

Child Support A Legal Obligation And A Moral Dilemma

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When does a parent's child support obligation end? There is no clear cut answer. Parents have a moral and legal obligation to financially support a child from the moment that child is born until that child becomes emancipated¹.

In its most simplistic form, emancipation is defined as the time when a child is or is expected to be self-sufficient or self-supporting. There is no fixed time or age when a child becomes emancipated.² For example, a child is not automatically considered emancipated on his or her birthday.³ Generally a child is not deemed emancipated until he or she has completed their education. Whether or not a child should be expected to be self-supporting depends on the facts of each case.

Some children are disabled or ill and will never be self-sufficient. Other children suffer from the "Peter Pan Syndrome" - - they simply do not want to grow up. However, most children fall into a "gray area". Some children need more time than others to get their life on track. But how much time is sufficient? Consider the following situations:

- Is a parent obligated to financially support a child who postpones college for several years after his 18th birthday?
- Is a parent obligated to financially support a child who becomes addicted to drugs?
- Is a parent obligated to financially support an unmarried child who gave birth while in high school and is attending college?
- Is a parent obligated to pay for graduate school?

There are no clear cut answers. Family Court judges have wide discretion in deciding these cases which are fact sensitive. Whether or not a child is deemed emancipated is not so much a question of age as it is of needs.

EMANCIPATION - PAST AND PRESENT

The concept of emancipation and a parent's obligation to support a child after he or she reaches the age of majority is actually no different today than it was 60 years ago. In *Cohen v. Cohen*,⁴ the Court held that the financial obligation to support a child terminates when that child reaches full age, although it might continue indefinitely if the child were crippled or unable to support him or herself. The cost of a child's college education was specifically addressed by the Court, which held that parents would be required to pay for college when college would be considered normal for that family, the child shows scholastic aptitude, and one or both parents have the financial ability to pay tuition.

The *Cohen* case was decided 60 years ago. The age of majority then was 21. The age of majority in New Jersey is now 18. The Courts have, in fact, expanded the definition of emancipation. Generally, a child will be deemed emancipated when he or she "moves beyond the sphere of influence and responsibility" exercised by a parent; obtaining independent status on his or her own.

So what does it mean for a child to move beyond the sphere of influence and responsibility of the parent? A child is deemed emancipated upon entering the armed forces, upon their marriage, or upon completing their education. A child is presumed emancipated upon turning 18, but this is only a presumption which can be refuted depending on the facts and circumstances. A Court may determine that a child is or should be self sufficient based upon a specific occurrence or event in the child's life. The best interest of the child is always paramount. Simply stated, the law is not black and white. The facts and circumstances must be carefully presented and scrutinized.

EVALUATING SPECIFIC CIRCUMSTANCES

Consider this: Several years after graduating from high school, your child changes his or her mind and decides to attend college. How does the law treat this "change of heart"? In the case of *Sakovits v. Sakovits*,⁶ this son told his father after he graduated from high school that he did not want to attend college but wanted to go into his own business. The father gave his son money to start his own business. The son lived separately from his parents and was continually employed. The father no longer paid child support. The Court entered an order emancipating the son.

At the age of 22, the son changed his mind and decided he wanted to attend college. The Court decided that the father was not obligated to contribute to the son's college education based on the following facts: Years before, the son told his father that he did not want to go to college. The father relied on this statement and gave his son money to start a business. There was also a significant lapse of time between high school graduation and college.

However, the Court noted that there could be situations where a child may be self sufficient at one point and become dependent again at another point. In other words, it may be possible for a child to be "temporarily" emancipated.

CHILD SUPPORT FOR DISABLED CHILDREN

New Jersey case law requires parents to contribute to the cost of necessary care and maintenance of an adult child who has become so disabled, due to a pre-existing mental illness or emotional disorder, that the capacity to maintain him or herself is lacking. What type of disability would extend a parent's child support obligation? In the case of *Baldino v. Baldino*,⁷ the Court held that voluntary addiction to illegal drugs is not a disability or handicap which would defer emancipation and extend a parent's child support obligation. The father in that case was not required to contribute to his son's support.

In the case of *Filippone v. Lee*,⁸ the son was a troubled 14 year old teenager who was living at a home for boys. Ultimately, he received G.E.D. and started college. Unfortunately, he failed most of his courses and did not enroll in school the following semester. The son tried again two semesters later, but then withdrew. Approximately one year later, the son sustained serious knife wounds and became disabled. The issue was if the parents were obligated to contribute to his financial support as a result of his disability. The Court found that the son became emancipated when he failed his courses and failed to return to school the following semester. The son became disabled one year after he was emancipated. The Court held that the parents had no obligation to financially support their son as a result of his disability.

