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OPINION OF THE CONNECTICUT PROBATE COURT

IN THE MATTER OF N, A MINOR

PROBATE COURT, NORWALK-WILTON DISTRICT

MAY 11, 2017

EDITOR'S SUMMARY & HEADNOTES

Minor resided in Ohio with her Mother and Siblings. Minor's Mother reported that Minor was oppositional and engaging in acts of self-mutilation. Minor's Maternal Aunt, who resided in Connecticut, provided a home and other support for Minor and was granted temporary guardianship. Minor began school in Connecticut, engaged in extracurricular activities, obtained an after-school job, participated in therapy, thrived academically and socially, and exhibited no behavioral issues. Despite Minor's success, Mother wished for Minor to return to and permanently reside in Ohio. Upon attaining the age of sixteen, Minor petitioned the Court for emancipation from her parents, reasoning that she could no longer live in the chaos of Mother's home due to Mother's unpredictable and erratic behavior. A Department of Children and Family investigation was made which supported the Minor's emancipation. Citing Minor's maturity, progress since moving to Connecticut, the formation of a loving relationship with Maternal Aunt, the expressed wishes to continue to reside in Connecticut, and the expressed desire not to return to Ohio, , the Court granted emancipation. The Court found the statutory standard for emancipation had been met, and that emancipation was in the best interest of the minor.

1. Emancipation: Grounds

Pursuant to Conn. Gen. Stat. § 46b-150b (2016), there are four separate grounds for granting a decree of emancipation.

2. Emancipation: Effects

Conn. Gen. Stat. § 46b-150d (2016) sets forth the broad effects of an emancipation order.

3. Emancipation: Defined Generally

Emancipation, defined generally, is an act by which a person who was once in the power or under the control of another is rendered free. A minor is emancipated if placed in a new relation inconsistent with the former relation as part of his parent's family.

Opinion¹

A Court of Probate held at the place and time of hearing set by the Court, together with any continuances thereof, as of record appears, on an application concerning the emancipation of N, a Minor, for whom the court appointed an attorney and Guardian ad Litem. N is the petitioner ("Petitioner").

A contested hearing on the Application for emancipation was held on April 4, 2017. Petitioner, Petitioner's mother ("Mother"), and Petitioner's maternal aunt ("Maternal Aunt") testified at the hearing and all were represented by counsel. Petitioner's sister ("Sister") also testified. A Department of Children and Families ("DCF") investigation was requested as part of an earlier application for removal filed by the Maternal Aunt on December 6, 2016. A report of the DCF investigation was made part of the record. Ex 1. A DCF social worker substituted at the hearing for the author of their report because its original author had since retired. The DCF social worker was not called to testify and neither party objected to the admission of the DCF report. Despite notice of hearing, Petitioner's father ("Father") was not in attendance.

Notice of hearing was given in accordance with the order of notice previously entered and having carefully considered the testimony and any evidence presented the COURT FINDS that:

Petitioner is sixteen-years-old and has been a resident of Connecticut since July 2, 2015. She is the third of five children born to her parents ("Parents"). Until July 2, 2015, Petitioner lived in Ohio with her mother and three siblings. Her eldest sister, having reached the age of majority, lives independently. The Parents separated five years ago and the Father currently lives in New Jersey. The couple has not filed for divorce, and there is no formal custody order or visitation schedule in place with Father.

¹ This Opinion has been modified to maintain the privacy of minor children. Names and other identifying information of the parties have been edited to preserve confidentiality. To preserve the privacy of the minor children, some of the materials referred to herein have not been verified by the Editors of the Quinnipiac Probate Law Journal.

On or about June 28, 2015, the Petitioner's friend contacted the Ohio Child Protective Services ("CPS") to investigate an incident involving allegations of Petitioner's then fifteen-year-old brother handcuffing her during an outburst with their mother. CPS took the Petitioner to the hospital for observation, and according to the affidavit on file from Mother's Ohio attorney; no charges were ever brought against Mother as a result of the incident. Petitioner was placed back into Mother's custody upon release from the hospital. According to the DCF report, the investigation was never completed because soon after, Petitioner moved to Connecticut. .

