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**EMANCIPATION OF INFANT BY PARENT'S CRUELTY
FOR PURPOSES OF CONTROL OVER
EARNINGS AND SERVICES**

Lucas, et ux., v. The Maryland Drydock Company¹

The plaintiff's son, being eighteen years of age, obtained a job at the Maryland Drydock Co. for wages of about forty dollars a week. On his first pay day, the boy returned home and found a note from his father directing him to leave his pay on the desk and his father would see him later. The boy left five dollars and fifty cents to reimburse his father for car fare and lunch money and went to bed. Between twelve-thirty and one in the morning the father arrived home; and upon finding the note, he went up to the boy's room, awakened him, and argued with the boy about

¹ 31 A. (2d) 637 (1943).

the money. Bodily blows ensued, during which, the boy testified, his father choked him. In addition there was general evidence to indicate that the father habitually abused the boy, had a bad and violent temper, and once choked the mother. The next day the boy moved to the home of a cousin where he has since resided. Immediately thereafter, the father wrote to the defendants requesting them to terminate his son's employment and to hold whatever earnings were due. Upon their refusal to do so, suit was brought in the amount of five hundred dollars for services rendered by the son. The Court in affirming the judgment of the lower court for the defendant reasoned thusly: The right of a parent to the child's earnings arises out of the duty to support the child. It is contingent on the actual furnishing of such support, and hence it is lost when the parent abandons the child, neglects or refuses to maintain and support it, or forces it to leave the home and labor for its own livelihood.² A parent has the right to exercise such control and restraint and to adopt disciplinary measures for the child as will enable him to discharge his parental duty. But the law protects infants to the extent that if a parent exceeds the bounds of moderation in chastising a child, the law will refuse to recognize the parental right to services and earnings.³ In the instant case, the son was emancipated by the intemperate and brutal treatment of the father and was entitled to work and collect his own pay.

The instant case suggests the problems of what is emancipation, how does it occur, and what are the sequelae of emancipation? Emancipation can be defined only in the light of the common law status of minors. The common law gave to the parent or person standing *in loco parentis* the right to demand the services and earnings of the minor in return for the support and care furnished by the parent. The minor was under certain disabilities; to name a few: he was not entitled to his own services and earnings, he could not manage his own property, he could not establish his own domicil, he could not sue or be sued in his own name, and he could not enter into a valid binding contract. Emancipation is then the conferring on the minor of one or more of the incidents of being of age. It is the removal of one or more of the disabilities of being a minor.

² 46 C. J. 1287.

³ 39 Am. Jur. 601; 1 SCHOULER, DOMESTIC RELATIONS (6th Ed.) 783; MADDEN, DOMESTIC RELATIONS (1931) 410.

Emancipation occurs in four principal ways: (1) By the parent expressly or impliedly emancipating his child by a written or oral agreement, or merely by some act denoting a relinquishment of parental control. (2) By the misconduct of the parent such as abandonment, cruelty, or neglect. (3) By the marriage of the infant whether or not by parental consent, so long as a valid marriage is entered into. (4) By the mere passage of time such as when the infant either reaches full majority (21 years), or reaches an age when by statutory authority he is allowed to exercise some of the rights of majority. In addition to the principal methods outlined, it has been said that emancipation also results during military service.⁴ And, in at least one state, there is a provision for emancipation by civil proceeding if the minor can establish that he has reached an age of discretion sufficient to justify release from parental control.⁵

The question whether an emancipation has taken place naturally arises whenever an infant attempts to exercise a right usually accorded to adults, or whenever a parent seeks to exercise an incident of control over a minor usually accorded to the parent. The question of emancipation most often arises in a suit by the parent to recover for loss of services and earnings of the minor occasioned by negligence, seduction, etc. Until the instant case, which actually had the problem squarely presented, the Maryland law on the subject was only dicta.

In *Mercer v. Walmsley*,⁶ a father sued to recover for the seduction of his daughter. The Court said:

"A father may maintain an action for debauching his daughter when she was under age, whether she was living with him at the time the offense was committed or not; for from the legal control he had over her services, the law implies the relation of master and servant, *unless in the case of her not living with him, he had, by some act of his own destroyed the relation.*"

The case of *Keller v. Donnelly*⁷ admitted the dictum in *Mercer v. Walmsley* to be true; but actually decided that in a case where the mother brought suit for seduction of

⁴ On enlistment of a minor in military or naval service as emancipating him, see annotation, 12 A. L. R. 927, noting *Iroquois Iron Co. v. Industrial Commission*, 294 Ill. 106, 128 N. E. 289, 12 A. L. R. 924 (1920).

