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EFFECT OF SON'S MILITARY SERVICE
ON FATHER'S DUTY OF SUPPORT

One of the most perplexing facets of the law relating to support of minor children is the question of how far into the future contracts and decrees for support extend. More particularly, what is the effect of a minor's marriage, entrance into the military service, or a similar event on the father's duty to support the minor? Since the beginning of World War II, the question of the effect of a child's entrance into the military has been frequently presented to the courts.

The Supreme Court of Washington, in *Koon v. Koon*,¹ held that a father was not relieved from making support payments while his son was in the army. The son was assigned to duty in Seattle, where he resided throughout his military life in a house rented by his mother. The court reasoned that army service did not change the fact of dependency since the mother had rented a house at additional expense in order that the son could reside with her. In determining that the father was not relieved of his duty to support, the court rejected the contention that entry into military service had emancipated the son.

So long as there is a basis for the father's obligation to support the minor, then all lawful means should be used to enforce this obligation; but when conditions have changed, such as induction into military service, then the court will modify the decree.² The question of whether circumstances have changed is ordinarily treated by the courts as one of emancipation.³

It is generally held that an enlistment by a minor is a contract between him and his country which involves a change in his status as a minor.⁴ This change severs the filial relation as completely as if the

¹50 Wash. 2d 577, 313 P.2d 369 (1957). This case also deals with the problem of "the father's liability for accumulated monthly installments of support money for minor children awarded by divorce decree to respondent wife for a period when the children lived with and were wholly supported by him." *Id.* at 370. This aspect of the *Koon* case is beyond the scope of this comment.

²*Green v. Green*, 234 S.W.2d 350 (Mo. App. 1950). The primary duty of the father to support his minor children is not lessened by a divorce decree, but when the son becomes emancipated by induction into military service the father's primary duty to support will be extinguished.

³*Swenson v. Swenson*, 241 Mo. App. 21, 227 S.W.2d 103 (1950); *Wallace v. Cox*, 136 Tenn. 69, 188 S.W. 611 (1916).

⁴*Iroquois Iron Co. v. Industrial Comm'n*, 294 Ill. 106, 128 N.E. 289 (1920); *Baker v. Baker*, 41 Vt. 55 (1868); *Gapen v. Gapen*, 41 W. Va. 422, 23 S.E. 579 (1895). Apparently no court as yet has held that consent of the parent to the enlistment of the child is necessary to give the enlistment the effect of emancipation.

child had become of age.⁵ The child is no longer dependent on his father and ceases to be a part of his father's household while under the control of the government.⁶ It cannot be presumed that the government will not fully and adequately provide support, maintenance, and medical care for the minor.⁷

What constitutes an emancipation is a matter of law, but whether emancipation has occurred in a particular case is factual.⁸ A majority of jurisdictions hold that an enlistment in the military, during its continuance, constitutes an emancipation.⁹ If the military service is terminated before his coming of age, the minor will again become subservient to the authority of his parents;¹⁰ but if he attains majority while in the military, the emancipation becomes absolute.¹¹ Since the question of what constitutes an emancipation is a matter of law, and since the occurrence of emancipation is a factual matter, a minor may be emancipated for some purposes and not for others. For example, if a minor left home with his father's consent, the father could not demand his son's pay; but if the son became unable to support himself while still a minor, the father might be legally obliged to support him.¹²

The Supreme Court of Washington has previously decided that a support decree extends into the future only for the period during which the children's dependency on their guardian continues.¹³ That court

⁵*Troquois Iron Co. v. Industrial Comm'n*, 294 Ill. 106, 128 N.E. 289, 290 (1920).

⁶*Streeter v. Streeter*, 67 Cal. App. 2d 138, 153 P.2d 441 (1944); *Schrader v. Schrader*, 148 Neb. 162, 26 N.W.2d 617 (1947); *Stavis v. Stavis*, 61 N.Y.S.2d 634 (Sup. Ct. 1946).

⁷*Corbridge v. Corbridge*, 230 Ind. 201, 102 N.E.2d 764, 768 (1952).

⁸*Wood v. Wood*, 135 Conn. 280, 63 A.2d 586, 587 (1948); *Crosby v. Crosby*, 230 App. Div. 651, 246 N.Y. Supp. 384, 387 (1930); *Fiedler v. Potter*, 180 Tenn. 176, 172 S.W.2d 1007, 1009 (1943).

⁹*United States v. Williams*, 302 U.S. 46, 49 (1937); *In re Morrissey*, 137 U.S. 157, 159 (1890); *Corbridge v. Corbridge*, 230 Ind. 201, 102 N.E.2d 764, 767 (1952); *Green v. Green*, 234 S.W.2d 350, 352 (Mo. App. 1950); *Swenson v. Swenson*, 241 Mo. App. 21, 227 S.W.2d 103, 105 (1950); *Baker v. Baker*, 41 Vt. 55 (1868). As shown by the above cases, it has long been established that a minor is emancipated upon entrance into the armed forces as far as the parents and the government are concerned.

¹⁰*Dean v. Oregon R.R. and Nav. Co.*, 44 Wash. 564, 87 Pac. 824, 825 (1906).