At the time of the incident, the Petitioner was enrolled in a virtual (online) school in part due to Mother's concerns of Petitioner's self-cutting. The Mother reported to DCF that at age eleven Petitioner began to be "oppositional" and that matters had not subsided since. Following the CPS intervention in Ohio, the Mother contacted her sister in Connecticut. Mother's sister offered her support by way of immediately obtaining counseling services through a friend and licensed social worker with whom she worked in Connecticut. The Maternal Aunt promised to provide a home and any support the Petitioner would require while in Connecticut. The Mother agreed to allow Petitioner to live in Connecticut temporarily in order to take advantage of this offer.

On July 2, 2015, the Petitioner moved to Connecticut to reside with Maternal Aunt and her aunt's fiancé ("Fiancé"). At the time, the Maternal Aunt resided in Stamford while her new home in Wilton was under construction. In September of that same year, the Mother petitioned the Stamford Probate Court to grant temporary guardianship to the Maternal Aunt, to which Father consented. The Petition was granted on December 15, 2015. Initially the Petitioner continued online schooling and the Maternal Aunt arranged for a tutor to supplement the learning. In order to avoid changing schools twice, the Maternal Aunt made all the necessary arrangements and paid the tuition to enroll the Petitioner as a future student in Wilton. In addition to transporting Petitioner to her counseling sessions, the Maternal Aunt drove daily to Wilton so Petitioner could attend school and extracurricular activities. At the end of the 2016 school year, all parties agreed Petitioner would spend the summer in Ohio with her mother and three siblings. By all indications, the summer holiday was without incident. Petitioner worked as a counselor in a performing arts camp, and at the end of summer returned to live with the Maternal Aunt in Connecticut.

Petitioner moved to Wilton with her Maternal Aunt and her Fiancé in September of 2016. During the school year, she thrived academically, socially and from all accounts, exhibited no behavioral issues. In October of 2016, the Mother contacted the counselor that the Petitioner had been seeing since July of 2015. The Mother testified it was only then that she became aware that the counselor's therapeutic goal was not strictly reunification with her, but rather individual counseling and overall well-being. The Mother disapproved and abruptly insisted the counseling cease. At the hearing, the Mother testified that this felt like a betrayal on the part of her sister.

In late November of 2016, the Maternal Aunt contacted her sister to renew the Application for Temporary Guardianship prior to its expiration on December 15, 2016. She did not respond to her sister's calls. On December 6, 2016, the Petitioner was notified via email from Father that he would arrange to pick her up two days later, on December 8, to transport her back to Ohio. There was no prior discussion regarding the abrupt change during the middle of the school term; the Petitioner was never consulted and never afforded the opportunity to discuss the plan or her wishes. That same day, Maternal Aunt filed an application with this Court for removal of the Parents as guardians. On December 7, faced with the threat that Parents would remove her from the jurisdiction, the Maternal Aunt filed an Application for Immediate Temporary Custody. On December 9, 2016, the Mother filed a letter in the Stamford Probate Court revoking her sister's Temporary Guardianship.

The Petition for Immediate Temporary Custody was granted ex parte by decree dated December 8, 2016. A DCF study was ordered and pursuant to statute, the matter was scheduled for hearing on December 13, 2016. The Parents' attorney requested a continuance to December 20, 2016, and a second continuance to December 22, 2016, both of which this Court granted. On December 22, 2016, what started out eighteen months earlier as two sisters coming together for the benefit of a young girl in need, quickly plummeted to the point where this Court became the forum for parents, grandparents, siblings, and children who were summoned, in attendance to testify and take sides against one another. In an effort to de-escalate the mounting tensions, and prior to the start of the hearing and testimony being taken, the parties, including Petitioner's attorney, Guardian ad Litem, Mother, Father, and Maternal Aunt, and their attorneys, came to a stipulated agreement for Petitioner to spend the winter holiday with the Mother in Ohio. There was no indication whether the Father would take part in the visit. The Maternal Aunt agreed to drive her one-half of the distance with Mother picking her up at a designated location in Pennsylvania. The Petition for Removal was continued by agreement of all the parties. It was the Mother's hope that this time together would result in reconciliation with her daughter; however, this was not the case. Shortly thereafter and upon the Petitioner's return to Connecticut, additional proceedings were filed.

