

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

D.L.H.,	:	
Plaintiff	:	
	:	
v.	:	No. 87-20,641
	:	PACES NO. 218002306
D.S.T., Sr.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by Father to the Master's order of January 26, 2005, awarding Mother child support. His primary objection is to the Master's determination that the child at issue is not emancipated.

The child, C.J., turned eighteen on May 5, 2005. At the time Father's petition was filed, she was seventeen. Father argues that C.J. is emancipated because she spends two-to-three nights at her boyfriend's residence, has given birth to two children, makes her own decisions, and is capable of supporting herself.

We begin by noting that there is a presumption against emancipation, and the burden of establishing emancipation falls upon the party asserting emancipation.

Nicholason v. Follweiler, 735 A.2d 1275 (Pa. Super. 1999). As pointed out by the Master, under Nicholason,

the touchstone of emancipation refers to the minor's establishment as a self-supporting individual independent of parental control. When a minor still has a need for care, custody and maintenance, the minor is not emancipated and the duty of support continues. . . . [T]he critical test is whether the child is dependent on his parents for support or is independent of such needs. Consequently, economic self-sufficiency is a critical factor to be considered in determining a child's emancipation.

Id. at 1278.

Nicholson involved a sixteen-year-old boy who had dropped out of high school over his parents' objection and had held minimum wage jobs for a period of six or

seven weeks. The Superior Court reversed the trial court's finding of emancipation, stating:

Economic self-sufficiency means more than the mere physical ability to perform a job. The undisputed evidence of record clearly showed that the minor continued to reside with his Mother and that she was paying for his food, clothing, shelter and other basic necessities of life.

Id. at 1279.

Similarly, in Maurer v. Maurer, 555 A.2d 1294 (Pa. Super. 1989), the Superior Court determined that a 16-year-old boy was not emancipated. After exhibiting a pattern of destructive, disobedient, and criminal behavior, the boy removed himself to a youth shelter and indicated his desire to sever all ties with his parents. The court's ruling was based upon the lack of evidence the boy was self-supporting.

In the case before this court, C.J. is living at home. She testified that although at the time her first child was conceived she spent two or three nights at the residence of her boyfriend, who lives with his parents. N.T., p. 29. However, she stated several times that she does not see her boyfriend much now. N.T., p. 28, 22, 29. She receives food stamps, but is not eligible for cash assistance because she is not yet eighteen. She has filed for child support, but has not yet received a hearing. Prior to the birth of her second child she worked part-time for a short period, at a position provided through a school district training program. She has an access card for her own medical needs and those of her children. She has been attending school, receiving homebound instruction after her delivery, and she plans to graduate in the spring of 2005. Her grades are good, and she plans to become a Certified Nursing Assistant after graduation.

The court agrees with the Master's analysis of the case, which is that although C.J. has established a habit of making all the important decisions in her life, she is not self-supporting. She still lives at her mother's residence, and still attends school. She has not achieved financial independence, nor has she evidenced a desire or ability to move out of her mother's home and live independently.

This case is in stark contrast to the case of Gray v. Kilgus, Lyc. Co. No. 89-20,046, where the child was earning his own money on the rodeo circuit, and did not live at home for long periods of time. The Master correctly found emancipation under those circumstances. In short, as Nicholason and Maurer establish, simply having an errant, rebellious, or headstrong child does not relieve a parent from the duty of support.

Father also objects to the Master's decision to modify the child support even though there was no change of circumstances since the entry of the prior support order, entered into by agreement in December 2002. As this court has stated in Saka v. Saka, Lyc. Co. No. 03-21,191 and Mertes v. Mertes, Lyc. Co. No. 04-20,613, a child support agreement must be honored, so long as the amount of support adequately provides for the needs of the children. In Kost v. Kost, 757 A.2d 952, 954 (Pa. Super. 2000), the Superior Court cited Koller v. Koller, 481 A.2d 1218 (Pa. Super. 1984), as follows:

[W]hen the agreement adequately provides for the needs of the children and spouse and has been recently entered into under court approval, unless a change of circumstances can be shown, there is no justification for ignoring the agreement.

In Kost, the court looked to the support guidelines as a rough gauge to determine whether the amount of support the father paid was adequate. The court held the support could be increased, as the recommended guideline amount was 75% more than Father was currently paying under the agreement. In Mertes, we denied modification because the agreement was only 15% less than the guideline amount. In Saka, the agreement was only 4% less than the guideline amount. Here, Father's support jumps from \$195 per month to \$504.95 per month. Therefore, we will order modification, because the amount of support under the agreement is inadequate.

And finally, the defendant objects to having his tax refund included in his income, arguing that it should only be included for the year 2004 or 2005, as there is no evidence he will receive the same tax refund this year. This exception will be denied, as

his income has remained roughly equivalent. Should his actual tax refund substantially change, he may file for a modification.

ORDER

AND NOW, this _____ day of May, 2005, for the reasons stated in the foregoing opinion, the defendant's exceptions to the Master's order of January 26, 2005 are dismissed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
William Miele, Esq.
D.H.
Domestic Relations (RW)
Family Court
Gary Weber, Esq.