¹¹*Green v. Green*, 234 S.W.2d 350, 352 (Mo. App. 1950); *Swenson v. Swenson*, 241 Mo. App. 21, 227 S.W.2d 103, 106 (1950); *Notes*, 9 S.C.L.Q. 269, 276 (1957); 28 Minn. L. Rev. 275, 279 (1943).

¹²See *Porter v. Powell*, 79 Iowa 151, 44 N.W. 295 (1890), where a physician had treated a minor daughter for typhoid fever. The daughter had been self-supporting and away from home for three years. The court held that even though the father knew nothing of the debt to the doctor until the demand for payment was made, he was still obligated to pay the debt. The court reasoned that there was, at most, a partial emancipation—i.e., an emancipation from the father's service for an indefinite time. See also *Note*, 8 Md. L. Rev. 71 (1943).

¹³*Ditmar v. Ditmar*, 48 Wash. 2d 373, 293 P.2d 759 (1956).

has also determined that a mother cannot compel support payments for children whose dependency upon her has ceased by reason of death, marriage, attainment of majority, or service in the armed forces.¹⁴ The principal case, however, indicates that entrance into military service does not of itself alter the child's dependency on his mother.

The *Koon* case seems to carry the dependency theory quite far. The issue should perhaps have centered upon whether the son's living with his mother during his military service necessitated the continuation of support,¹⁵ instead of whether the fact of dependency on the mother negated an emancipation by military service. The better reasoned cases discontinue the award of support as unnecessary when the minor enters military service, usually on the ground of emancipation.¹⁶ The *Koon* case, however, does involve a factual pattern not present in most cases. Minors seldom reside with their parents while in the military. Even if the Washington court relied on the theory of dependency, it would seem that a minor is not his father's dependent during military service. He is under the care and control of the government so long as that service continues.¹⁷

The court in the principal case cites two Georgia decisions,¹⁸ relied on by the mother, as authority for the proposition that military service does not terminate a support decree. The reasoning of these Georgia cases, however, did not involve the question of emancipation. In *Torras v. McDonald*, the Georgia court stated: "After the termination of a suit for permanent alimony and the rendition of a final decree therein, not excepted to, the decree allowing alimony passes beyond the discretionary control of the trial judge, and he has then no authority either to abrogate it or to modify its terms, unless the power to do so is reserved in the decree."¹⁹ In neither Georgia decision referred to in the *Koon* case had the court reserved the power to modify the decree. It would appear, therefore, that permanent alimony in a Georgia decree is a final provision for the child until he reaches majority. This

¹⁴*Id.* at 760.

¹⁵See *Neelands v. Neelands*, 310 Mich. 537, 17 N.W.2d 743 (1945), holding that an award for weekly support of a minor son who was in the navy was unnecessary and could be discontinued.

¹⁶*United States v. Williams*, 302 U.S. 46 (1937); *In re Morrissey*, 137 U.S. 157 (1890); *Iroquois Iron Co. v. Industrial Comm'n*, 294 Ill. 106, 128 N.E. 289 (1920); *Corbridge v. Corbridge*, 230 Ind. 201, 102 N.E.2d 764 (1952); *Argonaut Ins. Exchange v. Kates*, 137 Cal. App. 2d 158, 289 P.2d 801, 805 (1955) (dictum).

¹⁷*Swenson v. Swenson*, 241 Mo. App. 21, 227 S.W.2d 103, 106 (1950).

¹⁸*Peacock v. Peacock*, 212 Ga. 401, 93 S.E.2d 575 (1956); *Torras v. McDonald*, 196 Ga. 347, 26 S.E.2d 598 (1943).

¹⁹26 S.E.2d at 599.

conclusion is supported by the decisions of the Supreme Court of Georgia.²⁰

The principal case reasons that it was not necessary to pass on the question of emancipation since the army duty did not change the fact of dependency. The two Georgia decisions must have had some bearing on the outcome in *Koon*. Although citing them, the Supreme Court of Washington fails to point out the fundamental difference between the status of support decrees in the two states. Support decrees can never be modified in Georgia unless the court expressly reserves the right of modification;²¹ in the State of Washington such decrees are subject to modification.²² Thus, the Georgia cases are not very persuasive on the question of whether or not the son's entrance into military service relieves the father of his duty to support.

The decision in the principal case may have been based upon something in the nature of an "estoppel theory." Relying on the failure of the father to modify the support decree, the mother rented the house for the son's occupancy. If the support money cannot be recovered, the mother will then have relied to her detriment on the father's continued obligation of support. The father is thus "estopped" to deny liability. A denial of recovery would be the same as retroactively modifying accrued installments.²³

Actually, a mother in Washington has no personal interest in child support money and holds it only as a trustee;²⁴ hence, the mother

²⁰*Hardy v. Pennington*, 187 Ga. 523, 1 S.E.2d 667 (1939); *Henderson v. Henderson*, 170 Ga. 457, 153 S.E. 182 (1930); *Gilbert v. Gilbert*, 151 Ga. 520, 107 S.E. 490 (1921); *Woodall v. Woodall*, 147 Ga. 676, 95 S.E. 233 (1918); *Wilkins v. Wilkins*, 146 Ga. 382, 91 S.E. 415 (1917); *Coffee v. Coffee*, 101 Ga. 787, 28 S.E. 977 (1897). See also *Yarborough v. Yarborough*, 290 U.S. 202 (1933), where the Supreme Court interpreted Georgia law. The court decided that "permanent alimony" in a Georgia divorce decree is final and cannot be modified.