UNWED MOTHER

Another troublesome circumstance occurs when a minor child gives birth out of wedlock while she is in high school. In the Filippone case, the parties' unwed daughter had a child while she was in high school. The daughter went directly to college upon graduating from high school and was primarily supported by her father. Although she received minimal support from the child's father and was working part time to contribute to some of her expenses while attending college, the court found that she was clearly unemancipated and, thus, ordered the father to pay child support.

CHILD SUPPORT INCLUDES A POST SECONDARY EDUCATION

The New Jersey Courts have held that higher education is a necessity. New Jersey law goes further than most states in requiring parents to financially contribute towards their children's post-secondary education.

In New Jersey, a child is not emancipated until he or she completes their education. Post secondary education is considered a form of child support. In deciding whether a parent is obligated to pay for a child's tuition and costs, the Court considers the following factors:

- If the parents were still living with the child, would that parent have financially contributed toward the cost of the child's education?
- What are the background, values and goals of the parent?
- How reasonable is the child's expectations for higher education?
- How much money is needed for college?
- Do the parent's have sufficient income and assets to pay for the education?
- What is the relationship of the cost to the kind of school or cost of study sought by the child?
- How committed is the child to a post-secondary education and what is that child's aptitude?
- What financial resources does the child have?
- Is the child able to earn money during the school year, or on vacation?
- Are there any grants, student loans, scholarships, or financial aid available?
- What is the child's relationship to the paying parent?
- Do the child and parent have mutual affection and shared goals?
- Does the child respond to parental advice and guidance?
- How does the education relate to the child's prior training and the child's long term goals?

In addition to the above, the Court may consider any other factor it considers relevant in evaluating a claim for college contribution.⁹

Parents who have the financial ability have been required to pay for a child's graduate school tuition. In the case of *Ross v. Ross*,¹⁰ the mother, the custodial parent, requested continued support from the father until the child completed law school. The father argued that he should not be obligated to pay support beyond college graduation. The father also argued that his daughter's professional goals could be obtained by her attending law school part-time and working part-time.

The Court held that there is no definitive date as to when child support ends. The father's argument that his daughter could pay for law school by attending part-time and working part-time was rejected by the Court. The Court held that the custodial parent, in this case the mother, had the discretion as to how the child would achieve the goal of completing graduate school. The noncustodial parent cannot insist on alternative ways of accomplishing that goal.

The pivotal issue for the court was this: Had the parents not been separated or divorced, would they have paid for the daughter's law school tuition? After considering the parties' respective histories and incomes, the fact that their child was an only child, and the child's early interest in attending law school, the Court found that the parents would have paid for their daughter's law school tuition.

The Court decided that the child could not be considered emancipated until she graduated or withdrew from law school. The father was directed to continue to support his daughter.

CONCLUSION

Emancipation does not automatically occur when a child reaches a specific age or upon the occurrence of a specific event. Furthermore, a child may be deemed emancipated for a period of time and then unemancipated. The question of if a child is emancipated for child support purposes involves a critical evaluation of the facts and circumstances of each case including but not limited to, the child's needs, interests, independent resources, the family's reasonable expectations, the parties' financial abilities

and other relevant issues.

Einhorn, Harris is experienced in handling complex divorce and family law issues such as child support obligations and questions regarding a child's emancipation. If you would like to schedule a consultation with one of our attorneys, please call us at [\(973\) 627-7300](tel:9736277300) or click on the email icon in the upper right hand corner of this web page.

¹Kiken v. Kiden, 149 NJ 441(1997)

²Patetta v. Patetta, 358 N.J. Super. 90 (App.Div.2003)

³N.J.S.A. 9:17b-3

⁴6 N.J. Super. 23 (App.Div.1949)

⁵Bishop v. Bishop, 287 N.J. Super. 593 (Ch.Div.1995)

⁶178 N.J. Super. 623 (Ch.Div. 1981)

⁷24l N.J. Super. 414 (Ch.Div. 1996)

⁸304 N.J. Super. 301 (App.Div. 1997)

⁹Newburg v. Arrigo, 88 N.J. 529 (1982)

¹⁰167 N.J. Super. 441 (Ch.Div. 1979)