On January 10, 2017, the Mother filed a Motion to Reopen and dismiss the Order of Immediate Temporary Custody. On January 25, 2017, the Maternal Aunt filed an objection to the Motion to Reopen. On February 26, 2017, the Mother filed a response to the objection, and on March 21, 2017, following Petitioner's sixteenth birthday, the Petitioner filed an Application for Emancipation from her parents. The Court scheduled all four Petitions for hearing on April 4, 2017 and heard the Application for Emancipation first.

MEMORANDUM OF DECISION AND ORDER:

THE LAW

[1] The applicable law in this case is Conn. Gen. Stat. § 46b-150b

(2016), which specifies four separate grounds for granting a decree of emancipation. In her petition, Petitioner claims the third and fourth grounds, as delineated in subsection (3) and (4) of the statute, apply in this case. It states in relevant part:

[i]f the . . . Probate Court, after hearing, finds that: . . . (3) the minor willingly lives separate and apart from his parents or guardian, with or without the consent of the parents or guardian, and that the minor is managing his own financial affairs, regardless of the source of any lawful income; or (4) for good cause shown, it is in the best interest of the minor, . . . the court may enter an order declaring the minor emancipated.

Conn. Gen. Stat. § 46b-150b. The statute offers no guidance as to the meaning of the term “good cause” as it is used in this context. Black’s Law Dictionary defines “good cause” as “[a] legally sufficient reason.” *Good Cause*, Black’s Law Dictionary (7th ed. 1999). “Good cause is often the burden placed on a litigant . . . to show why a request should be granted or an action excused.” *Id.* Essentially, the law requires a preponderance of the evidence in Petitioner’s favor.

The Court is well aware of the emotional toll these proceedings have taken on this family. As the member of a large family, a father, and grandfather, this Court gives great deference to the rights of parents to rear their children and views those rights as among the most fundamental and intrinsic. Even so, the Court must here recognize and carefully weigh what is in the best interest of the minor in this particular case.

[2] Likewise, the Court is cognizant of the broad effects of an emancipation order as set forth in Conn. Gen. Stat. § 46b-150d (2016). It provides that:

(1) [t]he minor may consent to medical, dental or psychiatric care, without parental consent, knowledge or liability; (2) the minor may enter into a binding contract; (3) the minor may sue and be sued in such minor’s own name; (4) the minor shall be entitled to such minor’s own earnings and shall be free of control by such minor’s parents or guardian; (5) the minor may establish such minor’s own residence; (6) the minor may buy and sell real and personal property; (7) the minor may not thereafter be the subject of (A) a petition under section 46b-129 as an abused, neglected or uncared for child or youth; . . . (8) the minor may enroll in any school or college, without parental consent; (9) the minor shall be deemed to be over eighteen years of age for purposes of securing an operator’s license under section 14-36 and a marriage license under subsection (b) of section 46b-30; (10) the minor shall be deemed to be over eighteen years of age for purposes of registering a motor

vehicle under section 14-12; (11) the parents of the minor shall no longer be the guardians of the minor under section 45a-606; (12) the parents of a minor shall be relieved of any obligations respecting such minor's school attendance under section 10-184; (13) the parents shall be relieved of all obligation to support the minor; (14) the minor shall be emancipated for purposes of parental liability for such minor's acts under section 52-572; (15) the minor may execute releases in such minor's own name under section 14-118; and (16) the minor may enlist in the armed forces of the United States without parental consent

Apart from Judge Kurmay's thoughtful and well scripted decision, *In re Mary, a Minor*, 22 QUINNIPIAC PROB. L.J. 200 (2009), the facts of which closely resemble the current case, there is scant case law interpreting the emancipation statutes. The issue here turns on whether the Petitioner has met the standard of proof and whether granting the emancipation is in her best interest. The Court believes that the standard of proof has been met, and that it is in Petitioner's best interest to grant the Petition for Emancipation from her parents.