⁵ Louisiana Civil Code (Dart) Art. 385.

⁶ 5 H. & J. 27 (Md., 1820).

⁷ 5 Md. 211 (1853).

her daughter the *prima facie* presumption that she was entitled to the child's services extended only until the daughter was eighteen. The case of *Greenwood v. Greenwood*⁸ expressly adopted the dictum from *Mercer v. Walmsley* as good law in deciding that a father could recover for the seduction of his daughter when she was under twenty-one, though living with an aunt.⁹

These cases are applicable to the present problem for several reasons. The presumption of a master and servant relation dovetails so perfectly with the common law time period during which a minor was under full disability that the presumption may be considered as simply a presumption that the minor was not emancipated, and hence that the parent is entitled to the daughter's services and earnings. Moreover, the Court seems to recognize that emancipation is part of the law of Maryland, when it speaks of the father's being able to destroy the presumption of a master and servant relation by an act of his own. And the cases serve to illustrate the type of emancipation by coming of age, in that the presumption of a master and servant relation ceases when majority is reached. After that an actual agency must be proved in order to recover, rather than merely the relationship of parent and daughter. Perhaps most important, the cases are based on the assumption that the presumption of a master and servant relation rests on the right of the parent to the services and earnings of a minor daughter, so that we can conclude that a sequel of emancipation of the daughter, by coming of age or by an act of the parent, is a loss of control over services and earnings unless the parent can prove an agency in fact exists.

The emancipation of the first type is established by authority in other jurisdictions. The Connecticut court in *Town of Plainville v. Town of Millford*¹⁰ has said:

"Emancipation which occurs when a person once under the power and control of another is rendered free, ordinarily takes place when the child reaches majority, but a minor child is emancipated if his par-

⁸ 28 Md. 369 (1867).

⁹ Query: Has *Keller v. Donnelly*, 5 Md. 211 (1853), been overruled by *Greenwood v. Greenwood*, 28 Md. 369 (1867)? In the latter case, the Court construed the same statutes, relied on in the former for its result, as not changing the common law rule that a father is entitled to the services of his daughter until she is 21. No reason is apparent why there should be any difference when the mother is the one bringing suit.

¹⁰ 119 Conn. 380, 177 A. 138 (1935).

ents absolutely renounce by agreement or implication all care and control of the child, or place the child in a new relation inconsistent with the child's former relation as part of the parent's family."¹¹

It should be noted that category (1) includes the cases in which a result of emancipation occurs because the parent or person in *loco parentis* is estopped from disclaiming emancipation. A type of equitable estoppel is worked out by some courts in refusing to allow a parent to recover for past services of a minor. If a parent acquiesces, whether expressly or by deed, in his son's working and in allowing the son to collect his own earnings, the parent is estopped from recovering them from the employer if he has given no notice to the employer not to pay directly to the son.¹² In *Lucas v. Maryland Drydock Co.*, the case here reviewed, the father notified the employer to hold his son's earnings, so that the principle of estoppel was precluded and emancipation, if emancipation had occurred, would necessarily be of another type.

Maryland has never had a case which involved emancipation by marriage, of type (3).¹³ However, there is authority in other jurisdictions to support the view that emancipation may occur by marriage.¹⁴ A Louisiana court, in *Bonnette v. Flourney*,¹⁵ said: "A male or female is emancipated by marriage." A Tennessee court explained the matter more fully in *Going v. Going*,¹⁶ when it said: "The

¹¹ On express emancipation by agreement or transfer of custody, see: *Schoenberg v. Voigt*, 36 Mich. 310 (1877); *In re Riff*, 205 F. 406 (D. C. Ark., 1913); *Merithew v. Ellis*, 116 Me. 468, 102 A. 301, 2 A. L. R. 1429 (1917). On implied emancipation inferred from circumstances, see: *Lewis v. Missouri, K. & T. Ry. Co.*, 82 Kan. 351, 108 P. 95 (1910); *Coleman v. Dublin Coca Cola Co.*, 47 Ga. App. 369, 170 S. E. 549 (1933); *Lipovac v. Iowa Ry. & Light Co.*, 202 Iowa 517, 210 N. W. 573 (1926). Even though the child remains at home, there can be implied emancipation, see: *Donegan v. Davis*, 66 Ala. 362 (1880); *Groh v. W. O. Krahn, Inc.*, 223 Wis. 662, 271 N. W. 374 (1937).

