

LEGAL NOTICES, cont.

Estate of Edward C. Brene-
man, late of the Borough of
Waynesboro, Franklin
County, Pennsylvania, de-
ceased.

CRAIG: First and final account,
statement of proposed dis-
tribution and notice to the
creditors of Farmers and
Merchants Trust Company
of Chambersburg, Admin-
istrator of the Estate of Es-
ther M. Craig, late of the
Borough of Chambersburg,
Franklin County, Pennsylv-
ania, deceased.

DESSEM: First and final account,
statement of proposed dis-
tribution and notice to the
creditors of Jeryl Eugene
Overcash, Jr., Executor of
the Estate of Betty B. Des-
sem, late of the Borough of
Chambersburg, Franklin
County, Pennsylvania, de-
ceased.

LEAK: First and final account,
statement of proposed dis-
tribution and notice to the
creditors of Valley Bank and
Trust Company, Executor
of the Estate of Robert C.
Leak, late of the Borough of
Chambersburg, Franklin
County, Pennsylvania, de-
ceased.

OYLER: First and final account,
statement of proposed dis-
tribution and notice to the
creditors of Helen M. Oyler,
Administratrix of the Estate
of Douglas A. Oyler, late of
Chambersburg, Franklin
County, Pennsylvania, de-
ceased.

UPPERMAN: First and final account,
statement of proposed dis-
tribution and notice to the
creditors of Chambersburg
Trust Company, Executor
of the Estate of Ada E.
Upperman, late of Cham-
bersburg, Franklin County,
Pennsylvania, deceased.

LEGAL NOTICES, cont.

WOOD: First and final account,
statement of proposed dis-
tribution and notice to the
creditors of Valley Bank and
Trust Company, Executor
of the Estate of Theodore
M. Wood, Jr., late of Cham-
bersburg, Franklin County,
Pennsylvania, deceased.

Robert J. Woods
Clerk of Orphans' Court
Franklin County, Pennsylvania
3/10, 3/17, 3/24, 3/31/89

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SCHULTZ V. SCHULTZ, C.P. Franklin County Branch, No. F.R.
1988-3238

Support - Emancipation - Age 18 - High School Student - College Student Test

1. When a child becomes emancipated a presumption arises that the reciprocal duties between father and child end.
2. After emancipation a child must prove to the court that she is unable to be self-supportive in order to continue to receive support from a parent.
3. Where an 18-year old child lives in her own home and mother no longer exercises any control over her, she is emancipated despite the fact she is still in high school.
4. When a child is emancipated but still in high school, she cannot become self-supporting and is entitled to support using the college student test.
5. Under the college student test, a parent will be required to pay support if the child successfully pursues her education and parent has sufficient earning capacity.

Thomas M. Painter, Esq., Attorney for Plaintiff
Beth Ann C. Gabler, Esq., Attorney for Defendant

WALKER, J., October 4, 1988:

On March 23, 1988, a support conference was held on the matter of Douglas L. Schultz v. Priscilla Schultz in which Mr. Schultz sought modification of his support obligations to the parties' minor child, Wendy E. Schultz. The hearing officer determined that Wendy had become emancipated and terminated Mr. Schultz's support obligations to her.

The plaintiff, Wendy E. Schultz, now brings this action for child support on her own behalf against her defendant/father, Douglas L. Schultz. The plaintiff contends that, since she is unable to support herself, her defendant/father should be ordered to resume making reasonable support payments to her and to add her to his medical and health insurance coverage.¹ The defendant,

¹ The plaintiff was previously covered by the defendant's medical and health insurance coverage. She was later taken off this coverage by the defendant for an unknown reason, even though it did not cost him any additional money to have her on his coverage.

on the other hand, contends that his plaintiff/daughter is emancipated, his support obligations to her were justifiably terminated by the hearing officer, and that his support obligations cannot be continued under the present circumstances.