THE COURT FURTHER FINDS that:

The Petitioner is a well-spoken, engaging, and intelligent young woman. She is a junior in excellent academic standing and on track to graduate. She has successfully maintained her grade-point average in a competitive school, created a network of friends, and she participates in extracurricular activities. She has forged a loving and supportive relationship with her Maternal Aunt and her Fiancé. She testified that, following her graduation, she hopes to attend college and has begun the college selection process with the guidance of her Maternal Aunt and school counselor. She is fully aware of the constraints resulting from the substantial financial burden of a college education. Nonetheless, her testimony indicated that she is exploring options to meet those goals including student loans, grants, and scholarships. Since her sixteenth birthday, the Petitioner has applied for after-school jobs that would allow her to continue to take part in extracurricular activities and intends to find full-time employment during the summer holiday. She babysits when possible. When questioned about her healthcare coverage, which is presently provided by her parents through the state of New York, she explained that she had already taken the initiative to contact Connecticut state agencies who informed her she would be eligible for the HUSKY Health program, should her Petition for Emancipation be granted. The Petitioner has continued to avail herself of the services of her therapist, which she understands have been crucial to her emotional stability and growth. The DCF investigation supports the Petitioner's decision to remain in Connecticut and the report recommends she continue to live with the Maternal Aunt.

[3] Petitioner has essentially already achieved emancipation in that she is willingly living separate and apart from her parents. The statute does not

require parental consent. In *Wood v. Wood*, the Court stated, “[e]mancipation, defined generally, is ‘an act by which a person who was once in the power or under the control of another is rendered free.’” 135 Conn. 280, 283 (1948) (citation omitted). “‘A minor is emancipated if placed in a new relation inconsistent with the former relation as part of his parent’s family.’” *Id.* (citing *Town of Plainville v. Town of Milford*, 119 Conn. 380, 384 (1935)).

At the hearing, the Mother argued that without her sister’s support, the Petitioner would not be capable of managing her financial affairs and therefore does not meet the statutory requirement for emancipation. The Mother testified that she disapproved of her sister’s willingness to give the Petitioner an allowance for chores and provide for her basic needs, such as food, shelter, and transportation. Doing so, she testified, was only teaching Petitioner to be a “moocher.” However, the statute does not require financial independence, it states, “the minor is managing [her] own financial affairs, regardless of the source of any lawful income.” Conn. Gen. Stat. § 46b-150b. Financial independence would be an impossible standard given the legal working age starts at sixteen in Connecticut. Petitioner testified that she has applied for an after-school job, babysits when possible, and intends to find a full-time summer position, which are realistic expectations of a sixteen-year-old full-time student. The Maternal Aunt testified that she is willing and able to provide financial and emotional support and guidance to the Petitioner up to, but not including, college tuition. She testified that it was never her intention to cause a rift in the family, but rather, her sincere hope to be able to support The Petitioner and her sister in addressing the issues that gave rise to the incident involving CPS in the summer of 2015. The Aunt’s Fiancé was present at each of the hearings and expressed his willingness to support the Petitioner emotionally and financially. The Maternal Aunt testified that she, the Petitioner, and her Fiancé set in place house rules to hold the Petitioner accountable for her responsibilities as a member of the household. In addition to chores, the Petitioner was also asked to bake some of the couple’s favorite goodies and was required to laugh at the Fiancé’s (admittedly bad) jokes. While seemingly silly, this moment of levity during the proceedings stood in stark contrast to the severity and rigidity with which the Mother seemed to approach parenting. The Maternal Aunt and her Fiancé were genuine in their commitment to the Petitioner’s future. The Court has no reason to doubt that they will honor their commitment, and views their support as a lawful source of income for statutory purposes.

The Mother asked her eldest daughter to testify at the Hearing. The Court hoped to gain some insight into the relationship between her and the children. Instead, the eldest Sister took the opportunity to bash her little sister, characterizing her as “rude and disrespectful” to their parents, explaining how she had slighted the family by declining invitations to family gatherings, and that when she was present at such gatherings, she chose to sit with others not in her immediate family. The Sister went on to testify of the damage and pain the Petitioner wreaked on her family of origin. She further explained that although their Mother was strict with her when she was a teen, and that they also did not

get along, she now realizes everything their mother did was for her children. Petitioner was repeatedly described by her Sister as “dramatic,” a “brat,” “selfish,” and “entitled,” ultimately telling her that she would be “disowned” if she insisted on proceeding with the emancipation. Rather than support the Mother’s efforts, the Sister’s testimony called into question the Mother’s judgment in pitting the two sisters against one another—it served only to deepen the wounds already festering in this family. The Court could see no benefit and therefore denied the Mother’s request to allow her thirteen-year-old son to testify against his sister.

