Full Faculties and Constructive Emancipation Applications

By Vesselin Mitev

In 1971 (checks calendar, sees that's 47 years ago, briefly contemplates jumping out a window), New York established an escape hatch from the state's public policy, codified in the Family Court Act, that a parent has a duty to support their child(ren) until they turn 21, in the seminal case of *Roe v. Doe*, 29 NY2d 188.

That case has become shorthand for persons wishing to suspend or end their support obligations to claim that their child, once reaching "employable age and in full possession of [his or] her faculties, voluntarily and without cause, [has] abandon[ed] the parent's home, against the will of the parent and for the purpose of avoiding parental control" and therefore that [he or] she forfeits [his or] her right to demand support; that the child has become constructively emancipated.

The burden is a high one, to be sure, since a whole line of cases has emerged that parents who in any way contribute to the breakdown in the relationship or make no serious efforts to rekindle it are not relieved of their support obligations despite the fact that they have no real relationship with their child(ren):

"In contrast, where it is the parent who causes a breakdown in communication with his [or her] child, or has made no serious effort to contact the child and exercise his [or her] visitation rights, the child will not be deemed to have abandoned the parent" (*Matter of Alice C. v Bernard G.C.*, 193 AD2d 97, 109 [1993]; *see Matter of Gold v Fisher*, 59 AD3d at 444).

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"'The burden of proof as to emancipation is on the party asserting it' " (*Matter of Gold v Fisher*, 59 AD3d at 444, quoting *Schneider v Schneider*, 116 AD2d 714, 715 [1986]; *see Matter of DeLuca v Strear-DeLuca*, 84 AD3d 801 [2011]).

The *Roe v. Doe* test has somehow also been further shortened (I attribute this to judicial drift) into a minor, without cause, withdrawing from parental control and supervision. This Cliff's Notes approach is incorrect on its face. In fact, the actual test is a 7-part test, and failure to meet even one of the elements must result in a dismissal of a constructive emancipation petition.

The one element most easily glossed over, however, is the "full possession of the faculties", since the others are largely objective, e.g., is the child of employable age (defined as 18 years of age), did he or she abandon the parent's home, was it against the will of the parent, etc. There is a surprising lack of case law on the subject, probably due to the self-evident proposition that a child not in possession of its faculties would not likely be employed or be in a position to realize that their leaving the parental home is a) against the parent's will, or b) done for the express purpose of avoiding parental control.

Yet a deeper dive into this seemingly self-evident, yet impossibly difficult concept: "full possession of the faculties", yields an additional hurdle that a petitioning parent must overcome before obtaining relief under *Roe v Doe*.

For example, a convincing argument could be made that a child that is on serious medication for a number of psychological ailments is by definition not in possession of its full faculties; likewise for a child that has had an IEP (individualized education program) in school (which have skyrocketed over the last 3 decades) depending on the disability the child is classified as having.

The IDEA (the federal act governing such classifications), classifies 13 different disabilities that qualify a student to receive an IEP, including Autism, Deafness, Emotional Disturbance, Intellectual Disability, Learning Disability, Orthopedic Impairment, Other Health Impairment, Traumatic Brain Injury and Visual Impairment, to name some.

At a *Roe v. Doe* hearing, the respondent could (and should) argue that, for example, the child being classified as Autistic, or having a learning disability which rendered it classified as a disabled child under Federal law could necessarily not be in possession of its faculties. As with all such diagnoses, each is fact specific and each person falls somewhere in a spectrum, such as a high-functioning Asperger's sufferer, who would still be classified as an Autism Spectrum Disorder, even though they are generally considered "high-functioning"; nevertheless, under the strict application of the test, they could never be considered in full possession of their faculties, requiring the denial of the application.

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