The plaintiff is 18 years old and an eleventh grade high school student who regularly attends classes from 8:00 a.m. to 4:00 p.m. every school day. She resides, with her sister and brother-in-law, in a house which she inherited from a deceased aunt. All three contribute to the maintenance and expenses of the house although her sister and brother-in-law generally contribute more than the plaintiff. The plaintiff has lived in this house for the past three years, prior to which she lived in her mother's home. She apparently left her mother's home because she wanted to live in her own house.

It appears from the record and the aforementioned facts that plaintiff's mother no longer exercises any control over plaintiff's life despite the facts that they live approximately ten miles from each other and that plaintiff makes various visits to the mother's home. In further support of this finding, the plaintiff cooks for herself, does her own laundry, and helps maintain her own house.

In addition to owning her own house, the plaintiff owns most of the house furnishings as well as an automobile. Furthermore, she receives \$50 per week income from her mother for taking care of her mentally retarded sister, Joletta, who lives with her mother. Based on the aforementioned facts, it is the court's belief that the plaintiff is emancipated and no longer under the control of either parent.

When a child becomes emancipated, a presumption arises that the reciprocal duties between father and child end. The existence of the presumption places the burden of proof on the emancipated child to show that the surrounding circumstances make it impossible to be self-employed or self-supportive. *Commonwealth ex re. Welsh v. Welsh*, 222 Pa. Super. 585, 296 A.2d 891 (1972). Plaintiff must therefore prove to the court that she is unable to be self-supportive in order to be eligible to receive support from her defendant/father.

The court determines that the plaintiff has carried her burden of proof in this case. The record indicates that the plaintiff has two years of high school remaining and at the present time, has reasonable financial needs. Although she receives \$50 per week income for taking care of her sister Joletta, plaintiff's total weekly

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expenses for such necessities as food, taxes, transportation, utilities, tuition, and heating fuel clearly exceed her \$50 weekly income.

The court does note that plaintiff can, and previously did, obtain part-time employment at night and on weekends in order to supplement her weekly income. Another possibility to help plaintiff pay her weekly expenses is to take out a small balloon mortgage on her house which apparently is unencumbered at this time. A balloon mortgage would give the plaintiff the cash which she presently needs for her expenses. The repayment schedule can be arranged so that plaintiff would be required to make small initial payments while still in school and larger payments when she graduates, finds permanent employment, and becomes self-supportive. In short, there are various ways that plaintiff can improve her own financial position.

The fact remains, however, that she cannot, while still attending high school, become self-supportive so as to justify the termination of defendant's support obligations. The court will not, under the circumstances, shift the financial burden entirely to the plaintiff/daughter. As such, our attention must now be directed to defendant's ability to make support payments to plaintiff.

Because the facts in this case are highly unusual, the court gives careful consideration as to which test to apply in determining whether or not the defendant should be required to make support payments to the plaintiff. It is the court's opinion that the most equitable test to apply under the present and unusual circumstances is the college student test. The court therefore analogizes the plaintiff's position to that of a college student, living independent of her parents and attending school on a regular basis.

Under the college student test, the defendant will only be liable for support obligations if the plaintiff is willing and able to successfully pursue her course of studies and the defendant/father has sufficient earning capacity or income that would enable him to pay an order without undue hardship. *Leonard v. Leonard*, 353 Pa. Super. 604, 510 A. 2d 827 (1986); *Commonwealth ex rel. Ulmer v. Sommerville*, 200 Pa. Super. 640, 190 A.2d 182 (1963). Since the plaintiff is attending school on a regular basis and passing her courses, the court finds that she is willing and able to successfully pursue her education.

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We must therefore determine the defendant's ability to pay a support order without undue hardship. The court makes this determination by carefully examining the defendant's monthly income and expenses as follows:

Monthly Income	
Average take-home pay (after deductions)	\$618.74
1987 Federal income tax refund ²	116.66
Room, board, and maintenance of stepdaughter ³	76.00
Total Monthly Income	\$811.40

Monthly Expenses	
Food	\$ 120.00
Rent	100.00
Real estate taxes	12.30
Car Expenses	66.66
Loan Payments ⁴	
Chambersburg Trust	102.75
Beneficial Finance	88.00
Medical bills ⁵	50.00

²In tax year 1987, defendant received a \$1,400 income tax refund from the federal government. Since the origin of the refund was withheld tax on income, the court considers it in computing defendant's monthly income.

