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The Emancipation of Children: Age of Majority Versus 21

There is a dichotomy in the law in New York state in the area of child support and the emancipation of children that is especially compelling between the ages of 18 and 21. It is between these ages where a child is considered an adult, yet is still not automatically considered emancipated for child support purposes.

New York is in the minority on this issue. Only Indiana, Mississippi and Washington, D.C., direct a parent to pay child support until the age of 21 absent other contingencies.

The age of majority in New York had been 21 until Sept. 1, 1974, when it was lowered to its present age of 18.

Despite this important amendment, there are still certain areas in which legal rights or restrictions continue beyond a child's attainment of 18 and instead, continue until 21. Child support is one such area in which a child's legal rights continue, and she is not considered an adult until age 21 or upon emancipation, whichever occurs first.[1]

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Once a child reaches 18 in New York, she is considered an adult, and a court can no longer render a custody determination with respect to that child.[2] This standard is statutory as well, and is contained in both the Domestic Relations Law under §2 and The Family Court Act pursuant to §119.[3]

Despite this, both Domestic Relations Law §32 and Family Court Act §413 provide for child support payments to continue until a child reaches 21. Thus, unless sooner emancipated, a child is considered an adult at age 18, but her non-custodial parent is still obligated to pay child support on behalf of that child for at least another three years. Parents may also be obligated to pay certain other expenses on behalf of the child until age 21, such as college expenses, health insurance costs and unreimbursed medical expenses. The New York Court of Appeals has upheld this standard as well.[4]

In New York, a child between the ages of 18 and 21 is considered an adult, yet is still not automatically considered emancipated for child support purposes.

Early Emancipation

One instance in which a child who is under 21 can become emancipated is through marriage, and her non-custodial parent is no longer obligated to pay child support.[5] The reasoning is that the marriage of a minor gives rise to privileges and responsibilities inconsistent with the subjection of the minor to the control and care of the parent.

Another instance in which a child can become emancipated before 21 is through her entry into the military.[6] For example, a child's full-time enrollment at the U.S. Naval Academy was sufficient for a court to rule that emancipation had transpired. The logic here is that upon entry into the military, the child's life is largely controlled by the government, which provides for the bulk of her material needs.

A child younger than 21 also can become emancipated as a result of becoming employed and thereby achieving economic independence from her parents.[7] Employment, in and of itself however, is insufficient to trigger emancipation. The court must determine that the child's earnings are sufficient to meet all of her needs and expenses,[8] and that the child is financially independent.[9] Thus, the Appellate Division, Second Department, has ruled that a 20-year-old child who worked an average of 30 to 35 hours per week and who did not attend school nor had any plans to return to school in the immediate future was emancipated, thereby relieving his non-custodial parent from paying child support.[10]

On the other hand, the Fourth Department has held that a child's employment for 30 hours per week for a few months so that she could save money to attend college on a full-time basis was insufficient to trigger an emancipation.[11] It has also been held that full-time employment by an 18-year-old did not constitute emancipation where the child frequently returned to live at home and accepted payments for car insurance, medical costs and college tuition from the mother who was the custodial parent.[12] The court found that these factors demonstrated that the child was not truly financially independent.

Finally, the Second Department determined that a child's employment at a dry cleaner was insufficient to satisfy her food, clothing, housing and educational needs and therefore did not entitle her father to a termination of his responsibility for paying child support on her behalf.[13]

Constructive Emancipation

The final grounds for emancipation is known as constructive emancipation, which is defined as a child's withdrawal from the parent or parents' control and supervision.[14]

However, for a child to be considered constructively emancipated, she must have voluntarily and deliberately abandoned the parent without just cause or consent.[15] A constructive emancipation will not be deemed to have taken place where it is the parent who causes the breakdown in communication and relationship with the child.[16]

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Thus, the Court has considered an 18-year-old child to be constructively abandoned where she took calculated and deliberate steps to completely terminate the parent-child relationship between herself and her father by refusing to visit or communicate with him and by changing her surname to that of her stepfather. The court considered this the ultimate act of defiance.[17]

Moreover, the Nassau County Family Court recently held that an 18-year-old girl was constructively emancipated where, after giving birth to twins, she voluntarily vacated her father's home and chose not to return when the father requested that she does so.[18] The court ruled that the daughter's vacating the father's home was against his will, was voluntary on her part, and was without cause.

However, a child was not deemed to be emancipated where her failure to visit with her father was found to be the result of the father's lack of concern.[19] The Second Department has held that a few telephone calls by a father to a child cannot be construed as a serious attempt to maintain a relationship, and therefore, the father could not establish that the child was constructively abandoned.[20]

College/Boarding School

On the other hand, a child's college attendance before she reaches 21 or her admittance into boarding school is insufficient to be deemed an emancipation by the Courts.[21]

Similarly, a child's residence at a facility for children with special needs was not considered an emancipation where the facility endeavored to instill skills necessary for the child to return home and the child's eligibility for care at the facility was determined on a year-to-year basis.[22]

Thus, one prerequisite for a finding of emancipation is that the child's residence away from home must be permanent.[23]

Change in Circumstances

Finally, it is possible for a child who is under 21 but who has been adjudicated as emancipated by the court to be deemed unemancipated as a result of a change in circumstances.[24] This is possible in situations in which a child was previously employed but then either becomes unemployed or chooses to attend college before turning 21.[25]

It is further relevant in cases involving military service where upon termination of such service, the child returns to reside with a parent and is therefore dependent upon her parents for economic support.[26]

It is therefore apparent that a parent's obligation to support a child under age 21 is merely suspended rather than terminated upon the emancipation of that child. Thus, the support obligation for an emancipated child under 21 can either be reinstated upon the child's return to financial dependence on her parent or parents, or terminated permanently upon the child reaching 21.