Most striking was the Mother’s testimony. She seemingly heaped fault on everyone around her for the present situation. There was not a single moment of self-reflection, nor any indication that she might have played even a minor role in the deterioration of her relationship with her daughter. It was obvious that she not only expected, but demanded the submission of her children, as well as others around her, which she interprets as respect. The Mother berated her sister for having been disrespectful of her and her rules as a parent, and for allowing the Petitioner to seek counseling, not necessarily for the purpose of reunification, but for her overall well-being. Her sister was further condemned for not abiding by certain orthodox religious tenets, which the Mother found reprehensible. There was not a scintilla of gratitude for all that the Maternal Aunt and Fiancé have done for Petitioner in the last eighteen months, nor was there any recognition that her daughter is happy, exhibited no behavioral issues, the cutting has ceased, she is performing well in school and has adjusted well to her new environment. The Mother also did not acknowledge that it is Petitioner’s sincere wish to remain with Maternal Aunt. Despite the fact that the Mother told the DCF worker her daughter became “oppositional” at age eleven, she was unable or unwilling to acknowledge that this coincided with the separation from her husband and the family’s move from New York to live alone with their mother in Ohio. Instead, the testimony was full of self-justification and outward finger pointing. It was only after the Court questioned the Mother whether she intended to “disown” her daughter as a result of these proceedings that she saw fit to repudiate that portion of the Sister’s testimony.

During the incendiary testimony of both the Sister and the Mother, Petitioner showed incredible poise and respect. She exhibited, on every occasion before this Court, a maturity beyond her years. The same could not be said of her Mother, who continuously spoke out of turn, scribbled notes and whispered to her attorney during the testimony of others, expressed her displeasure with Petitioner’s testimony through exaggerated facial expressions, loud sighs, and repeatedly interrupted the proceedings even during the administration of the oath.

Ultimately, it was the Petitioner’s testimony that proved most persuasive. When asked why she filed the Petition for Emancipation, she stated simply that she could no longer live in the chaos of her mother’s home. She explained that the relationship with her mother makes her very anxious because

of her unpredictable and erratic behavior. She explained that she is doing well in high school; she is happy and wants to continue her progress without the constant threat that she will abruptly be taken out of school. She explained that her mother could be quite authoritarian and punitive and that the relationship was strained to the point of being unworkable at the present time. She expressed hope that with continued counseling she could have a relationship with her mother and siblings, but felt strongly that at this time it was best they be apart. The Court agrees, and is hopeful the family will find a way to restore their broken ties.

As Judge Kurmay reflected in his opinion, *In Re Mary, a Minor*:

Given the fact that she is *already separated* from her parents, she lives in a virtual no-man's land. She is not a functional member of a family unit, nor is she a complete legal person. She is neither. She has diminished legal standing at the present time, which will continue until she reaches the age of majority.

22 QUINNIPIAC PROB. L.J. 200, 211 (2009). The same is true in this case. The Court believes, even if the Application for Emancipation were denied, there would be little, if anything, that could legally be done to compel the Petitioner's return to Ohio. More importantly, a denial of her petition would leave her in a legal limbo. She would not have the support of her parents, nor the legal guardianship protection of Maternal Aunt. Absent the legal authority provided by emancipation, she would be unable to make independent medical decisions, enroll in school, obtain health care coverage, and apply for financial aid for college. Petitioner deserves the legal protection afforded by granting her Petition for Emancipation.

WHEREFORE IT IS ORDERED AND DECREED that:

Accordingly, the Court finds, for good cause shown, pursuant to the statutory standards of Conn. Gen. Stat. § 46b-150b, that Petitioner willingly lives separate and apart from Parents, with or without their consent, and that Petitioner is managing her own financial affairs, regardless of the source of any lawful income, and the Court further finds that granting the Application for Emancipation is in Petitioner's best interest.

The Application for Emancipation is hereby **GRANTED**.

It is so ORDERED.

Dated at Norwalk, Connecticut, this 11th day of May 2017.

/s/

Anthony J. DePanfilis, Judge