³Defendant currently resides with his second wife and stepdaughter who receives \$76 bi-weekly support payments from her biological father. Although defendant has no legal duty to support his step-daughter, the court considers one-half of her monthly support as income for room, board, and maintenance.

⁴Defendant is making monthly payments of \$102.75 to Chambersburg Trust in satisfaction of a loan which he took to finance a new furnace for his mobile home and to help pay his child support obligations that were in arrearages. Defendant also pays \$88 per month to Beneficial Finance in satisfaction of a loan taken for automobile and unforeseen expenses. Both loans have remaining terms of two and one-half years.

⁵Defendant pays \$50 per month on medical bills as the result of treatment received by his present wife at the Chambersburg and Carlisle Hospitals. This figure represents the amount his medical insurance did not cover.

Insurance ⁶	
Life	20.00
Home repairs	13.58
Utilities	80.00
Telephone	25.00
Barber and beauty shop	4.00
Entertainment	9.00
Residence tax	2.08
Lunches	20.00
Other expenses	
Heating fuel	41.66
Trips to Veterans' Administration Hospital	3.33
Total Monthly Expenses ⁷	\$ 758.36

It is clear from the calculations that the defendant's income exceeds his expenses. The question remains whether or not an order of support by this court would cause the defendant undue hardship. The court believes that any substantial payments would cause him undue hardship. On the other hand, the plaintiff is defendant's daughter as well as a full-time student with reasonable financial needs. Although there appears to be little, if any, unnecessary luxuries or fat in the defendant's monthly budget, the court determines that the defendant can make minimal weekly support payments to his plaintiff/daughter without suffering undue hardship. It is not unreasonable to ask the defendant to make some personal sacrifices in order to fulfill, to the best of his ability, his parental obligations to his daughter while she pursues her high school education.

In the court's opinion, such minimal weekly support payments would not cause defendant any undue hardship. The court therefore orders that the defendant make weekly support payments of \$7.50 to the plaintiff. These payments shall be effective

⁶Defendant lists his medical and health insurance payments as an expense on his monthly budget sheet. The court will not consider them in calculating his monthly expenses because they are automatically deducted by his employer from his gross pay per month. To also include them in the expense column would allow the defendant to receive a double benefit.

⁷On his monthly budget sheet, defendant lists his support payments to his daughter, Joletta, as an expense. Since these payments are automatically taken out of his gross pay per month, the court does not include them in calculating his expenses.

through June 1990 unless the plaintiff discontinues pursuit of her education.

In addition, the court orders the the defendant add the plaintiff to his medical and health insurance coverage at his place of employment, since it will not cost him any additional money to have her included under his health insurance.

ORDER OF COURT

October 4, 1988, the court having found that the plaintiff has a net weekly income of \$50 and the defendant has a net monthly income of \$811.40 and upon consideration of plaintiff's petition for child support, the following relief is granted:

1. Defendant is ordered to make weekly support payments of \$7.00 to plaintiff via the Collection Officer of this court, plus a 50 cent service charge each Monday. These payments shall continue through June, 1990 unless plaintiff discontinues pursuit of her high school education;

2. Defendant is ordered to add plaintiff to his medical and health insurance coverage at his place of employment.

FACCHINE, BY WHITSEL, GUARDIAN V. BIGLER, C.P.
Franklin County Branch, E.D. Vol. 7, Page 445

Equity - Deed - Fraud - Undue Influence - Confidential Relationship

1. In order to prove that a transfer of property is not a gift the burden of proof is on the challenging party to produce evidence of a clear, strong and compelling nature.
2. The existence of a confidential relationship shifts the burden to the alleged donee to prove that the gift was the free act of the donor.
3. A confidential relationship will be found only when the parties are not on equal terms and one side exercises overmastering influence over the other.
4. The fact a couple resides together unmarried for 26 years does not, of itself, establish a confidential relationship.

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