Reviving "Unemancipation" Status in Child Support Applications

By Vesselin Mitev

Mom and Dad settle their divorce and agree on boilerplate conditions of emancipation for the children: turning 21, or becoming independent through full-time employment, or marriage, or entry into the military service. Because they have fancy lawyers, two other conditions are also written in, "conduct as set forth in the seminal case of *Roe v. Doe*, 29 NY 2d 188 (1971) and, separately, conduct as set forth in the case of *Cohen v. Schnepf*, 94 Ad2d 783 (2d Dept. 1983)" dealing with constructive emancipation of the children.

The oldest child then enters the U.S. Army, triggering the bargained-for contractual emancipation clause of "entry into the military service." This event is also memorialized in a court order dealing with arrears of child support add-ons. Sometime later, the child is discharged (honorably, let's say) prior to turning 21 and returns to live with non-custodial parent Dad. Dad, although the monied (ex) spouse, wastes no time in hustling back to court to file a support petition for the child.

As Mom's attorney, do you a) advise your client that she owes the child support; or b) move to dismiss and seek attorneys' fees for the inconvenience of having to oppose an obtuse application?

Choice "a" might seem like the obvious, easy answer. But there is plenty of grist for the mill should you choose option "b." While parents have a duty to support their child(ren) until age 21, (Family Court Act 413, it is equally well settled that parties can arrange their obligations vis a vis each other via a legally binding contract, which is the stipulation of settlement. At least one court has held that a court absolutely lacks the authority to reform the parties' contract under the guise of interpreting it, even with respect to child support, *Mark D. v. Brenda D.*, 27 Misc. 3d 713 (Sup. Ct. Nassau County 2010).

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But the overarching issue is can a child's unemancipated status be "revived" by dint of an emancipation event ending, absent such an agreed-upon provision in the parties' agreement. Only one of the standard, boilerplate emancipation events is truly set in stone: turning 21. All others can revert back to "unemancipation" status, e.g., a full-time employment can be lost, a married child can be divorced, and an armed forces entrant can be discharged, but obviously, a child will never go back to being 19 after turning 21.

Self-evidently, such oscillations between statuses (emancipated vs. unemancipated) would, taken to their logical conclusions, grind the courts to a halt, should a petition be filed each time status changed, i.e., Bobby is 19, fully independent by dint of his full-time job, loses said job on Tuesday, is unemployed through Friday, then regains another full-time job on Monday; is anyone on the hook for those five days during which Bobby reverted back to "unemancipated" status? Since the law does not concern itself with trifles, the inquiry is academic.

Few courts have bothered with this analysis and the take-away standard is as generic as it is unhelpful, at least at first blush: "…a child's unemancipated status may be revived, provided there has been a sufficient change in circumstances to warrant the corresponding change in status" see *Bogin v. Goodrich*, 265 A.D.2d 779 (3d Dept. 1999).

Dissecting those three lines reveals, importantly, that reversion is not mandatory but discretionary — "may be revived" — and that further, such discretion hinges on whether there has been a "sufficient change in circumstances" to warrant the corresponding change in status.

Provided that the agreement between the parties did not contemplate a discharge from military service as a reverting event, a solid argument may be made that the parties necessarily anticipated that discharge was a possibility (as was a divorce in the event of a child's marriage, or a loss of full-time employment) and that they chose not to include such language in their binding contract.

To be sure, the standard is "unanticipated and unreasonable" change in circumstances resulting in a concomitant need, where the parties have come to an agreement regarding child support, thus mounting an even thornier obstacle to the reversion argument. Parenthetically, it appears that only one court, out of the Fourth Department, (in a strained, circular decision) has held that a child's return to the *non-custodial* parent constituted a sufficient change in circumstances to revive the unemancipated status, *Baker v. Baker*, 129 AD3d 1541 (4th Dept. 2015).

In short, it is far from automatic that simply because a child has lost its emancipated status, that either party is responsible for payment of any child support. Instead, the case law suggests a detailed, factual analysis must be undertaken by the court that includes, as a preliminary matter, deciding whether inquiry into the matter is foreclosed due to any bargained-for terms and provisions in the parties' agreement; then consideration of whether the change is "unanticipated and unreasonable" and has resulted in a concomitant need, before deciding that revival of the emancipation status "may," not "should" occur.

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