²¹*Peacock v. Peacock*, 212 Ga. 401, 93 S.E.2d 575 (1956).

²²*Wheeler v. Wheeler*, 37 Wash. 2d 159, 222 P.2d 400 (1950); *Anderson v. Anderson*, 27 Wash. 2d 122, 177 P.2d 83 (1947); *St. Germain v. St. Germain*, 22 Wash. 2d 744, 157 P.2d 981 (1945).

²³Most cases in Washington hold that while the superior court has authority to modify a decree of divorce and reduce the amount of alimony as far as future payments are concerned, it has no authority to modify the decree as to installments which have accrued. *Phillips v. Phillips*, 165 Wash. 616, 6 P.2d 61 (1931); *Boudwin v. Boudwin*, 159 Wash. 262, 292 Pac. 1017 (1930); *Kinne v. Kinne*, 137 Wash. 284, 242 Pac. 388 (1926); *Beers v. Beers*, 74 Wash. 458, 133 Pac. 605 (1913). Cf. *Anderson v. Anderson*, 27 Wash. 2d 122, 177 P.2d 83 (1947); *St. Germain v. St. Germain*, 22 Wash. 2d 744, 157 P.2d 981 (1945), where the Washington court approved decrees retroactively modifying payments which were due for support money by ordering those payments then due cancelled and extinguished.

²⁴*Wheeler v. Wheeler*, 37 Wash. 2d 159, 222 P.2d 400 (1950); *Mosher v. Mosher*, 25 Wash. 2d 778, 172 P.2d 259 (1946).

should not have relied on the support money to pay the rent. The enforcement of support decrees is predicated upon the continued dependency of the children.²⁵ It follows that a mother cannot compel support payments for children whose economic sufficiency results from their own earnings.²⁶

The courts appear to reach different results depending upon whether the obligation to support is created by a divorce decree²⁷ or by a separation agreement.²⁸ Courts generally have power to modify divorce decrees,²⁹ while separation agreements, which are not incorporated in divorce decrees, cannot be modified because of a change in circumstances.³⁰ Emancipation does not operate to release a parent from an obligation to his child which he has expressly covenanted to perform.³¹

The intentions of parties should be clearly spelled out in divorce decrees and separation agreements in order that such litigation as the principal case may be eliminated. Unless the parties definitely want the support to continue until the child reaches his majority, stipulations to the effect that support shall terminate when the child is self-supporting or being supported by a third party should perhaps be included in divorce decrees. Since most jurisdictions hold that the father is not legally obligated to support his serviceman son, divorce decrees should spell out clearly that support ceases when the son enters the military.

JOHN R. ALFORD

²⁵*Ditmar v. Ditmar*, 48 Wash. 2d 373, 293 P.2d 759 (1956).

²⁶"[A] mother cannot compel payments of support money for children whose dependency upon her has ceased by reason of death, emancipation by marriage, attainment of majority, service in the Armed Forces of the United States, adoption, incarceration in penal or other custodial institutions, or economic sufficiency resulting from earnings, gifts, or inheritance." *Id.* at 760.

²⁷*Corbridge v. Corbridge*, 230 Ind. 201, 102 N.E.2d 764 (1952); *Neelands v. Neelands*, 310 Mich. 537, 17 N.W.2d 743 (1945); *Green v. Green*, 234 S.W.2d 350 (Mo. App. 1950); *Swenson v. Swenson*, 241 Mo. App. 21, 227 S.W.2d 103 (1950).

²⁸*Carson v. Carson*, 120 Ind. App. 1, 89 N.E.2d 555 (1950); *Wack v. Wack*, 74 N.Y.S.2d 435 (Sup. Ct. 1947); *Eisenberg v. Eisenberg*, 59 N.Y.S.2d 534 (Sup. Ct. 1945); *Harwood v. Harwood*, 182 Misc. 130, 49 N.Y.S.2d 727 (Sup. Ct., App. T. 1944). See also Annot., 20 A.L.R.2d 1414 (1951), as to the father's duty under a divorce decree or separation agreement to support his child as affected by the child's induction into the military service.

²⁹2 Vernier, *American Family Laws* § 95, at 194 (1932).

³⁰*Carson v. Carson*, 120 Ind. App. 1, 89 N.E.2d 555 (1950); *Harwood v. Harwood*, 182 Misc. 130, 49 N.Y.S.2d 727 (Sup. Ct., App. T. 1944).

³¹*Harwood v. Harwood*, 182 Misc. 130, 49 N.Y.S.2d 727, 730 (Sup. Ct., App. T. 1944). Justice Hecht in his dissent says that the effect of the son's induction into the army was to bring about a complete failure of the consideration for the separation agreement. *Id.* at 731.