1. Casino gambling and the consumption of alcohol are other areas in which an individual has to attain the age of 21 in order to legally participate.

2. *Belsky v. Belsky*, 172 A.D.2d 576, 568 N.Y.S.2d 627 (2d Dept. 1991); *Markland v. Markland*, 67 A.D.2d 940, 413 N.Y.S.2d 202 (2d Dept. 1979); *Silverman v. Silverman*, 50 A.D.2d 824, 376 N.Y.S.2d 182 (2d Dept. 1975); *Anastasia v. Anastasia*, 100 A.D.2d 740, 473 N.Y.S.2d 667 (4th Dept. 1984); *Palmer v. Palmer*, 223 A.D.2d 944, 637 N.Y.S.2d 225 (3d Dept. 1996).

3. DRL §2 provides that a minor or infant is a person under 18 while Family Court Act §119 states that the term infant or minor means a person who has not attained age 18.

4. *Bani-Esrali v. Lerman*, 69 N.Y.2d 807, 513 N.Y.S.2d 382 (Ct. App. 1987); See also, *Sassano v. Sassano*, 143 A.D.2d 893, 533 N.Y.S.2d 507 (2d Dept. 1988).

5. *Henry v. Boyd*, 99 A.D.2d 382, 473 N.Y.S.2d 892 (4th Dept. 1984); *Mayer v. Strait*, 251 A.D.2d 713, 673 N.Y.S.2d 777 (3d Dept. 1998); *Alice C., v. Bernard G.C.*, 193 A.D.2d 97, 602 N.Y.S.2d 623 (2d Dept. 1993); *Bogin v. Goodrich*, 265 A.D.2d 779, 696 N.Y.S.2d 317 (3d Dept. 1999).

6. *Zuckerman v. Zuckerman*, 154 A.D.2d 666, 546 N.Y.S.2d 666 (2d Dept. 1989); *Beekman-Ellner v. Ellner*, 296 A.D.2d 404, 745 N.Y.S.2d 442 (2d Dept. 2002); *Alice C.*, at note 5; *Bogin*, at note 5.

7. *Macauley v. Duffy*, 297 A.D.2d 680, 747 N.Y.S.2d 246 (2d Dept. 2002); *Bogin*, at note 5; *Alice C.*, at note 5; *Mayer*, at note 5; *Holscher v. Holscher*, 4 A.D.3d 629, 772 N.Y.S.2d 127 (3d Dept. 2004).

8. *Fortunato v. Fortunato*, 242 A.D.2d 720, 662 N.Y.S.2d 579 (2d Dept. 1997).

9. *Drago v. Drago*, 138 A.D.2d 704, 526 N.Y.S.2d 518 (2d Dept. 1988).

10. *Fortunato*, at note 8.

11. *Howard v. Johnson*, 227 A.D.2d 929, 643 N.Y.S.2d 259 (4th Dept. 1996).

12. *Aletto v. Green*, NYLJ Aug. 11, 1995, p. 33, col. 5 (Fam. Ct. Monroe Cty.).

13. *Drago*, at note 9.

14. *Alice C.*, at note 5; *Henry*, at note 5; *Bogin*, at note 5.

15. *Rosemary N. v. George B.*, 103 Misc.2d 1036, 427 N.Y.S.2d 553 (Fam. Ct. Dutchess Cty. 1980).

16. *Chamberlin v. Chamberlin*, 240 A.D.2d 908, 658 N.Y.S.2d 751 (3d Dept. 1997); *Radin v. Radin*, 209 A.D.2d 396, 618 N.Y.S.2d 105 (2d Dept. 1994); *Drago*, at note 9.

17. *Rosemary N.*, at note 15.

18. *Matter of Nikkita N.B. v. Ricky B.*, (Special Referee Dorothy Phillips), N.Y.L.J. April 30, 2004, P. 20.

19. *Villota v. Zelenak*, 203 A.D.2d 370, 610 N.Y.S.2d 91 (2d Dept. 1994).

20. *Radin*, at note 16.

21. *Holscher*, at note 7; *P. St. J. v. P.J.T.*, 175 Misc.2d 417, 669 N.Y.S.2d 150 (Fam. Ct. Westchester Cty. 1997); *Fetherston v. Fetherston*, 172 A.D.2d 831, 569 N.Y.S.2d 752 (2d Dept. 1991); *Rosenthal v. Vaneria*, 255 A.D.2d 243, 680 N.Y.S.2d 502 (1st Dept. 1998); *Jane S.D. v. Francis X.D., Jr.*, 110 Misc.2d 737, 442 N.Y.S.2d 918 (Fam. Ct. New York Cty. 1981).

22. *Rosenthal v. Vaneria*, 255 A.D.2d 243, 680 N.Y.S.2d 502 (1st Dept. 1998).

23. *Henry v. Henry*, 272 A.D.2d 520, 708 N.Y.S.2d 443 (2d Dept. 2000); *Cion v. Gruenberger*, 233 A.D. 2d 106, 649 N.Y.S.2d 783 (1st Dept. 1996).

24. *Hamdy v. Hamdy*, 203 A.D.2d 958, 612 N.Y.S.2d 718 (4th Dept. 1994).

25. Although we are not aware of any case law on the subject, we would imagine that if a child who was emancipated through marriage were to get divorced prior to reaching 21 and were to subsequently return to reside with a parent, then the initial emancipation would be vacated as a result of a change in circumstances.

26. *Crimmins v. Crimmins*, 192 Misc.2d 290, 745 N.Y.S.2d 686 (Fam. Ct. Orange Cty. 2002) citing *Fauser v. Fauser*, 50 Misc.2d 601, 271 N.Y.S.2d 59, 61).