¹² On estoppel to deny emancipation although none exists, see: *Giovagnoli v. Ft. Orange Const. Co.*, 133 N. Y. S. 92 (1911); *Daniel v. Atlantic Coast Line Ry. Co.*, 171 N. C. 23, 86 S. E. 174 (1915); *Schoonover v. Sparrow*, 38 Minn. 393, 37 N. W. 949 (1888); *Vance v. Calhoun*, 77 Ark. 35, 90 S. W. 619 (1915).

¹³ Md. Code (1939) Art. 93, Sec. 199 provides that a guardian shall deliver property to his female ward upon the marriage of the ward.

¹⁴ To the effect that marriage emancipates a child, see: *Vanatta v. Carr*, 229 Ill. 47, 82 N. E. 267 (1907); *Easterly v. Cook*, 140 Cal. App. 115, 35 P. (2d) 164 (1934); *Dixie Motor Coach Corp. v. Shivers*, 131 S. W. (2d) 677 (Tex. Civ. App., 1939); *Ex parte Mosier*, 114 Okla. 234, 245 P. 992 (1926); *Rinaldi v. Rinaldi*, 94 N. J. Eq. 14, 118 A. 685 (1922).

¹⁵ 9 La. App. 467, 119 So. 736 (1929).

¹⁶ 8 Tenn. App. 690 (1928).

marriage of a minor even without consent emancipates a child from the custody of the parents, for the marriage creates relations inconsistent with the subjection to the control of the parent." But, the Montana court, in *State v. District Court* adds:¹⁷ "Marriage does not change an infant's status to that of an adult." It should be noted this latter statement had to do with the effect and scope of emancipation, which will be discussed later.

Emancipation by abandonment, cruelty, or neglect is well illustrated by the principal case. It suffices to say that this view finds support in other jurisdictions.¹⁸

Emancipation by coming of age normally occurs when a minor reaches the age of twenty-one.¹⁹ In Maryland there has been some confusion as to whether a female is emancipated upon reaching eighteen. The confusion results from the existence of certain statutes²⁰ conferring on the females the powers to receive property by inheritance at eighteen, to make a will, and to give receipts for property; from which the Court has reasoned²¹ that the legislature intended females to be considered as adults at eighteen for some purposes. Needless to say such a conclusion does not necessarily follow. A person may be emancipated for one purpose but not for all purposes. Williston, in his work on Contracts, was apparently confused by these Maryland statutes enabling a female to perform some acts before majority, and he stated that a female in Maryland over eighteen but not over twenty-one was able to enter into a valid binding contract.²²

The sequelae of emancipation can be stated with less definiteness than the factual situations resulting in emancipation. Some courts speak of emancipation as a sudden

¹⁷ 77 Mont. 290, 250 P. 973 (1926).

¹⁸ That misconduct of parent emancipates child, see: *Nichols v. Harvey and Hancock*, 206 Ky. 112, 266 S. W. 870 (1924); *Patek v. Plankinton Co.*, 179 Wisc. 442, 190 N. W. 920 (1922); *Briscoe v. Price*, 275 Ill. 63, 113 N. E. 881 (1916); *P. J. Hunnycutt and Co. v. Thompson*, 159 N. C. 29, 74 S. E. 628, Ann. Cas. 1913E, 928 (1912).

¹⁹ That a child is emancipated at 21 although he continues to live at home, see: *Gaydos v. Domabyl*, 301 Pa. 523, 152 A. 549 (1930). But see *Brown v. Ramsey*, 29 N. J. Law 117 (1860), that arrival at age of 21 is only *prima facie* evidence of emancipation and may be overcome by showing that the child is incompetent to care for himself.

²⁰ Md. Code (1939) Art. 93, Sec. 199, providing a guardian shall deliver property to his ward upon (1) marriage if a female or (2) coming of age, which is expressly stated as 18 for females. *Ibid.*, Art. 79, Secs. 1, 7, 8, 10, allows females over 18 to execute valid receipts and releases. *Ibid.*, Art. 93, Sec. 335, allows females over 18 to execute valid will.

²¹ *Keller v. Donnelly*, *supra*, n. 7.

