition of secondary school? Is all of this irrelevant because Hunter has otherwise severed the parent-child relationship?

⁹ Would it make a difference if Dad had already succeeded in terminating his support obligation for Hunter because of emancipation? Could this obligation be resurrected? **See McCarthy v. McCarthy**, 301 Minn. 270, 274-75, 222 N.W.2d 331 at 334 (1974) (motion must be brought on or before the date upon which child attains majority, but later cases say this is dicta); **but, see State ex rel. Jarvela v. Burke**, 678 N.W.2d 68, 72-73 (Minn. App. 2004) (court retains jurisdiction to modify support order beyond age of majority if child is incapable of self-support) and **Maki v. Hansen**, 694 N.W.2d 78, 85 (Minn. App. 2005) (Holding that motions made after a child’s birthday are untimely and cannot be addressed will require the court to penalize the child for the parent’s mistake in not making a timely motion).

Ultimately, however, the ***Maki*** court remanded the case to the district court solely to determine whether the child in that case was emancipated and capable of self-support.

¹⁰ I received a copy of a district court memorandum (See attached Appendix at A-1) stating the court's conclusion that an 18 year old living at home, attending school and dependent on parent for support still met the definition of "child" under Minn. Stat. Sec. 518A.26, subd. 5. The court stated that "[b]ut for [the] marriage, the issue of emancipation would not have been raised. Thanks to Ruth Sundermeyer of Aitken County for sending the decision to me.

¹¹ Child support may be extended beyond age 18 when that child is incapable of self-support because of a "mental or physical deficiency." ***Krech v. Krech***, 624 N.W.2d 310, 312 (Minn. App. 2001); ***see, also***, Minn. Stat. Sec. 518A.26, Subd. 5. Would not such a finding normally depend on the opinion of a treating physician or other qualified medical provider? What if Hunter avoided the accident graduated from high school but returned to live with Mom under a diagnosis of bipolar disorder? ***See Hunter v. Owen***, 2008 WL 4224558 (Minn. App. 2008).

¹² In ***Hennepin County v. Hill***, 777 N.W.2d 252, 255-57 (Minn. App. 2010), the Minnesota Court of Appeals rejected Dad's argument that the registration and child support modification of his Mississippi order in Minnesota produced a controlling order which would then be subject to Minnesota's less favorable emancipation law. Dad moved to terminate his support obligation under Minn. Stat. Sec. 518A.26, subd. 5 when the youngest child, a full-time university student, turned 20. The parties agreed under the facts of the case that youngest child's support obligation would terminate under Minnesota law at age 20, but not until 21 under Mississippi law. The court, citing Minnesota's applicable provision of the Uniform Interstate Family Support Act, Minn. Stat. Sec. 518C.611, subsection (c), the official comments for the uniform act, and case law from other states, found that subsection (c) dictates that "the duration of a child support obligation may not be modified if the law of the issuing state would not permit it to be modified. ***Id.***, 777 N.W.2d at 256.

¹³ As stated in ***Hill***, Mississippi law also provided for emancipation if the child married, joined the military, has been convicted of a felony and sentenced to two years or more or incarceration, has obtained full-time employment, or has cohabited with another person without a parent's approval. ***Id.***, 777 N.W.2d at 255, n. 1.

¹⁴ ***See***, for example Wis. Stat. Ann. 767.511 (4):

Age of child eligible for support. The court shall order either party or both to pay for the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent.

¹⁵ See attached June 1, 2010 Rochester Post-Bulletin article at Appendix A-3.

APPENDIX

A-1 Aitken County District Court Memorandum on emancipation issue.

A-3 June 1, 2010 Rochester Post-Bulletin Article on Virtual High School Commencement.

MEMORANDUM

Minn. Stat. § 518A.39, subd. 2(a)(8) provides that the terms of a child support order may be modified "upon the emancipation of the child as provided for in subdivision 5." Minn. Stat. § 518A.39, subd. 5 provides that "[u]nless 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 518A.26, subdivision 5." Minn. Stat. § 518A.26, subd. 5 defines a "child" as "an individual under 18 years of age, an 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."

In her February 4, 2010 motion for review, Petitioner states, in part, that "the parties' daughter, Bridget [REDACTED] resides in Petitioner's household as stated in Paragraph 6 of Petitioner's Affidavit dated November 16, 2009, and she will continue to reside in Petitioner's household until she graduates from high school." Petitioner requests that Order No. 1 granting Respondent's motion to modify his child support obligation be reviewed and modified to deny the motion to modify on the basis that the parties' daughter, Bridget [REDACTED] continues to reside with Petitioner.

In Respondent's written arguments filed December 24, 2009, Respondent cited *King v. Braden*, 418 N.W.2d 739 (Minn. App. 1988). *Braden* involves a father-obligor who brought a motion seeking relief from action of the county in deducting \$80 per month from his paycheck as reimbursement for AFDC payments made to his minor daughter. The daughter was then 16 years old and the mother of two minor children of her own, and was living independently of either of her parents. The district court found that the daughter was an emancipated minor and her father was no longer responsible for her care, and the decision was affirmed by the Court of Appeals. The decision was based on the fact that the daughter's receipt of AFDC payments was based on her status as the mother of two minor children and not on her own status as a

minor. If the respondent father was ordered to reimburse the county for a portion of these AFDC payments, he would in effect be paying for the care of his grandchildren. The court held that the county was not entitled to reimbursement from respondent.

The *Braden* case involves a situation that has few if any similarities to the present case. The minor in *Braden* was living outside the parental home and was the mother of two children of her own. She was no longer dependent on either parent. In the present case, Bridget continues to reside in her mother's home and to depend on her parents for support, her own marriage notwithstanding.

In his written arguments filed December 24, 2009, Respondent also cited Minn. Rule 9500.2060, subp. 46 as a basis for finding that Bridget was emancipated through marriage. The Court notes that this rule, which related to the administration of the Minnesota AFDC program, was repealed by statute in 1999 and is not applicable to this case.

Respondent argues that Bridget was effectively emancipated on the date of her marriage and that her husband, who is over the age of 18, is legally responsible for her support. However, based on the affidavit of Petitioner, Bridget continues to reside with Petitioner and to depend on her for support. Bridget is still a "child" for child support purposes in that she is under age 20 and still in secondary school. Minn. Stat. § 518A.26, subd. 5. But for her marriage, the issue of emancipation would not have been raised. Whether Bridget is emancipated should be determined based on all the facts and circumstances of the case and not solely on her marital status.

J.R.S.

Kelly Tom

To: Paul Clabo
Subject: Virtual high schools hold commencement ceremonies Sunday

Interesting . . .

Post-Bulletin

Virtual high schools hold commencement ceremonies Sunday

Tuesday, June 01, 2010

Post-Bulletin staff

HOUSTON — Minnesota Virtual Academy High School and Minnesota Center of Online Learning, online schools that are part of Houston public schools, will have commencement at 2 p.m. Sunday.

The 27 Virtual Academy graduates come from throughout Minnesota. Thirty-two students will graduate from the Minnesota Center of Online Learning.

At the Center of Online Learning, valedictorian is Jacob Timothy Wrobbel and the salutatorian is Jessica Paige Schlauderaff.

Commencement for both schools will be at the Sheraton Minneapolis West Hotel in Minnetonka, Minn., 12201 Ridgedale Drive.

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