

IN THE DISTRICT COURT OF BLAINE COUNTY, NEBRASKA

**LaTonne L. PIRNIE, now known as
LaTonne L. DAVIS,**

Petitioner,

vs.

ROBERT L. PIRNIE,

Respondent.

Case No. 1427

FINAL ORDER

DATE OF TRIAL: November 21, 2002.
DATE OF RENDITION: November 22, 2002.
DATE OF ENTRY: See court clerk's file-stamp date per § 25-1301(3).
APPEARANCES:
For petitioner: Rodney J. Palmer with petitioner.
For respondent: Timothy P. Brouillette with respondent.
SUBJECT OF ORDER: Respondent's application for modification of decree filed June 4, 2002.
PROCEEDINGS: See Journal Entry rendered on November 21, 2002.
FINDINGS: The court finds and concludes that:

1. The respondent seeks a determination that his support obligation for the parties' 18-year-old daughter has terminated by her emancipation. The testimony revealed very little dispute of fact. The court resolves any disputes of fact by stating the following determinations.

2. M.P. is 18 years old. She lives in the residence owned by the petitioner at 1820 Q Street in Ord. M.P. has one child, G., born on February 15, 2002, and is pregnant with another child. G.'s father has never lived with M.P. and was recently ordered to pay support in a state-initiated paternity action. Although some amount from the payments has been saved, most has been spent for G.'s needs. The unborn child has a different father.

3. On approximately April 1, 2002, M.P. moved from her mother's home at 1820 Q Street to a residence at 609 N. 18th Street, taking G. with her. The petitioner paid the rent for that residence. M.P. graduated from high school in May of 2002. M.P. testified that she moved to the 18th Street address because she had a baby and thought she should be on her own. In June of 2002, the petitioner moved from Ord to South Dakota for employment reasons. Although the petitioner later returned to Nebraska, she did not return to the Ord residence. In September, M.P. returned to the Q Street house. The petitioner owns the Q Street house, and pays the mortgage payment of \$303 per month. M.P. does not pay rent to her mother.

4. M.P. started working for the Alco department store almost one year prior to trial. She works the 3:00 to 8:30 shift on four to five days each week at a wage of \$5.15 per hour. She takes home a little over \$200 every two weeks from her employment. The level of employment has not varied over the past year. The pay from Alco does not provide M.P. sufficient income to maintain her own existence.

5. M.P. has a driver's license, although it has been suspended for some periods in the past. During the suspension periods, M.P. relied on the petitioner to provide M.P.'s transportation. M.P.'s automobile is titled jointly with the petitioner, who bought and paid for the vehicle two years ago.

6. The petitioner supplied M.P.'s housing at the 18th Street address. She also supplies M.P.'s housing at the Q Street address. She provides the car, although M.P. apparently pays for the fuel, insurance, and other current automobile expenses. The petitioner paid over to M.P. the respondent's monthly support payments and also bought M.P. additional clothes and food costing about \$160 to \$200 per month. The petitioner also drives M.P. for doctor's visits from time to time.

7. M.P.'s child, G., receives medical insurance through the Kids Connection program. Although there was a suggestion that M.P. receives Medicaid assistance, the evidence more persuasively showed that M.P. received medical insurance through the

respondent's employment. She receives four cans of baby formula each month through the WIC program, and receives state assistance to pay for child care for G. while M.P. is working. M.P. denied receiving AFDC or other public cash assistance.

8. M.P. appears to have limited ability or intelligence. When questioned regarding submission to the petitioner's control, M.P.'s demeanor spoke louder than the words demonstrating a rebellious streak that would make it difficult for the petitioner to effectively control M.P. The petitioner testified that she tries to guide M.P. and that M.P. listens most of the time.

9. The respondent testified to hearsay regarding public assistance cash payments to M.P. and a reduction in employment hours to remain on assistance. The other testimony effectively refuted those hearsay statements.

10. In *Accent Service Co., Inc. v. Ebsen*, 209 Neb. 94, 306 N.W.2d 575 (1981), the Nebraska Supreme Court stated that where a minor departs from the family home with parental consent, takes his personal belongings with him, thereafter furnishes his own support and receives nothing from his parent, that minor becomes emancipated, thereby relieving the parent from liability to those who furnish necessities of life to the minor. Obviously, the current situation does not meet all of those requirements.

11. In *Wulff v. Wulff*, 243 Neb. 616, 500 N.W.2d 845 (1993), the court stated that whether there has been an emancipation is a question of fact, but what is emancipation is a question of law. 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.* The Supreme Court affirmed the district court determination that the minor child was not emancipated even though she had given birth to her own child.

12. In *Foxvog v. Foxvog*, 7 Neb. App. 92, 578 N.W.2d 916 (1998), the Court of Appeals derived certain principles from prior Supreme Court opinions on emancipation.

The court stated that “emancipate” means to free or release a child from the parental power, making the person released sui juris. The court further stated that 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. The court observed that 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. In determining whether a child has been emancipated, the intention of the parent governs.

13. The evidence persuades this court that the petitioner intends to continue to exercise her legal right to control M.P. to the greatest extent possible. This certainly appears to pose a challenge at times. The petitioner continues to provide support and assistance. The court concludes that the child is not emancipated.

FINAL ORDER: IT IS THEREFORE ORDERED that:

1. The respondent’s application is dismissed at respondent’s cost.
2. The temporary order suspending income withholding is dissolved, and the mandatory withholding of child support from the respondent’s earnings shall be reinstated forthwith pursuant to the Income Withholding For Child Support Act.
3. The deposit of support installments totaling \$675.00 is ordered paid by the court clerk to the petitioner, for the use and benefit of the minor child.
4. The monthly child support judgment of \$225.00, to be paid through income withholding, is reinstated commencing on December 1, 2002, until the support obligation terminates as provided in the decree. Delinquent support shall bear interest at 3.507% per annum as provided by law.

Signed in chambers at **Ainsworth**, Nebraska, on **November 22, 2002**;
DEEMED ENTERED upon file stamp date by court clerk.

BY THE COURT:

If checked, the court clerk shall:

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

Mailed to:

William B. Cassel, District Judge