

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

JOYCE ANN BENNETT,
Petitioner,

vs.

DONALD EUGENE BENNETT,
Respondent.

Case No. 18942

**ORDER DISMISSING
APPLICATION**

DATE OF HEARING: June 4, 2001.

DATE OF RENDITION: June 4, 2001.

DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).

TYPE OF HEARING: Open court.

APPEARANCES:

For petitioner: Petitioner pro se.
For respondent: Respondent pro se.

SUBJECT OF ORDER: Respondent's application for modification of decree.

PROCEEDINGS: See journal entry rendered June 4, 2001.

FINDINGS: The court finds and concludes that:

1. The respondent seeks modification upon a claim that his two oldest children are emancipated.

2. In *Palagi v. Palagi*, 10 Neb. App. 231, ___ N.W.2d ___ (2001), the Nebraska Court of Appeals restated basic principles applicable to the determination. A minor child may acquire a domicile of choice only if he or she is emancipated. *Id.* Emancipation means the freeing of the child for a portion of its minority from the care, custody, control, and service of its parents. *Id.* A child who moves out of a custodial parent's home for a short time is not emancipated if that child continues to be supported by a parent. *Id.* Whether a child is emancipated is a question of fact. *Id.* The emancipation of a child by a parent may be proved by circumstantial evidence or may be implied from the conduct of the parties. *Id.*

3. Similarly, in *Wulff v. Wulff*, 243 Neb. 616, 500 N.W.2d 845 (1993), the Nebraska Supreme Court noted certain fundamental rules on this issue. Whether there has been an emancipation is a question of fact, but what is emancipation is a question of law. *Id.* Emancipation is not necessarily a

continuing status; even if once established, it may be terminated at any time during the child's minority. *Id.* Giving birth may be one factor to be considered in the determination of whether a minor has achieved a new status or position inconsistent with parental control, but should not alone be dispositive. *Id.*

4. Finally, in *Foxvog v. Foxvog*, 7 Neb. App. 92, 578 N.W.2d 916 (1998), the Nebraska Court of Appeals recited that to emancipate means to free or release a child from the parental power, making the person released sui juris. Emancipation, as the term is used in the law of parent and child, means the freeing of the child for the period of its minority from the care, custody, control, and service of its parents. *Id.* Emancipation occurs where the parent renounces all the legal duties and voluntarily surrenders all the legal right of his or her position to the child or to others. *Id.* In determining whether a child has been emancipated, the intention of the parent governs. *Id.*

5. With respect to David, the second oldest child, the analysis is clear. While the child was not going to school and lived for a brief time outside the petitioner's home, even during that time he returned home for meals and was dependent upon the petitioner for support. While he had some income before he lost his most recent employment, the petitioner continued to provide substantial support and maintenance. David was not emancipated, even during his brief absence from home.

6. The decision regarding the oldest child, Misty, is a close call. The fact that Misty now has a child is not dispositive. She has been living in a separate residence and not going to school for more than six months. On the other hand, the undisputed testimony is that she is sharing rent with another person of the opposite sex, but is not involved in any relationship with him. The petitioner testified without contradiction that she has assisted Misty with the rent, and contributed to Misty's support at least two times each month. The petitioner testified, although not in those particular words, that she has not renounced her duties to Misty. The petitioner's conduct, which was not disputed in the evidence, supports that testimony. The petitioner's intent not to emancipate the child controls.

7. As the court concludes that the children are not emancipated in fact or in law, the respondent's application must be dismissed at respondent's cost.

ORDER: IT IS THEREFORE ORDERED that:

1. The respondent's application is dismissed at respondent's cost.

Signed at O'Neill, Nebraska, on June 4, 2001.
DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

- ⋮ Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 20__ by ____.
- 9 Enter judgment on the judgment record.
Done on _____, 20__ by ____.
- 9 Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 20__ by ____.
- ⋮ Note the decision on the trial docket as: [date of filing] Signed "Order Dismissing Application" entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge