

ORDER OF COURT

NOW, August 22, 1978, at 2:30 p.m., the order of the Pennsylvania Liquor Control Board to citation No. 1984 is affirmed to the extent that intoxicating beverages were sold to an intoxicated person but is reversed as to the allegation that the Mansion House, Inc. operated in a noisy and/or disorderly manner. The fine is reduced to \$200.00.

The order of the Pennsylvania Liquor Control Board as to citation No. 1525 is affirmed.

COMMONWEALTH ex rel. CLINE vs. CLINE, C.P. Franklin County Branch, No. 274 of 1978, NS

*Non-Support - Parent's Responsibility for College Education - Lack of Contact with Father*

1. The fact that an 18 year old daughter seeking support from her father for her college education has not seen her father for 7 years does not deprive her of her right to support.
2. Various acts of the legislature establishing age 18 as the age of majority do not limit a parent's responsibility for support of a child when she reaches 18.

*Gregory L. Kersz, Esq., Attorney for Petitioner*

*R. Harry Bittle, Esq., Attorney for Respondent*

EPPINGER, P.J., October 4, 1978:

Kimberly K. Cline (Kimberly) wants to go to college. According to her testimony she can't do it unless her father, Walter M. Cline, contributes to her support. Her father maintains (1) that he had no contact with his daughter for many years and therefore is not responsible for her education, (2) that she is 18 years old, is legally an adult and is responsible for her own education and (3) even if under the law he could be compelled to assist with her education, it would work an undue hardship upon him.

(1) *Non-visitation by the child with her father.* It has been uniformly held that a child's failure to visit with a parent does not affect the child's right to support. *Mallinger v. Mallinger*, 197 Pa. Super 34, 175 A.2d 890 (1962); *Commonwealth v. Mexal*, 201 Pa. Super 457, 193 A.2d 680 (1963); *Commonwealth v. Ferree*, 35 Northumb. L. J. 121 (1963). The rule still prevails, though to the observer there may be

something unseemly about a child insisting on receiving money from a parent and disdaining any social contact with the source of that money. In most situations a child who is supported by a parent would want to fulfill his or her responsibility to that parent by at least being civil, and visiting from time to time.<sup>1</sup>

In cases where that does not occur, it is frequently because the parents have had a difficult break and the child feels compelled out of loyalty to cling to one parent or the other. This is quite understandable, but on reaching maturity the child should attempt to re-establish relationships with the other parent.

With these comments which are aimed more at good sense than at the legal situation, we hold that the fact that Kimberly hasn't seen her father for seven years, even if she has refused to associate with him, does not alone deprive her of the right to receive educational funds from him.

(2) *The child is an adult.* There was great pressure on legislators and others to grant 18 year olds the full panoply of rights and privileges. About 1972 many laws were changed, all seemingly intended to make the 18 year olds complete adults. Generally they have been given control of their own affairs. Parental influence now seems to be that which is engendered by respect. If that is so, one would wonder how it is that a child can claim money for educational purposes from his or her parents after reaching 18.

Merely as illustrative of what has happened, the legislature has declared that 18 year olds are adults for the purposes of suing and being sued<sup>2</sup>, of consenting to their own adoption<sup>3</sup>, for the purposes of being employed<sup>4</sup>, of entering into contracts<sup>5</sup>, of serving as guardians for others<sup>6</sup>, and of special interest in this case, for the purposes of seeking financial aid from the Pennsylvania Higher Education Assistance Agency<sup>7</sup>.

From all of this it might be concluded that the legislature has established 18 as the age when a person becomes an adult. It

<sup>1</sup>Our courts speak of the reciprocal duties between father and child. *Commonwealth ex rel. Schulberg v. Hrisch*, 236 Pa. Super 179, 344 A.2d 530 (1975).

<sup>2</sup>Act of 1972, P.L. 1404, 12 P.S. Sect. 140

<sup>3</sup>Act of 1972, P.L. 347, 1 P.S. Sect. 413

<sup>4</sup>Act of 1974, P.L. 123, 43 P.S. Sect. 41

<sup>5</sup>Act of 1972, P.L. 472, 73 P.S. Sect. 2021

<sup>6</sup>Act of 1972, P.L. 508, 20 P.S. Sect. 5113

<sup>7</sup>Act of 1977, P.L. 1, 20 P.S. Sect 5158.3

is interesting to note, however, that in doing this, the legislature did not pass one sweeping act. Instead it was done on a situation by situation basis. So far as we have been able to determine, no act was passed nor have there been any judicial holdings limiting a child's right to educational support upon reaching 18. Ordinarily when a child comes of age the duty of the father to support a child ends. *Commonwealth ex rel. Welsh v. Welsh*, 222 Pa. Super 585, 296 A.2d 891 (1972).

Our courts have held that if the child is in college, a father may have the obligation to help with the education. *Commonwealth ex rel. Williams v. Williams*, 242 Pa. Super 550, 364 A.2d 410 (1976); *Commonwealth ex rel. Ulmer v. Sommerville*, 200 Pa. Super 640, 190 A.2d 182 (1962), but this is only true if the amount of support required of him would not work a hardship upon him.

The father has argued with some force that the policy in Pennsylvania today is to limit parents' responsibilities for support when a child reaches 18. He cites the Act of 1974, P.L. 249, 50 P.S. Sect. 4502, which terminated the liability of parents for a child receiving services or benefits under the Mental Health and Mental Retardation Act when the mentally disabled person becomes 18. Again, however, this is a legislative statement dealing with one specific situation. If the legislature had intended to dissolve a parent of all responsibility for an 18 year old child, it could have said so. So we must decide this case on the unchanged law of our appellate courts, and it is noted that one of the cases cited was decided after the 18 year old legislative surge in 1972.

(3) *Undue hardship*. In this case the father has a net weekly income of approximately \$240.00 and from this he must support himself and his wife. He reports that he expects to retire at the beginning of 1979 and upon his retirement, his income will be reduced to \$160.00 per week. Since support orders are effective as of the time they are made and may be changed from time to time according to the circumstances, *Welsh*, supra, we must make this order based on the \$240.00 income and if he does in fact retire and his income is reduced, the father may petition the court to modify the order.

We conclude that it would not work an undue hardship upon the father to require him to contribute \$40.00 per week for the support of his daughter so she may obtain an education.

Records in this court show that prior to August 10, 1978, the father had been paying Kimberly's mother \$45.00 per week for the child's support. That order was terminated and

Kimberly has brought this action on her own complaint, Act of 1953 P.L. 431, 62 P.S. Sect. 2043.35. At the time the order was made on October 6, 1976, requiring the father to pay \$45.00 per week, he was earning approximately \$190.00 per week. Since that time his income has increased by \$50.00.

An order in the usual form will be filed.

COMMONWEALTH EX REL. McCOY V. McCOY, C.P.  
Franklin County Branch, No. F. R. 1978-106-5

*Non-Support - Parent's Responsibility for College Education - Sufficient Estate of Parent*

1. In the absence of an agreement to provide a child with a post high school education, a parent may be ordered to provide support for a child while securing such education or ordered to provide such an education in part or whole only, if: the child is willing and able to successfully pursue her course of studies; and the parent has a sufficient estate, earning capacity or income to enable payment of the order without undue hardship.

*William C. Cramer*, Assistant District Attorney, Attorney for the Petitioner

*William F. Kaminski*, Attorney for the Respondent

#### OPINION AND ORDER

KELLER, J., October 18, 1978:

The petition of JoAnn McCoy to modify an existing support order was presented to the Court on September 14, 1978, and a hearing on the matter was scheduled for October 4, 1978. The petitioner alleged changed circumstances:

1. The petitioner is unable to get a job, because she is partially disabled, and also states that she has an earning capacity of \$50.00 per week.

2. There are added expenses for the one child, Brenda Kay McCoy, because she is attending college.

The hearing was held as scheduled and counsel for the respective parties have submitted memoranda of law.