²² 1 WILLISTON, CONTRACTS (both 1st Ed. 1920 and Rev. Ed. 1936) Sec. 224.

acquiring by the infant of majority in all its aspects. Still others recognize that emancipation may remove one of the disabilities of infancy and yet not remove all of them.²³ The method of emancipation determines to a degree the effects of the emancipation.²⁴ Emancipation by mere passage of time, as when the infant reaches his majority, removes all of the disabilities of infancy.²⁵ But it does not follow that the other methods of emancipation give a similar result. Just because a parent abandons a child, the child does not suddenly acquire power to enter into a valid, binding contract. Rather, one must consider the method of emancipation, and speculate as to what incidents of majority should follow therefrom. Although some courts speak broadly of an infant achieving the status of an adult, the better view is the one expressed in *Cohen v. Delaware, L. and W. Railroad Co.*,²⁶ in saying: "Emancipation does not remove all of an infant's disabilities."²⁷

As was previously mentioned, Williston thought a female over eighteen and under twenty-one was able to enter into a valid and binding contract in Maryland.²⁸ Even more generally speaking, the question arises does an emancipated infant acquire the contractual ability of an adult through emancipation? The answer is he does if he is emancipated by reaching majority; but as regards other types of emancipation, there is a conflict of authority. One view is that he does, but one can question the soundness of that view. Query: If an emancipated infant needs protection when he contracts for non-necessaries, does an infant emancipated by desertion of his parents no longer need such protection? The better view is expressed in *Schoening v. Gallet*:²⁹

²³ Complete emancipation does not sever parent and child relationship for all purposes. See: *Round Bros. v. McDaniel*, 133 Ky. 669, 118 S. W. 956 (1909); *Iroquois Iron Co. v. Industrial Comm.*, 294 Ill. 106, 128 N. E. 289, 12 A. L. R. 924 (1920); *Groh v. W. O. Krahn, Inc.*, 223 Wisc. 662, 271 N. W. 374 (1936).

²⁴ That marriage emancipates so as to allow a minor husband to sue in his own name in an action to free his minor wife from the custody of her family, see: *In re Hollopeter*, 52 Wash. 41, 100 P. 159, 21 L. R. A., N. S., 847 (1909).

²⁵ But see *supra*, n. 19.

²⁶ 269 N. Y. S. 667 (1934).

²⁷ Similarly, the Maryland Court has recognized that the statutes cited *supra*, n. 20, entitle a female over 18 to possession of her property, but they do not allow her to dispose of it except by devise. See: *Davis v. Jacquin*, 5 H. & J. 109 (1820); *Fridge v. State*, 3 G. & J. 115 (1830); *Waring v. Waring*, 2 Bl. 674 (1830); *Bowers v. State*, 7 H. & J. 32 (1826); *Greenwood v. Greenwood*, 28 Md. 385 (1867).

²⁸ See *supra*, n. 22.

²⁹ 206 Wisc. 52, 238 N. W. 852 (1931).

"Where the issue is whether a minor may rescind contracts for the purchase of things not necessary, the fact of the emancipation is immaterial."

Another problem is, how does emancipation affect the parent's duty to support the child? Again there is a divergence of authority. The correct answer as regards emancipation by coming of age, in the strict sense, is that a parent is relieved of the obligation to support. But as regards other types of emancipation, a correct or sociably desirable solution is not as easily obtained. In *Going v. Going*⁸⁰ the Tennessee court said briefly:

"Emancipation of a child is the relinquishment by the parent of control and authority over the child, conferring on him the right to his earnings and terminating the parent's legal duty to support the child."

Does it seem fair to deprive all minors of support if emancipated by the wrongful conduct of the parent?⁸¹ On the other hand if the child is emancipated by marriage, especially a female, is it desirable to retain the parents' duty to support?

In conclusion, the instant case is interesting as recognizing emancipation of the second type. Moreover, it suggests some of the problems attendant on emancipation. It may be said that a single concept of emancipation, as to results, will not fit all situations. Rather each type of emancipation and each problem involving emancipation must be considered separately. A broad conceptualism will not suffice. It is unwise to say simply an emancipated infant is the same as an adult in the eyes of the law. Rather the method of emancipation necessarily affects the results to be obtained by the fact of emancipation.

⁸⁰ See *supra*, n. 16.

⁸¹ That a parent is still under a duty to support, see: *Johnson, et al., v. Silsbee*, 49 N. H. 543 (1870); *Porter v. Powell*, 79 Iowa 151, 44 N. W. 295, 7 L. R. A. 176 (1890); *Simmonds v. Stewart*, 198 Ky. 330, 248 S. W. 892 (1923); *Hendrickson v. Town of Queen*, 149 Minn. 79, 182 N. W. 952 (1921).