IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CS,	: NO. 85-21,492
Petitioner	:
	:
vs.	: DOMESTIC RELATIONS SECTION
	: Exceptions
JB,	:
Respondent	:

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order dated May 8, 2002, in which her request for child support was denied. Argument on the exceptions was heard July 3, 2002.

Petitioner's request for child support was denied based upon the Family Court hearing officer's determination that the child for whom support was sought is emancipated. In her exceptions, Petitioner contends the hearing officer erred in this conclusion. The Court does not agree. Further, the Court finds that Petitioner actually had no standing to seek support in the first place.

With respect to the issue of standing,[1] in Elkin v Williams, 755 A.2d 695 (Pa. Super. 2000), the Court held that neither Pennsylvania Rule of Civil Procedure 1910.3 nor 23 Pa. C.S. Section 4341 creates standing to bring a child support action in a non-parent where the child for whom support is sought is over the age of 18 at the time of the Petition. In the instant matter, the child in question became 18 years of age on March 11, 2002 and the Petition in this matter, a Petition to Reopen, was not filed until March 19, 2002. Petitioner, a non-parent, thus did not have standing to bring the action in the first place.

[1] At argument, Petitioner's counsel opined that standing is not an issue before the Court as Respondent did not raise the issue at the hearing in Family Court. The Court may raise the issue of standing sua sponte, however, inasmuch as in the instant matter, standing is a jurisdictional prerequisite to the action. See Grom v Burgoon, 672 A.2d 823 (Pa. Super. 1996) (when a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction and thus a jurisdictional prerequisite to an action, which may be raised at any time by the Court sua sponte).

In any event, the Court agrees with the hearing officer's conclusion that the child in question is emancipated. The hearing officer found that the child is able to support herself and desires to live independently of her parents. Without addressing the issue of the child's ability to support herself, the Court finds that the child's desire to live independently of her parents is sufficient in the instant matter to support a finding of emancipation. In Elkin v Williams, supra, and Oeler by Gross v Oeler, 594 A.2d 649 (Pa. 1991), children who had left the home of a parent to reside with a non-parent were found to be emancipated based upon their desire to live separate from the parent and their failure to provide a justifiable reason for not living with the parent. In the instant matter, the child left her mother's residence to move in with her boyfriend in the boyfriend's mother's residence and gave as a reason only that she and her mother had a "quarrelsome relationship."[2] The child's mother may therefore not be charged with her support in the home of her boyfriend's mother, where she remains willing and able to provide the child with support in her own home.

ORDER

AND NOW, this 5th day of July, 2002, for the foregoing reasons, Petitioner's exceptions are hereby denied and the Order of May 8, 2002 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
Christian Lovecchio, Esq.
Lori Rexroth, Esq.
Gary Weber, Esq.
Dana Jacques, Esq.

[2] This "fact" is not found in the Family Court Order of May 8, 2002, and a transcript of the hearing held May 7, 2002, was not prepared. The Court takes this information from a statement made by Petitioner's counsel at argument, respecting the testimony at the hearing, which proffer was not contradicted by Respondent. Without this information, the Court would find that the child provided no justifiable reason for not living with her mother. With this information, the Court's finding remains the same and therefore it is considered even though it is not part of the record before the Court on exceptions, as no prejudice to Respondent is created thereby, and Petitioner's claim is thus addressed squarely on the merits.